ODISHA ELECTRICITY REGULATORY COMMISSION
PLOT NO. 4, CHUNUKOLI, SAILESHREE VIHAR,
CHANDRASEKHARPUR,
BHUBANESWAR-751021

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Present: **Shri S. C. Mahapatra,Chairperson**
Shri G. Mohapatra, Member
Shri S.K. Ray Mohapatra, Member

Case No.81/2023

M/s. Vedanta Limited …… Petitioner
Vrs.
The Executive Engineer (Electrical),
Jharsuguda Electrical Division,
TPWODL, Jharsuguda &Others …… Respondents

In the matter of: **Application under Section 86(1)(f) & (k) of the Electricity Act, 2003 seeking for order/ direction inter-alia, quashing notice dated 16.08.2023, communications dated 28.06.2023 & 07.08.2023 and the bill dated 03.08.2023 issued by TPWODL and refund of the amount of INR 18.28 Crore towards CSS for FY 2015-16 along with DPS of INR 0.59 Crores as already paid by the Petitioner with applicable interests/carrying costs.**

For Petitioner: Mr. Biju Mattam, Advocate, Mr. Hemant Singh, Advocate and Ms. Nehul Sharma, Advocate along with Shri Biswajit Sahoo, Associate Manager, M/s. Vedanta Ltd.

For Respondents: Shri K.C Nanda, G.M (Regulatory Affairs & Strategy) & Shri Amaresh Chandra Bal, D.M (Legal) along with Mr. Ananda Shrivastava, Advocate on behalf of Respondent No.1-TPWODL. Shri Kamala Kanta Mohanta, Chief Engineer-cum-Chief Electrical Inspector (WZ), Odisha, Sambalpur, the Respondent No.2. Mr. R.K.Mehta, Sr. Advocate along with Mr. L.K. Mishra, DGM (F) R&T and Mr. B.K.Das, Sr. GM on behalf of the Respondent No.3-GRIDCO Ltd. Ms. Nibedita Mishra, Addl. Secretary, DoE, GoO-Respondent No.4, and the Representative of SLDC-Respondent No.5.

ORDER

Date of Hearing: 17.10.2023 **Date of Order:26.10.2023**

The Petitioner-M/s. Vedanta Ltd. has filed the present petition under Section 86(1)(f) and (k) of the Electricity Act, 2003 seeking for quashing of the disconnection notice dated 16.08.2023, communications dated 28.06.2023 & 07.08.2023 and the bill dated 03.08.2023 issued by the Respondent No.1-TPWODL claiming payment of Rs.181.65 crores towards Cross Subsidy Surcharge (CSS) for the consumption of power from its CGP, and also for a direction to TPWODL for refund of Rs.18.28 crores already paid

by it towards CSS for FY 2015-16 along with Delayed Payment Surcharge (DPS) of Rs.0.59 crores with applicable interest/carrying cost @1.25% per month.

2. **The submissions of the Petitioner-M/s. Vedanta Ltd. vide his application as amended, may be briefly stated as under:**

a) The Petitioner owns & operates a CGP comprising of 12 units (3x600 MW & 9 x 135 MW) and the power generated from these units is primarily for captive consumption of the Petitioner. Initially, the Petitioner was running a CGP of 9x135 MW capacity and 4x600 MW units asan IPP.The Petitioner(erstwhile Sterlite Energy Ltd.) had executed a PPA with GRIDCO (State Designated Agency) for supply of State share of power from the 4x600 MW power plant which was approved by the Commission vide its order dated 12.06.2013 passed in Case No.117 of 2009. Subsequently, the Petitioner had filed a petition before this Commission seeking declaration of the 4x600 MW power plant as CGP or alternatively to declare the unit 4 of the power plant as a CGP. The Commission vide its order dated 27.01.2016 in Case No.21 of 2015 allowed conversion of the Units 1, 3 & 4 of the 4x600 MW power plant as CGP with effect from 01.04.2015.

b) At the end of the FY 2015-16, the Respondent No.1-TPWODL (erstwhile WESCO Utility), vide its letter dated 12.04.2016, requested the Chief Electrical Inspector(Generation), Western Zone for verification of the CGP status of the Petitioner for the FY 2015-16. This communication was made by the Respondent No.1 in terms of the Commission's order dated 27.01.2016.

c) According to the Petitioner, the calculation of CSS due to loss of captive status of the converted CGP units was Rs.18.28 crore along with DPS of Rs.0.59 crore till FY 2015-16 which was duly paid by the Petitioner on 31.03.2016. The Petitioner, vide its letter dated 30.04.2016, made a representation before the Respondent No.1, requesting to release a bank guarantee of Rs.260 crores, which was furnished earlier during the pendency of the Case No.21 of 2015, subject to certain submissions and undertakings. The relevant extracts of the said letter are reproduced herein below:

"After the end of FY 2015-16, although the Commission will declare the status of our CGP (Unit I, III and IV of 600 MW each), as per our captive consumption, we feel that we may not be able to achieve the CGP status for the above financial year. Accordingly, pending the verification of CGP status we have paid the calculated cross subsidy surcharge amount of Rs.18.28 crores, including DPS of Rs.59 lakhs as per available records. Regarding DPS which was paid along with CSS may be reconciled in future. We also undertake to submit the back guarantee amount to Rs.2.3 crores by 3rd May, 2016 against the energy of 4.33 MU which is not yet reconciled. After due reconciliation and payment if any for the above additional energy, the BG of Rs.2.3 crores may be returned back to us. Under the above circumstances, we request you to return back the original BG of Rs.260

crores at the earliest. In case the CGP status is maintained, we may be returned back the amount deposited. However, the necessary payment adjustment shall be made, only after the finalization of the CGP status by Hon'ble Commission."

d) On 21.04.2017, the Petitioner furnished the generation and consumption data of 3x600 MW converted CGP Units I, III and IV for the FY 2016-17 to the Chief Engineer-cum-CEI (Western Zone) requesting him to provide the CGP status for the year after verifying the above data.

e) Belatedly, after exhausting the period of limitation, Respondent No.1 vide its letter dated 12.03.2018 for the first time informed the Petitioner regarding alleged loss of captive status and made claim of CSS for FY 2015-16 and 2016-17. In the said letter the Respondent No.1 had claimed an amount of Rs.146.79 crores towards CSS for the FY 2015-16 after adjustment of the amount of Rs.18.28 crores already paid by the Petitioner andCSS of Rs.68.37 crores for the FY 2016-17. In response to such claim of Respondent No.1, the Petitioner, vide its letter dated 27.03.2018, informed the Chief Engineer-cum-CEI (Western Zone) regarding submission of generation and consumption data of 3x600 MW CGP Units I, III & IV for FY 2015-16 and 2016-17 wherein the Petitioner stated that the power consumption of SEZ unit (Smelter-II) was not included and also the CSS for FY 2015-16 was already paid. A copy of the said letter was also marked to TPWODL (erstwhile WESCO Utility).

f) The Respondent No.1-TPWODL, however, neither chose to rectify the said demand nor did initiate any action towards recovery of actual CSS or the CSS as per the alleged claim of Rs.146.79 crore for FY 2015-16. After lapse of about five years from the aforesaid demand, the Chief Engineer-cum-CEI (Western Zone), vide its letter dated 20.01.2023, requested the Petitioner to furnish month wise generation and consumption data from the date of commissioning of eachunit of 3x600 MW converted CGP till date for onward submission to the higher authority and the OERC. In response thereto, the Petitioner, vide its letter dated 26.06.2023, submitted the month wise generation and consumption data of 3x600 MW CGP to the Chief Engineer-cum-CEI (Western Zone) for the period from April, 2015 to March, 2023, which was subsequently furnished to the Respondent No.1 TPWODL by the Respondent No.2vide its letter dated 28.06.2023 along with status of the 3x600 MW Units from FY 2015-16 onwards. However, the above response of the Petitioner to the CEI does not extend the limitation period in favour of TPWODL to raise any demand or take any action for recovery of the alleged CSS for FY 2015-16 from the Petitioner.

g) In pursuance of the above communication, the Respondent No.1, vide its letter dated 28.06.2023 to the Petitioner, claimed the CSS of Rs.181.65 crore for the

aforesaid CGP Units I, III & IV on the ground of alleged loss of captive status for the FY 2015-16. In response to the above demand of CSS made by the Respondent No.1, the Petitioner, vide its letter dated 03.08.2022, refuted the claims of Respondent No.1, inter-alia, on account of the said claims being statutorily barred under the Limitation Act, 1963 and also the provisions of the Electricity Act, 2003. Further, without prejudice to the said claim, the Petitioner also questioned the correctness of the levy of CSS considering the same to be qualified as a CGP after taking into account the gross generation and aggregate self-consumption from the power plant as a whole (3x600 MW plus 9x135 MW) owned by the Petitioner.

h) The Respondent No.1 raised a bill dated 03.08.2023 on the Petitioner for the month of July, 2023, wherein the claim of CSS amounting to Rs.181.65 crore for the alleged loss of CGP status for FY 2015-16 was also raised. Thereafter, in the impugned letter dated 07.08.2023, Respondent No.1 insisted for payment of the CSS by the due date of 10.08.2023 and in case the Petitioner fails to honour the payment within the due date, the Respondent No.1 would take steps for disconnection of the power supply as per Section 56(1) of the Electricity Act, 2003. In terms of the above letter, the Respondent No.1,vide its Disconnection Notice dated 16.08.2023,has threatened to disconnect the Petitioner's power plant in case of failure to clear the outstanding dues including the claim of CSS due to loss of CGP status, within a period of fifteen days.

i) The levy and computations made by Respondent No.1 in its letter dated 12.03.2018 and the impugned letter dated 28.06.2023, suffer from certain grave errors apparent on the face of the record. Accordingly, the Petitioner, vide its letter dated 18.09.2023 addressed to the Respondent No.2, highlighted those errors in the data pertaining to the generation and consumption of the Petitioner, which was also shared with the Respondent No.1-TPWODL for consideration. The net consumption at SEZ Smelter is 1183.19 MU excluding auxiliary consumption of 391.16 MU during FY 2015-16 whereas Respondent No.1-TPWODL vide the impugned letter dated 28.06.2023, has shown the same to be 1574.35 MU while computing the CSS for the FY 2015-16.

j) **Section 42(2) of the Electricity Act, 2003** provides an exemption from imposition of CSS upon the captive user consuming electricity from its CGP and satisfying the twin criteria as stipulated in the Electricity Rule, 2005. Further, **as per Regulation 4 of the OERC (Determination of Open Access Charges) Regulations, 2006, the CSS shall be computed by the Distribution Licensee and approved by this Commission**. Further, the test for qualifying as CGP is provided in Rule 3 of the Electricity Rules, 2005 that:

k) "3(1) No power *plant shall qualify as a 'captive generating plant' under Section 9 read with clause (8) of Section 2 of the Act unless:*

(a) In case of a power plant:

(i) Not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) Not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use.

xxx xxx xxx"

l) The CSS is the sole claim of the Distribution Licensee (TPWODL) qua a CGP, if the same does not maintain its captive status for a financial year. As such, onus always lies on the concerned Distribution Licensee to take appropriate steps for verification of the captive status of the CGPs and to collect CSS, if found leviable after such verification. The CSS for the consumption in FY 2015-16, if payable, would have become due at the end of FY 2015-16. The liability to pay arises on the consumption of electricity and the obligation to pay would arise when the bill is issued by the licensee, quantifying the charges to be paid. In the instant case, the claim of CSS made by the Respondent No.1 through the impugned disconnection notice, letters and bill is clearly time barred in view of the extant tremor under the Limitation Act, 1963. The Respondent No.1 failed to take steps for recovery of such CSS for more than seven years from the end of the FY 2015-16.

m) **A conjoint reading of the Electricity Act, 2003, the Rules and the Open Access Regulations, 2006 makes it clear that it is upon the Distribution Licensee (being the Respondent No.1 in the present case) to verify the CGP status of the Petitioner's power plant and accordingly compute the CSS payable**. By not taking any action for recovery of such CSS payable by the Petitioner, for more than seven years, Respondent No.1, in effect, has waived its right to collect such CSS, owing to the statutory bar under the Limitation Act, 1963.

n) When the Respondent No.1 vide its letter dated 12.04.2016 requested the CEI (Generation) for verification of the CGP status, the Petitioner, on its own volition, has paid an amount of Rs.18.28 crore to the Respondent No.1 on account of CSS for Units I & III of 600 MW each for the FY 2015-16. However, the Respondent No.1 failed to take recourse available, if any, for recovery of such alleged revised demand subsequent to 12.03.2018 and thereby forfeited its right to recover such CSS after expiry of limitation period from the period of consumption i.e. FY 2015-16.

o) It is the settled law that whether a claim is under a statute or under a contract, the same cannot be recovered if it is beyond the prescribed period of limitation. **The claim of CSS is a claim of money recovery, and does not at all fall under the tariff determination domain. The Hon'ble Supreme Court in Andhra Pradesh Power Coordination Committee and others Vrs. M/s. Lanco Kondapalli Power**

Ltd. and others, reported in (2016) 3 SCC 468 (para 31), has held that Limitation Act, 1963 will not apply to the regulatory issues under Electricity Act, 2003 and that the said Limitation Act will apply to other disputes. The Hon'ble Supreme Court **in Energy Watch dog Vrs. CERC, reported in (2017) 14 SCC 80 (para 19 & 20) has held that tariff determination under Electricity Act, 2003 is part of regulatory functions. In terms of the above judgment, any issue concerning determination of tariff is outside the purview of Limitation Act, 1963**. The present case concerns with recovery of CSS, once the same is determined by the Commission in respective tariff orders, non-recovery of the same does not fall under regulatory domain and the provisions of Limitation Act, 1963 is squarely applicable. As such, the impugned disconnection notice, letters and bill/demand are liable to be quashed.

p) The Respondent No-1 in its impugned order dated 07.08.2023 has asked the Petitioner that in case payment of CSS of Rs.181.65 crore for FY 2015-16 is not made within the due date, as envisaged in the energy bill of July, 2023 it would take appropriate steps as per Section 56 (1) of the Electricity Act, 2003 and also proceeded to issue disconnection notice dated 16.08.2023 in terms of **Section 56(1) of the Electricity Act, 2003**. The Respondent No.1 has not referred to Section 56 of the Electricity Act, 2003 in its entirety, and is merely relying on Section 56(1) for taking steps for disconnection of electricity of the Petitioner. The claim made by the Respondent No1 is not just barred in terms of Limitation Act, 1963, but also barred in terms of **Section 56(2) of the Electricity Act, 2003** which is quoted here under:

"Section 56

(1) xxx xxx xxx xxx

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Section shall be recoverable after the period of two years from the dates when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

A careful reading of Section 56(2) of the Electricity Act, 2003 shows that the bar contained therein after lapse of two years from the date on which such sum became due, is not merely with respect to disconnection of supply, but also with respect of recovery.

q) The Respondent No.1 is barred from not only exercising its remedy of recovery but also the remedy of disconnection. Therefore, the impugned letter dated 07.08.2023 and the impugned disconnection notice dated 16.08.2023 issued by the Respondent No.1 are liable to be quashed by the Commission on account of being time barred in terms of Limitation Act, 1963 and Section 56(2) of the Electricity Act, 2003. In this regard, the Petitioner **relied upon the decision of the Hon'ble Supreme Court in Civil Appeal No.1672 of 2020 titled *'Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Ltd. & Anr. Vrs. Rahamatullah Khan' reported in (2020) 4 SCC 650*.**

r) The 1st demand for CSS was raised upon the petitioner by the Respondent No.1 vide its letter dated 12.03.2018. Merely by issuing the letter dated 12.03.2018 the Respondent No.1 made a futile attempt to increase the Limitation period for making its claim towards CSS for FY 2015-16. It is a settled position of law that merely by issuing correspondence/communications/letters the prescribed Limitation period cannot be extended. In this regard, the Petitioner relied upon the decision of the Hon'ble Supreme Court in the case of ***CLP India Pvt. Ltd. Vrs. Gujrat Urja Vikas Nigam Ltd. &Anr.*****, reported as [(2020) 5 SCC 185]**. In case it is considered that the 1st demand of CSS was raised upon the Petitioner through the letter dated 12.03.2018, even in that case the Respondent No.1 is barred from taking any action under Section 56 of Electricity Act, 2003. Further, the prescribed Limitation period of three years if counted from the date of 1st demand i.e. 12.03.2018 did not survive by the time the demand was raised in June, 2023 to the tune of Rs.181.65 crore on the Petitioner. Thus, the Respondent No.1 is estopped from asserting its right to recover the CSS for the FY 2015-16.

s) In view of the above, the claim made by the respondent No.1 for CSS for FY 2015-16 is liable to be quashed in limine on account of the same being barred under the Limitation Act, 1963. Further the threat of disconnection under Section 56(1) of the Electricity Act, 2003 is also time barred in view of explicit bar under Section 56(2) of the Electricity Act, 2003, which not only bars the Respondent No.1 from disconnection, but also from recovering such claims beyond two years from the date on which they became due.

t) Further, the Petitioner satisfies the twin criteria as stipulated in the Electricity Act, 2003 read with the Electricity Rule, 2005 and is as such, entitled to be exempted from the payment of CSS for the FY 2015-16. The Petitioner owns and operate the CGPs i.e. (i) 3x600 MW Units and (ii) 9x135 MW Units. The power generated from the above CGPs is utilised by the Petitioner for its self-consumption/ captive use. The alleged demand of Rs.181.65 crore is erroneously raised by the Respondent No.1, based on the gross generation and captive consumption details with respect to only the 3 Units of 600 MW each owned by the Petitioner. It has erred by not taking into consideration the gross generation and captive consumption details of the Petitioner's CGP i.e. aggregate generation and consumption of 3 Units of 600 MW each (1800 MW) and 9 Units of 135 MW (1215 MW) and thereby wrongfully computed the liability of Rs.181.65 crore.

u) All the captive units i.e. 3x600 MW Units and 9x135 MW units are owned by the Petitioner and located in its Jharsuguda complex. In terms of Section 2(8) of the Electricity Act, 2003 read with Rule 3 of Electricity Rule, 2005, they have to be collectively considered as one CGP. The extant legal framework concerning captive generation, nowhere restricts the status of a generating plant to a specified area or location. The Respondent No.2 has provided the information regarding generation

and consumption of 3x600 MW Units and 9x135 MW Units separately. This cannot form the basis for levying Petitioner with the substantial levy of Rs.181.65 crore as CSS for the FY 2015-16, particularly when the extant legal framework under the Electricity Act, 2003, the Rules, 2005 and Open Access Regulations do not contain any restrictive clause pertaining to the same. It is a settled principle that law cannot be guided by the stand taken by the parties, rather the same is subject to reading of provisions and as interpreted by the Courts. In this regard, reference be made to the judgement of the Hon'ble Supreme Court **in P. Nallamal and Another Vrs. State, reported in [(1999) SCC 559] (Para 7).**

v) A conjoint reading of the provisions under Electricity Act, 2003 and the Electricity Rule, 2005 makes it clear that in order to qualify as a CGP, the following criteria has to be fulfilled:

(i) That the captive user(s) has to own a minimum of 26% equity share capital in the CGP; and

(ii) That the captive user(s) has to consume, on an annual basis, a minimum of 51% of the aggregate electricity generated for own use.

After taking into consideration the combined gross generation and captive consumption from the CGP (comprising of 3x600 MW Units and 9x135 MW Units) for FY 2015-16, the captive consumption of the Petitioner amounts to 71% of the gross generation, which is substantially above the minimum criteria of 51% as envisaged in the Electricity Rule, 2005. Thus, the Petitioner clearly qualifies the twin criterion for FY 2015-16 as stipulated in the Electricity Act, 2003 andthe Electricity Rule, 2005 and that the levy of CSS is not at all attracted.

w) Petitioner has already paid CSS of Rs.18.28 crore along with DPS of Rs.0.59 crore for the FY 2015-16. Considering the above computations, the power plant set up by the Petitioner qualifies as a CGP in terms of the twin criteria stipulated in the Electricity Rule, 2005. Therefore, it is imperative that necessary directions be issued to the Respondent No.1 for refund of the CSS earlier paid by the Petitioner along with the interest/caring cost at the rate of 1.25% per month upto the date of payment.

x) The Petitioner, for the purpose of operating its smelter, was consuming power from its 3x600 MW units and 9x135 MW units during FY 2015-16. However, while computing the CSS for consumption from 3x600 MW units, TPWODL has erroneously considered the power sourced from 9x135 MW captive units of the Petitioner and levied the CSS on the said consumption too, which is against the settled position of law that CSS cannot be levied on the consumption from the CGP. Further, while considering the SEZ consumption, TPWODL in its impugned demand letter dated 28.06.2023 has erroneously accounted the SEZ consumption including auxiliary consumption as 1965.52 MU. However, the Respondent No.2-CEI, who is the designated authority to collect generation and collection data and submit the same to the distribution licensee, in its letter dated 28.06.2023 to TPWODL had submitted

that the SEZ consumption including auxiliary consumption for FY 2015-16 was 1574.36 MU. TPWODL in the said impugned demand letter has erroneously levied CSS on the SEZ consumption that includes 391.16 MU towards auxiliary consumption of 3x600 MW power plant, which is completely erroneous as auxiliary consumption is part of generation of electricity and no CSS can be levied on it.

y) Further, out of 1574.36 MU considered by TPWODL for levy of CSS, 891.38 MU was consumed by the Petitioner from its 9x135 MW captive units under short term open access. The STOA applications preferred by the Petitioner categorically indicated the "injecting entity" as M/s. Vedanta Ltd., (CGP) voltage level 220 kV (9x135 MW) units and the "drawee entity" as M/s. Vedanta Ltd. (SEZ Unit, Jharsuguda), voltage level 400 kV Since this consumption was from the CGP owned by the Petitioner, which satisfies the twin criteria stipulated in Rule 3(2) of the Electricity Rules, 2005 (even when taken into isolation), the same is not amenable to the levy of CSS. Further, SEZ consumption of 195.31 MU was imported from GRIDCO under STOA. The Petitioner has only utilised 139.78 MU from the 3x600 MW units.

z) The gross generation and auxiliary consumption of (3x600 MW) CGP SEZ during FY 2015-16 were 4774.67 MU and 391.16 MU respectively. Pertinently, the SEZ Smelter of the Petitioner has consumed 1183.19 of MU (1574.36 MU less auxiliary consumption of 391.16 MU) in FY 2015-16 (while around 1226.47 MU was scheduled). The break-up of the scheduled 1226.47 MU is as follows:

- 891.38 MU from 9x135 MW captive units;
- 195.31 MU from GRIDCO for which CSS of Rs.24.73 crore has already been paid by the Petitioner; and
- 139.78 MU procured from 3x600 MW units for which CSS of Rs.18.28 crore along with DPS has already paid by the Petitioner.

aa) In view of the above facts and circumstances, the Commission ought to quash the impugned letters dated 28.06.2023, 07.08.2023 and impugned bill dated 03.08.2023 (to the extent of CSS raised for the FY 2015-16) along with the impugned disconnection notice dated 16.08.2023 issued by the Respondent No.1 to the Petitioner, being made beyond the prescribed period of limitation and also on account of the fact that computation of CSS is based on erroneous consideration of generation and consumption details of the Petitioner's generating units.

3. **The submissions of the Respondent No.1-TPWODL in brief, are as under:**

a) The Petitioner-M/s.Vedanta Ltd. is operating Aluminum Smelter Plants and generating plants/power plants in the Jharsuguda District of the State of Odisha. Initially,Vedanta Aluminum Ltd. (VAL) and Sterlite Energy Ltd. (SEL) were two separate independent companies. VAL set up a 0.5 MMTPA Aluminum Smelter Plant at Jharsuguda **(Smelter-I)** and also owned a Captive Generating Plant (CGP)

of 1215 MW (9x135MW) capacity. Later, VAL had set up another 1.1MMTPA Aluminum Smelter Plant in 2011-12 inside its SEZ area (VAL-SEZ) at Jharsuguda **(Smelter-II)**. The other independent company SEL had set up an IPP of 4x600MW capacityat Jharsuguda which commenced its operation in between 2010-2012. Pursuant to the Order of Hon'ble High Court of Bombay at Goa and the Hon'ble High Court of Madras dated 03.04.2013 and 25.07.2013 respectively, the IPP of SEL, Aluminum business of VAL and VAL-SEZ were merged together and owned by Sesa Sterlite Ltd. (SSL). The merger took place w.e.f.01.01.2011. The name of Sesa Sterlite Ltd. was changed to M/s.Vedanta Ltd. w.e.f.01.04.2015. After merger and demerger process, M/s.Vedanta Ltd. has following units running at Jharsuguda.

i. Aluminum Smelter Unit-I situated inside Domestic Tariff Area (DTA).
ii. Aluminum Smelter Unit-II situated inside the Special Economic Zone (SEZ).
iii. CGP of 1215 MW (9x135MW) situated inside the DTA. (Power Plant-1)
iv. IPP of 2400MW (4x600MW) situated inside the SEZ area. (Power Plant-2)

b) M/s. Vedanta Ltd. had filed an application before this Commission on dated 17.06.2015 with a prayer to declare its 4x600MW power plant as CGP, or in the alternative to declare Unit IV of the same power plant as CGP. In its application, the Petitioner had submitted that apart from the above IPP of 4x600 MW, it was also operating a CGP of 1215 MW (9x135MW) in Jharsuguda ("VAL CGP"), 1.1 MMTPA smelter unit located at Jharsuguda Special Economic Zone ("VAL SEZ") and 0.5 MMTPA aluminium smelter unit in the licensed area of WESCO (Domestic Tariff Area) located at Brundamal, Jharsuguda ("VAL DTA").

c) Further, in its application, the Petitioner had sought declaration of the IPP units of as CGP w.e.f.01.04.2015 and also undertaken to pay the CSS for the FY2015-16 in the event of loss of annual CGP status which would be determined after end of FY2015-16. The relevant paras of said application qua the issue of CSS are as under:

Para 67:

"It is submitted that the monitoring of captive status may only be on an annual basis, as stipulated in Rule 3 (1)(a)(ii) read with Explanation 1(a) of Rule 3. Explanation 1(a) of Rule 3 stipulates that annual basis shall be determined on financial year basis. Further the consumption should be cumulative of the consumption for the financial year. Therefore, this Hon'ble Commission once having declared the CGP status of the Power Plant may assess the consumption of the Petitioner for Financial year 2015-16 as per the provisions of the Rule. It is submitted that this Hon'ble Commission in the Order dated 23.03.2015 in Case Nos. 69,70,71 and 72 of 2014 and Case Nos. 61,62,63 and 64 of 2014 has held that the captive status of the thermal power plant can only be determined at the end of the financial year by the Hon'ble Commission after receiving the information from the Chief Electrical Inspector. In view of the same, it is

submitted that the decision of levy of CSS on Vedanta may be taken only after this Hon'ble Commission verifies the generation and consumption data on annual basis at the end of the financial year 2015-16 as per Electricity Rules.

Para 68:

In order to facilitate such review of consumption data, the Petitioner submits that the Petitioner will place on record such data before this Hon'ble Commission regarding power consumption in addition to the Hon'ble Commission and Chief Electrical Inspector assessing the same.

Para 69:

It is submitted that in the event, pursuant to the review of this Hon'ble Commission, it is found that the Power Plant does not qualify to be CGP at the end of financial year 2015-16, the Petitioner undertakes to pay CSS to WESCO, in terms of correct computation of CSS, it is settled position of law that a liability depending upon a contingency is not a debt in praesenti or in future till the contingency happens. The Petitioner further undertakes to provide a bank guarantee to WESCO as may be directed by this Hon'ble Commission during the intervening period prior to the end of the financial year 2015-16. In the event the Petitioner does not qualify to be a CGP at the end of financial year 2015-16, the bank guarantee may be encashed.

Para 70:

The petitioner is filing the present petition to seek to forthwith migrate the captive consumption for its aluminum smelters at VAL-SEZ and VAL-DTA (described above) to the Power plant so as to qualify as a captive power plant in the facts and circumstances listed below."

The prayer sought by the Petitioner in the aforesaid application was as given below:

- *Declare the petitioner's 4X600 MW Power Plant at Jharsuguda, a Captive Generating Plant;*
- *In the alternative, declare Unit-4 of the petitioner's Power Plant as Captive Unit;*
- *In the interim, direct WESCO/OPTCL to not raise invoices claiming Cross Subsidy Surcharge on monthly basis."*

d) During pendency of the said matter, vide interim Order dated 10.07.2015,the Commission had directed the Petitioner to pay Bank Guarantee in favour of the Licensee towards securing the payment of CSS in the contingency of loss of status of CGP of said Power Plant. Accordingly, the Petitioner deposited a Bank Guarantee issued by State Bank of India, amounting to Rs.260 Cr. in favour of the Licensee (erstwhile WESCO Utility) with validity upto 10th June, 2016. Further, the Petitioner, in response to various queries and direction of the Commission in the said Order dated 10.07.2015, had filed an affidavit dated 27.07.2015, wherein **the Petitioner had provided estimate of CSS for consumption of power by the SEZ entity from Unit-IV till 31.03.2016. In thisestimate, the**

energy consumed by the SEZ entity from the Unit-IV from April, 2015 to July, 2015was shown as 734MU. The Respondent No. 1 relies upon the said data filed by the Petitioner through affidavit as it is relevant in the present context which also involves the issue of actual quantum of energy consumed by the SEZ entity from the (3x600) MW Power Plant.

e) The Commission, vide its order dated 27.01.2016 while disposing of the said application of the Petitioner, declared three Units of the Power Plant of the Petitioner namely Unit-1, III & IV as CGP w.e.f.01.04.2015 and the Unit II remained as IPP. Relevant observation of the Commission on payment of CSS by the Petitioner upon losing CGP status for the FY-2015-16 is as under:

> Para-30
>
> *"In view of the above, the Commission allows conversion of units I, III & IV (600 MW each) from IPP to CGP save its commitment to the State as per PPA w.e.f 01.04.2015. The Commission however is not inclined to accept the request of the petitioner that this conversion of IPP into CGP should be done in a staggered manner. As stated above the Commission orders that the Unit-I, III and IV are to be treated as CGP. The prayer of the Petitioner to grant CGP status in time segregated manner is not acceptable. The Legal and factual position with regard to grant of CGP status to three generating units as on 01.04.2015 is no way foreseen to be different from that of 01.04.2016. No new facts and legal issues are anticipated in next financial year which will warrant deferment of granting CGP status to other two units in phased manner. The prayer of Petitioner appears to be a design to avoid paying cross subsidy surcharge to WESCO Utility by not maintaining specified CGP consumption criteria as per Rule 3 of Electricity Rules, 2005 in the current year. The interest of the consumers of the State is no way affected by the grant of CGP status to Units I, III and IV of the power stations since all the earlier conditions on the off take of quantum of power and its price as per PPA remain unaffected by virtue of own admission of the Petitioner."*

f) **After closure of the FY2015-16, vide its letter dated 12.04.2016, the Licensee (erstwhile WESCO Utility) requested the Chief Electrical Inspector (Generation), Western Zone, Sambalpur ("CEI, Sambalpur") to provide the annual generation and consumption data of the Power Plant of Petitioner (3x600MW) (Unit-1, III & IV) for the FY2015-16, for verification of CGP status, with a copy to the Petitioner with request to provide necessary information for early compliance. However, the Petitioner instead of awaiting the report from Electrical Inspectorate Office, deposited an amount of Rs.18.28 Crores towards CSS along with DPS of Rs.0.59 crore before the Licensee and vide its letter dated 30.04.2016, informed the Licensee that its (3x600MW) CGP may not be able to achieve the CGP status for the FY 2015-16 for which it has**

already paid Rs.18.28 crores along with DPS of Rs.0.59 crore and requested the Licensee to return the Bank Guarantee of Rs.260 Crores with an undertaking that the necessary payment adjustment shall be made, only after finalization of the CGP status by the Commission. Accordingly, the said BGwas returned to the Petitioner on 30.04.2016. The aforesaid deposit of Rs.18.28 Crore was based upon the own assumption and calculation of CSS of the Petitioner and the Petitioner was quite sure that it would lose the CGP status for the stated FY2015-16. Therefore, the payment of Rs.18.28 Crore along with DPS of Rs.0.59 crore by the Petitioner was provisional subject to final conciliation after obtaining the correct data qua generation and self-consumption by the Petitioner from the converted CGP (3x600MW)i.e. Power Plant-2. The Licensee (erstwhile WESCO Utility) had accepted the said payment made by the Petitioner without prejudice to its interest for levying further CSS after obtaining correct data.As per the Tariff Order for FY 2015-16 dated 23.03.2015, the Petitioner was to submit the correct information to the CEI (WZ), Sambalpur and the CEI (WZ), Sambalpur was directed to verify the data received by the Petitioner in order to declare its Power Plant as CGP. Further, the CEI (WZ), Sambalpur was to verify and submit the received data from the Petitioner to the Respondent No.1 to raise a bill upon the Petitioner. **Therefore, the onus for verifying the status of the CGP as well as providing the correct data is upon the Petitioner and the CEI (WZ), Sambalpur**.

g) Subsequently, the Petitioner, vide its letter dated 21.04.2017, submitted the generation and consumption data of 3x600MW CGP (Power Plant-2) for the FY2016-17, before the CEI, Sambalpur. But the Petitioner did not submit the Generation & Consumption data of its 3x600 MW CGP (Power Plant-2) for the FY 2015-16 with an oblique intention of avoiding the rigours of CSS. However, the Office of Principal Chief Electrical Inspector, Bhubaneswar ("PCEI, Bhubaneswar"), vide their letter dated 07.06.2017, provided the annual generation and self-consumption data of the various industries having CGPs in the State of Odisha for the FY2015-16 and FY2016-17 and subsequently, vide another letter dated 08.06.2017, provided a revised data of the same. But, in both the reports of the PCEI, Bhubaneswar, though the data pertaining to (9x135MW) CGP (Power Plant-1) of the Petitioner was provided, the data pertaining to generation and self-consumption by the Petitioner from its Power Plant (3x600MW) CGP (Power Plant 2), was not reflected. Therefore, the Licensee, vide its letter dated 24.06.2017 requested the PCEI, Bhubaneswar to furnish the data pertaining to the (3x600MW)

CGP (Power Plant-2) of the Petitioner for the FY2015-16 and FY2016-17, with subsequent reminder. The PCEI, Bhubaneswar, vide letter dated 02.02.2018, furnished the generation and self-consumption data of the (3x600MW) CGP (Power Plant-2) of the Petitioner for the FY2015-16 and FY2016-17 as obtained from the monthly ED return submitted by the CGP. The Licensee also obtained open access drawl data (STOA) from SLDC regarding scheduling of 3x600 MW CGP power for the Petitioner and found additional self-consumption of 893.835 MU by the Petitioner for FY 2015-16 over and above the consumption data reported by PCEI, Bhubaneswar. **Accordingly, the Licensee, vide letter dated 12.03.2018 raised demand of Rs.146.79 Crore and Rs.68.36 Crore towards CSS for the FY2015-16 and FY2016-17 respectively, totalling to Rs.215.15 Crore**.

h) In response to the above said demand letter dated 12.03.2018, the Petitioner, vide its letter dated 27.03.2018, addressed to the CEI, Sambalpur, disputed and raised certain anomaly with respect to the generation and self-consumption data of the 3x600MW CGP (Power Plant-2) for the FY2015-16 & FY2016-17 shared by the PCEI, Bhubaneswar. As per the Petitioner, while calculating the self-consumption for these two financial years, the power consumption of Smelter-II (VAL-SEZ) was not included. **Since the Petitioner disputed the data provided by the PCEI, Bhubaneswar, the Licensee did not press for the demand of CSS already raised earlier vide letter dated 12.03.2018. The onus qua verification of CGP status of the Power Plant purely rests upon the Petitioner as well as the Office of Electrical Inspector (in the present case the CEI (WZ), Sambalpur and EIC-cum-PCEI, Bhubaneswar). It is found that from 27.03.2018 onwards, the CEI (WZ), Sambalpur had been asking the Petitioner to provide the correct data qua generation and consumption by the SEZ entity from the Power Plant-2 (3x600 MW) of the Petitioner on numerous occasions. Therefore, the Licensee did not get data/information on its own until 26.06.2023**.

i) However, while the issue of submission of correct data by the Petitioner was pending, on 28.05.2018, **the Petitioner again approached this Commission, vide Case No.34 of 2018, seeking declaration of the Unit-II of the Power Plant as CGP**. In its Application the Petitioner had clearly mentioned that it was operating two distinct and separate Power Plantsi.e. VAL-SEZ and VAL-DTA. In its replies to the petition in Case No.34 of 2018 (on 23.10.2018 and 15.10.2019, the Licensee had raised the issue of non-payment of dues by the Petitioner including the CSS of Rs.215.15 Crore for the loss of CGP status of the (3x600MW) power plant (Power

Plant No.2) for the FY2015-16 & FY 2016-17 and **in its rejoinder to that case, the Petitioner had reiterated its stand made vide its letter dated 27.03.2018 addressed to the CEI, Sambalpur**. Thus, there is no ambiguity with respect to the fact that the Licensee had been constantly raising the demand of CSS for loss of CGP status of the (3x600MW) Power Plant (Power Plant No.2) for the FY2015-16 & FY 2016-17, even in the Case No.34 of 2018.

j) Thereafter, the Licensee had approached the Office of PCEI, Bhubaneswar and CEI, Sambalpur in several occasions to get the correct data qua the generation and consumption of (3x600MW) CGP of the Power Plant (Power Plant No.2) of the Petitioner from FY2015-16 onwards and finally received the correct data of generation and consumption status of the (3x600MW) CGP (Power Plant No.2) of the Petitioner, from the CEI, Sambalpur, vide their letter dated 28.06.2023. As per the said report furnished by the CEI, Sambalpur, it was ascertained that the 3x600 MW power plant (Power Plant No.2) of the Petitioner had lost its CGP status for the FY2015-16. Comparing the said data with the earlier data provided by the PCEI, Bhubaneswar, it was revealed that, while the total generation for the stated financial year (FY2015-16) was same (4774.67MU), the consumption data has varied. The report of the CEI (WZ), Sambalpur was based on the data submitted by the Petitioner vide its letter dated 26.06.2023. As per the said data, the self-consumption by the captive user(s) is shown as 1574.35 MU and in its remark, it is stated that the power plant has lost its status of CGP for the FY 2015-16. As per the said letter dated 26.06.2023 of the Petitioner, the data is confined to the generation of CGPs, energy sent out from these units, auxiliary consumption and balance is self-consumption out of the said generation. So, there is no ambiguity on self-consumption quantum out of the said generating units. However, on the basis of the said report of the CEI, Sambalpur, the Licensee-Respondent No.1 raised fresh demand against the Petitioner towards CSS for the FY2015-16 amounting Rs.181.65 Crore (after factoring earlier payment of Rs.18.28 Crore other than DPS), vide its letter dated 28.06.2023.

k) The Petitioner, vide its letters dated 12.07.2023 and dated 03.08.2023, raised objections to the said demand letter dated 28.06.2023 of the Respondent No.1 and in response, the Respondent No.1, vide its letter dated 07.08.2023, requested the Petitioner to pay the CSS dues. Since the Petitioner neglected to pay the said dues of CSS apart from the regular monthly electricity dues, the Respondent No.1,vide its letter dated 16.08.2023 issued disconnection notice to the Petitioner under Section

56(1) of the Electricity Act, 2003 read with Regulation 172(1) of the OERC Supply Code, 2019. The said demand letter dated 28.06.2023 and 07.08.2023, Bill dated 03.08.2023 and the disconnection notice dated 16.08.2023 are the subject matter of challenge by the Petitioner in the present proceeding.

l) During the pendency of the present proceeding and after filing of the detailed reply by the Respondent No.1, the Petitioner, vide its letter No.2 dated 18.09.2023, has provided another data to the CEI (WZ), Sambalpur claiming that the self-consumption of the SEZ entity of the Petitioner from its Power Plant (3x600 MW) CGP stands at 139.78 MU. As per the said letter of the Petitioner, out of the VAL-SEZ consumption of 1574.35 MU, 893.83 MU were consumed by the Petitioner from its (9x135 MW) CGP under STOA. However, the table appended to said letter dated 18.09.2023 reveals that the energy imported by the VAL-SEZ entity from the (9x135MW) CGP under STOA for the FY 2015-16 stands at 891.38 MU and the energy imported from GRIDCO under STOA through NTPC-NVVN for the FY 2015-16 stands at 195.31 MU. The Respondent No.1 vehemently disputes the statement of the Petitioner in the said letter dated 25.09.2023 as the same is confusing, contradictory, conflicting and without any basis. The import of energy shown by the Petitioner from its 9x135MW CGP and GRIDCO under STOA for the FY 2015-16 is over and above the self-consumption of 1574.35 MU by the VAL-SEZ entity. Thus, the quantum of energy import from the 9x135MW CGP and GRIDCO under STOA does not have any bearing upon determination of CSS for the FY 2015-16 towards loss of CGP status of (3x600)MW CGP of the Petitioner. The quantum of 893.83 MU as consumed from other CGP which is under VAL-DTA zone needs separate treatment as far as levy of CSS on such power is concerned.

m) From the above, it is the fact that the Petitioner has two separate and distinct power plants. Power Plant-1 i.e. CGP of 1215 MW (9x135MW) situated in the DTA meant for Smelter-I and Power Plant-2 comprises of one IPP of 600 MW (Unit-II) and 1800 MW (3x600MW) CGP (Unit-1, III & IV) situated in the SEZ area meant for Smelter-II (within SEZ).The Power Plant-2 (3x600MW) CGP lost its annual status of CGP for the FY2015-16 as per Chief Electrical Inspector latest correct report dated 28.06.2023 (not yet challenged) in accordance to Rule 3 of the Electricity Act, 2003 and thus, liable to pay CSS to the Licensee for the said Financial Year. The onus of verification of CGP status of Power Plant, entirely rests upon the Office of Electrical Inspector and the owner of the CGP (the Petitioner). **The cause of action for the Licensee to levy CSS would arise only after getting correct data qua**

generation and self-consumption by the Captive user(s). Thus, the obligation to pay the CSS in this case arises when the Licensee issued demand of CSS after receiving correct data from the CEI, Sambalpur, vide demand letter dated 28.06.2023 and consequent disclosure in the monthly energy bill of July, 23 tendered on dated 03.08.2023. The report furnished by the PCEI, Bhubaneswar to the Licensee, vide letter dated 02.02.2018, was incorrect as regards the consumption by the Captive user(s) from the (3x600MW) CGP is concerned for FY 2015-16 and also the petitioner has challenged the correctness of the report as well.The Licensee had agitated the issue of CSS before this Commission in Case No.34 of 2018 till its disposal vide order dated 05.10.2021. The Petitioner has been submitting conflict and contradictory data qua generation and consumption by the SEZ entity for FY 2015-16. The qua generation and self-consumption by the SEZ entity from the power plant-2 (3x600 MW) CGP for FY 2015-16 was submitted by the Petitioner only on 28.06.2023 has been deviating from its own submissions

n) As per Respondent No.1,the following primary issues have been raised by the Petitioner in the present petition:

A. The demand of CSS raised by TPWODL is barred by limitation under Limitation Act, 1963.

B. The demand of CSS raised by TPWODL is also barred by limitation under Section 56(2) of the Act, 2003.

C. The determination of status of the generating units of the petitioner has not been done in accordance with the provisions of Rule 3 of the Electricity Rules, 2005.

D. The actual quantum of self-consumption by the SEZ entity from 3x600 MW CGP (Power Plant-2) for the FY 2015-16.

The demand of CSS raised by TPWODL is barred by limitation under the Limitation Act, 1963.

o) It is a settled principle of law that in the matter of demand of statutory or regulatory dues (not arising from any contractual obligation), the bar of limitation does not apply. This principle has been set at rest by Hon'ble Apex Court in catena of cases. In the instant case the **demand of CSS by the Respondent No.1 is admittedly a statutory and regulatory due which right accrues upon the Licensee with corresponding liability upon the Petitioner, by virtue of the effect of Rule 3(2) of the Electricity Rules, 2005 read with the Open Access Regulations framed by the Commission**. The Petitioner cannot escape from the rigors of the said statutory mandate on the grounds of mere technicality and it is duty bound to honour the obligation without any deviation.

The consequences of non-payment of CSS by the Petitioner to the Distribution Licensee is two-fold. First, the Licensee is empowered to disconnect supply of electricity to the unit of the Petitioner through OPTCL, **by invoking the provisions of Section 56(1) of the Act, 2003 read with Regulation 172 of the OERC Supply Code, 2019. Secondly, the Licensee can also invoke the jurisdiction of the Commission under Section 142 of the Act, 2003 by virtue of the provisions of Regulation 34 of the OERC Open Access Regulations, 2020, for execution of the demand notice. After exhausting the remedy under Section 56 and 142 of the Act, 2003, in case the Petitioner fails to pay the demand dues, the Licensee has also recourse to filing civil suit as the demand of CSS is also electricity charges against the premises of the Petitioner company (VAL-SEZ)**.

p) **The question of limitation under the Limitation Act, 1963 would only arise in the happening of third event which is a subject matter of adjudication by the Civil Court under C.P.C. read with the Limitation Act, 1963**. For the first two legal remedies, the law of limitation does not attract as it is a settled principles of law that the regulatory matters are excluded from the purview of the Limitation Act, 1963. Even in the event of filing of civil suit before Civil Court, the claim is well within the period of three years, as Licensee had been constantly pursuing the matter even in the Case No.34 of 2018 which was disposed of on 05.10.2021. **Therefore, the question of general limitation as per the provisions of Limitation Act, 1963 does not arise in the instant case**. The following sequence of events would imply that the demand has been raised by the answering Respondent within the limitation period.

- On 17.06.2015, the Petitioner had filed an application before this Commission seeking conversion of all the units of its 4x600 MW thermal power plant or at least one unit to CGP, being fully aware that in case of loss of CGP status in a particular year, it is liable to pay CSS. The Commission admitted the case in the first hearing on 07.07.2015 and regarding payment of CSS by the Petitioner, the Commission had observed that since the issue of IPP / CGP status is sub-judice and the CGP status cannot be ascertain for FY 2015-16 at that point of time, WESCO Utility may not bill on CSS for the current period. **Thus, the Commission had directed the distribution licensee not to press for CSS for FY 2015-16 by getting a Bank Guarantee. Accordingly, the Petitioner had submitted the Bank Guarantee** before the licensee amounting to Rs.260 crore. Thus, the liability to pay CSS in the event of losing CGP status remained alive

and from the very beginning, the Petitioner was well aware of its liability to pay CSS for the FY 2015-16.

- The Commission disposed of the Case No. 21 of 2015 vide its order dated 27.01.2016 declaring three Units – I, III & IV as CGP w.e.f. 01.04.2015 and from the said order it is evident that loss of CGP status of the Petitioner would attract levy of CSS.
- On 12.04.2016, TPWODL (erstwhile WESCO Utility) requested the CEI (WZ), Sambalpur regarding verification of the CGP status of M/s. Vedanta Ltd.
- Thereafter, the Petitioner vide its letter dated 30.04.2016 requested the licensee for release of BG on payment of Rs.18.79 crore along with an undertaking to settle the same upon verification of the CGP status by the Commission. Instead of awaiting to the response of CEI (WZ), the Petitioner prefers to pay CSS of Rs.18.79 crore to the licensee on its own calculation with the anticipation that the licensee may revoke the BG on or before 10.06.2016 (the validity date of the BG of Rs.260.00 crore). However, the said BG was eventually returned on 30.04.2016 when the Petitioner acknowledged the fact that it would lose the CGP status and had paid Rs.18.79 crore to the licensee towards CSS for FY 2015-16.
- The EIC-cum-PCEI, Bhubaneswar, vide its letter dated 07.06.2017 and revised letter dated 08.06.2017, furnished the generation consumption data of all the CGP across the state for the FY 2015-16 and 2016-17 excluding the data of 3x600 MW thermal power plant of M/s. Vedanta Ltd. Hence, **on 24.06.2017, WESCO Utility requested the EIC-cum-PCEI, Bhubaneswar to furnish the data of M/s. Vedanta Ltd. SEZ CGP (3x600 MW) for FY 2015-16 & 2016-17**.
- WESCO Utility, vide its letter dated 16.01.2018, followed up with the EIC-cum-PCEI, Bhubaneswar regarding submission of generation & consumption data of VAL-SEZ CGP (3 X 600 MW) for the year 2015-16 & 2016-17.**The Petitioner deliberately avoided providing the generation and self-consumption data for FY 2015-16 though the Petitioner furnished the same for the FY 2016-17**.
- The EIC-cum-PCEI, Bhubaneswar, vide its letter dated 02.02.2018, submitted the Generation & Consumption data of 3 x 600 MW CGP of M/s. Vedanta Ltd. for FY 2015-16 & 2016-17basing upon data received at their end as per the monthly ED return submitted by the CGP.
- On 12.03.2018, basing on the data received the EIC-cum-PCEI, Bhubaneswar, WESCO Utility issued demand letter to M/s. Vedanta Ltd. regarding loss of CGP Status and CSS thereof for FY 2015-16 & FY 2016-17. The said demand letter

was made adding some additional quantum considering SLDC scheduled data, which was disputed by M/s. Vedanta Ltd. Hence, the said demand stands disputed.

- **M/s. Vedanta Ltd., vide its letter dated 27.03.2018 to PCEI, Bhubaneswar, disputed the figure of its CGPs provided by it on earlier occasion**. By virtue of said letter, WESCO Utility did not act upon its demand letter dated 12.03.2018.
- On 28.05.2018, M/s.Vedanta Ltd. filed Case No.34 of 2018 before this Commission seeking Unit-II to be declared as CGP. In this case WESCO Utility appeared and filed objections, raising the issue of CSS. In its replies, WESCO Utility had raised the specific issue of non-payment of CSS by Petitioner for the FY 2015-16 & 2016-17 for loss of CGP status of (3x600MW) CGP. **Since the matter was sub-judice before the Commission under Case No.34 of 2018, WESCO Utility did not follow up the matter with Petitioner for payment of CSS. The Commission disposed of the said Case No.34 of 2018 vide its Order dated 05.10.2021. However, in the meantime, WESCO Utility was continuing to request the Office of the EIC-cum-PCEI, Bhubaneswar and the CEI, Sambalpur to provide the subject data in view of the dispute raised by the Petitioner**.
- TPWODL vide its letter dated 24.02.2021 had requested the EIC-cum-PCEI, Bhubaneswar regarding generation and consumption data of the industries having CGPs including that of the 3x600 MW CGP of M/s. Vedanta Ltd.
- The EIC-cum-PCEI, Bhubaneswar, vide its letter dated 09.06.2021, advised TPWODL to contact the concerned CEI i.e. the CEI (WZ), Sambalpur for the information pertaining to the CGPs basing on the direction of OERC in Case No.1 of 2019.
- On 17.06.2021, TPWODL had requested the CEI (WZ), Sambalpur regarding generation and consumption data of the industries having CGPs of its area of operation.
- The CEI (WZ), Sambalpur vide its letter dated 24.06.2021 to the Secretary, OERC with a Memo to TPWODL furnished data of industries having CGPs under his jurisdiction for the period 2009-10 to 2014-15 and 2017-18 to 2020-21 excluding the required data of 3x600 MW CGP of M/s. Vedanta Limited.
- TPWODL vide its letter dated 21.05.2022, had requested the CEI (WZ), Sambalpur regarding generation and consumption data of the industries having

CGPs for FY 2021-22 and the same for 3x600 MW CGP of M/s. Vedanta Limited from the FY 2015-16 onwards.

- The CEI (WZ), Sambalpur, vide its letter dated 23.06.2022, furnished the generation and consumption data of industries having CGPs under his jurisdiction for the period FY 2021-22 excluding the required data of 3x600 MW CGP of M/s. Vedanta Limited.
- TPWODL, vide its letter dated 13.01.2023, requested the EIC-cum-PCEI, Bhubaneswar regarding generation and consumption data of the industries including the 3x600 MW CGP of M/s. Vedanta Limited.
- The EIC-cum-PCEI, Bhubaneswar, vide its letter dated 20.01.2023, directed the CEI (WZ), Sambalpur to provide the required data along with the generation and consumption data of 3x600 MW CGP of M/s. Vedanta Limited from the FY 2015-16 onwards.
- TPWODL, vide its letter dated 15.05.2023, requested to the CEI, Sambalpur regarding generation and consumption data of the industries having CGPs for the FY 2022-23 andTPWODL, vide another letter on the same date, requested to the CEI, Sambalpur regarding generation and consumption data of M/s. Vedanta Ltd. (SEZ) CGP (3x600 MW) for the period from the FY 2015-16 onwards.
- The CEI (WZ), Sambalpur, vide its letter dated 31.05.2023 to TPWODL, furnished the provisional generation and consumption data of industries having CGPs under his jurisdiction for the period FY 2022-23including the data of 3x600 MW CGP of M/s. Vedanta Limited for the FY 2022-23 only.
- The CEI (WZ), Sambalpur, vide its letter dated 17.06.2023 to the EIC-cum-PCEI, Bhubaneswar with a memo to TPWODL,providedthe provisional generation and consumption data of 3x600 MW CGP of M/s. Vedanta Limited(SEZ) for the FY 2015-16 only, wherein CGP status for FY 2015-16, 2016-17 and 2017-18 was declared not satisfied.
- The CEI (WZ), Sambalpur, vide its letter dated 28.06.2023 to the EIC-cum-PCEI, Bhubaneswar with a memo to TPWODL,providedthe revised generation and consumption data of 3x600 MW CGP of M/s. Vedanta Limited (SEZ) from the FY 2015-16 onwards, wherein CGP status for FY 2015-16 only was declared not satisfied.
- TPWODL issued demand letter dated 28.06.2023 to M/s. Vedanta Ltd. on CSS due to loss of CGP status.

q) In view of the above sequence of events, the Respondent No.1 had been continuously raising the issue of payment of CSS by the Petitioner for the FY2015-16 & FY 2016-17 before the Commission as well as with the Office of the EIC-cum-PCEI, Bhubaneswar and CEI (WZ), Sambalpur. **Since the Respondent No.1 is bereft of any authority to verify the status of the CGP on its own, it could only raise demand qua CSS only after obtaining information either from the Electrical Inspector or from the Commission. However, it is the primary obligation of the Petitioner to provide the data of its CGP up front to the Office of Electrical Inspector and to this Commission. The demand, which was earlier raised by the Licensee on dated 12.03.2018 does no longer survive in view of pendency of Case No 34 of 2018 filed by petitioner before OERC which was disposed up on 05.10.2021 and the subsequent data was provided by the CEI (WZ), Sambalpur on dated 28.06.2023**. Further, the Petitioner also vehemently disputed the CSS demand raised on 12.03.2018 citing incorrect data of Generation and Consumption. Therefore, the question of limitation does not attract in this case.

r) The period of limitation would start running from the date when the knowledge or correct information qua the CGP status of the Petitioner Company is obtained by the Licensee. In this regard it is apt to extract the provisions of Rule 3(2) of the Electricity Rules, 2005.

> Rule 3 (2) – "It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company."

As per the aforesaid provisions, a definite obligation is cast upon the captive users to ensure their captive status as per the rules. Thus, the onus lies upon the captive users and not upon the Licensee to maintain the status of CGP. In the instant case, the Petitioner ought to have ensured that it had maintained its CGP status as per Sub-Rule (1) of the Rule 3 of the Electricity Rules, 2005, which badly failed. The moment the captive users lose their status of CGP, the rigors of Sub-Rule (2) of Rule 3 of the Electricity Rules, 2005 comes into effect.

s) In the instant case, the Petitioner never took any step for ensuring submission of correct data before CEI (WZ), Sambalpur and as such the status of CGP for the FY2015-16 onwards remained in dark. The Petitioner has also not provided any proof of submission of correct data during the period from April-2016 to June-2023.

The correct information was finally submitted by the petitioner only in June-2023, basing upon which the CEI (WZ), Sambalpur has calculated the CGP status and provided the report on 28th June, 2023. Secondly, the Licensee had taken continuous and benevolent effort to obtain the status of the generating station/plant of the Petitioner from the office of the Electrical Inspector, who is undisputedly, the competent authority to provide the data qua status of a generating plant as determined by the Commission. **After obtaining the correct data from the office of the Electrical Inspector on 28.06.2023 and ensuring about the lose of CGP status by the M/s. Vednata(SEZ), the Licensee raised the demand qua CSS upon the Petitioner**. Thus, in any case, the period of limitation would start running from the date when the Licensee obtains the correct data from the office of the Electrical Inspector i.e. on 28.06.2023. Therefore, the demand raised by the Respondent No.1 is well within the limitation period.

t) The liability of Petitioner to pay CSS for the FY2015-16 was also raised and discussed in Case No.21/2015. The observation of the Commission in Para-30 of said Order dated 27.01.2016 evidentially reaffirms the fact that the Distribution Licensee had been constantly pursuing the matter qua levy of CSS since beginning and the Petitioner had also acknowledged its liability to pay the CSS. From the said order of the Commission, it is evident that the Petitioner was well aware of the fact that it will lose the status of 3x600 MW CGP (Unit-I, III & IV) for the FY 2015-16 and had prayed for declaring the status of CGP of the Units in segregated manner, which was eventually declined by the Commission. Thus, Petitioner had been acknowledging its liability to pay CSS from the beginning. Further, the same is also well revealed from the communication of the Petitioner dated 27.03.2018 made to the Chief Engineer-cum-CEI, Sambalpur and from the Rejoinder filed by it in Case No.34 of 2018. Therefore, there is no iota of doubt that, the Petitioner had acknowledged its liability to pay CSS in the event of losing CGP status qua 1800 MW (3x600MW) power plant. Therefore, the question of limitation would not arise in the facts and circumstances of the present case. As such the plea of the petitioner qua limitation is unwarranted and uncalled for and the same is purely misconceived and does not hold good in the eyes of law. In this regard, **Section 18 of the Limitation Act, 1963** may be relied upon which is quoted below:

*"**18. Effect of acknowledgment in writing.—**(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right*

is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shallnot be deemed to be an application in respect of any property or right"

In view of the above submission, the claim of CSS raised by the Respondent No.1 is well within the period of limitation and the Petitioner is liable to pay the said legitimate dues of the Licensee. The judgments relied upon by the Petitioner are not applicable to the facts and circumstances of the present case and more particularly said Judgments are also set against the contentions raised by the Petitioner.

The demand of CSS raised by TPWODL is also barred by limitation under Section 56(2) of the Act, 2003.

u) The demand and/or claim raised by the Respondent No.1 does not attract the rigors of Sub-Section(2) of Section 56 of the Act, 2003. In this regard the answering respondent relies upon the following judgments of Hon'ble Supreme Court;

i. **Assistant Engineer (D1), Ajmeer Vidyut Vitran Nigam Limited and another - versus – Rahamatullah Khan alias Rahamjulla reported in (2020) 4 Supreme Court Cases 650**
ii. **M/s Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Limited (Judgment dated. 5.10.2021 in CA 7235 of 2009) reported in 2021 SCC Online SC 870.**

v) The interpretation of the term 'first due' as mentioned in Sub-Section (2) of said Section 56 of the Electricity Act, 2003 has been settled by the Hon'ble Supreme Court in the case of ***Assistant Engineer (D1), Ajmer Vidyut Vitaran Nigam Ltd. & Another Vrs. Rahamatullah Khan alia Rahamjulla,*** **reported in (2020) 4 Supreme Court Cases 650.** As per the principles settled in the said case, the Respondent No.1-TPWODL is well within the time in demanding dues from the Petitioner, in view of the provisions under Section 56 of the Electricity Act, 2003.

w) The aforesaid view was further affirmed by the Hon'ble Supreme Court in Prem Cottex vrs Uttar Haryana Vijli Bitaran Ltd. & Others (decided on dated 05.10.2021), reported in 2021 SCC Online SC 870.

x) In the aforesaid cases, the Hon'ble Supreme Court has held that the liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid. Electricity charges would become "first due" only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity. In the instant case, the demand qua CSS for the FY 2015-16 & FY 2016-17 was raised in March, 2018. However, said demand was based on incorrect data provided by the PCEI, Bhubaneswar. Therefore, after obtaining the corrected data from the CEI (WZ), Sambalpur in June, 2023, Licensee raised fresh demand on 28.06.2023 and also added in the monthly energy bill of July, 2023 (raised on 03.08.2023). **Therefore, in terms of the aforesaid decision of the Hon'ble Apex Court, the first due would arise from 03.08.2023. As such, the said demand does not attract the provisions of Sub-Section(2) of Section 56 of the Electricity Act, 2003**. In view of the above, the demand/claim raised by the Licensee against the Petitioner *qua* CSS for the FY 2015-16 holds good in the eyes of law and the same does not attract the rigors of the provisions of Sub-Section(2) of Section 56 of the Electricity Act, 2003 and the contentions raised by the Petitioner are denied as being erroneous and not in judicious appreciation of the well settled principles of law.

Determination of status of the generating units of the Petitioner has not been done in accordance with the provisions of Rule 3 of the Electricity Rules, 2005.

y) The provisions contained in Rule 3(1) of the Electricity Rules, 2005 is the basis for determining the status of generating company, which is extracted herein below;

3. Requirements of Captive Generating Plant:

"(1) No power plant shall qualify as a 'captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless-

(a) in case of a power plant –

(i) not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate

and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

(b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy(s) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including –

Explanation:-

(1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and

(2) the equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six per cent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

Illustration: *In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen percent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users."*

z) In the instant case Clause(a) of Sub-Rule(1) of Rule 3 is squarely applicable to determine the status of the CGPs of the Petitioner. The Petitioner has established two distinct and separate power plants at Jharsuguda. The Power Plant-1 comprises of nine units (9x135MW) with total generating capacity of 1215MW,which is situated in the Domestic Tariff Area (DTA) and operating as a CGP. The Power Plant -2 comprises of four units of (4x600 MW) with total generation capacity of 2400MW, which is situated inside the SEZ area. Initially,Power Plant -2 (4x600 MW) were Independent Power Plant (IPP). **Consequent upon the Order of the Commission dated 27.01.2016 passed in Case No.21 of 2015 on the application filed by the Petitioner, the three units namely Units-I, III & IV were declared as CGP w.e.f.01.04.2015, but not in segregated manner as was prayed by the Petitioner to avoid the liability to pay CSS. Thus, the question of liability of the Petitioner to pay CSS had already attained finality in the said proceeding conducted vide Case No.21 of 2015 and there was no ambiguity to the fact that in the event the**

Petitioner's CGP (Units-I, III & IV) loses its status, the Petitioner shall be liable to pay CSS. At that point of time, the Petitioner had not raised the plea of determination of CGP status considering both the aforesaid CGPs at a time.

aa) It is further submitted that the Petitioner itself was submitting the generation and consumption data to CEI separately for Power Plant -1 and Power Plant- 2. **It is thus evident from the actions of the Petitioner itself, that these two power plants were separate and independent**.

bb) The report of the CEI (WZ), Sambalpur dated 28.06.2023 would clearly depict that, the total generation vis-à-vis captive consumption of the VAL-SEZ for the FY2015-16 does not meet the criteria as mandated in Clause (a) of Sub-Rule (1) of Rule 3of the Electricity Rules, 2005. Therefore, the VAL-SEZ is liable to pay the CSS to the Licensee for the FY 2015-16 as the consumption of power by VAL-SEZ from the said three units would be deemed as supply of power by a generating company and as such the rigors of Sub-Rule(2) of Rule 3 of the Electricity Rules, 2005 would apply. The Petitioner attempts to dilute the entire issue by wrongfully calculating the consumption of power in aggregate of the total 12 units by amalgamating its two Generating Plants which is per se illegal, erroneous and frustrates the intent and object of the legislature as inherited in Rule3(1) (a) of the Electricity Rules, 2005.

cc) The Power Plant-1 of 1215 MW (9x135 MW) and Power Plant-2 of 1800 MW (3x600MW) are two separate entities/power plants and the same has already been settled vide Case No. 70 of 2011 before this Commission and subsequently upheld by the Hon'ble ATE and the Hon'ble Supreme Court vide Civil Appeal No.5479 of 2013. In this regard, relevant portions of the said order dated 17.09.2012, are quoted below:

"M/s. VAL filed its written submission on 08.12.2011 pursuant to OERC Order 08.11.2011 addressing the clarifications on the issues raised by OERC. The Petitioner stated inter alia as follows:

i) The existing Aluminium unit with its own captive power plant shall remain as an EHT consumer of WESCO may be termed as M/s VAL-DTA (DomesticTariff Area). The proposed export-oriented smelter unit of M/s VAL may be termed as M/s VAL-SEZ. The VAL-SEZ has connectivity with M/s SEL-IPP through a 400 KV D/C line constructed by M/s VAL. (Emphasis supplied)

ii) ……

iii) …..

iv) ….

v) In view of their submission M/s. VAL through an amended petition on 27.03.2012 prayed the Commission to grant Distribution License in favour of M/s. VAL-SEZ with effect from the date of notification of Special Economic Zone i.e 27.02.2009and for approval of PPA

executed between M/s. VAL and M/s. SEL so as to enable them to purchase power from M/s. SEL."

Submission of GRIDCO and OPTCL:

"4. OPTCL & GRIDCO, the respondents in this case, submitted as follows From perusal of case record filed by the petitioner followings are noted:-

i) M/s VAL, the petitioner has received a formal approval from Ministry of Commerce & Industry, GoI, New Delhi vide letter No. F2/12 /127-EPZ on 23.5.2007 for setting up of a sector specific special economic zone for manufacture and export of Aluminium along with 1215 MW Captive Power Plant. The same has been notified by Ministry of Commerce, GoI, New Delhi vide S.O. 5776(E) & 577(E) dated 27.2.2009 granting the approval of SEZ for manufacture and export of Aluminium along with 1215 MW Captive Power Plant. However, in a subsequent letter M/s Falta SEZ, Ministry of Commerce, Kolkata has vide its letter No.SEZ/LIC/V-10 (I)/2009/189 dated 09.4.2009 extended all the facilities and entitlements admissible to a unit in SEZ to M/s VAL (SEZ-Unit) with terms and conditions of SEZ with no mention of 1215 MW Captive Power Plant.

ii) The Petitioner has not complied with the requirement of setting up of a CGP of 1215 MW in the SEZ areawhich is a pre-condition of permission to develop a SEZ by Govt. of India. As GoI has not modified its notification dated 27.02.2009, M/s VAL cannot claim the acceptance of GoI its SEZ status without establishment of CGP. The Development Commissioner, FALTA cannot amend / modify the notification of superior authority like Ministry of Commerce, Govt. of India.

iii) ...

iv) ....

v) ....

vi) The existing Distribution Licensee, WESCO is operating within the area of SEZ and getting its bulk power supply from GRIDCO. If M/s VAL in its SEZ is incapable of establishing the CGP of 1215 MW as per Govt. of India norms, yet to be allowed as a Distribution Licensee, it is bound to avail Bulk power supply from GRIDCO through the transmission network of STU but not otherwise."

Submission by Development Commissioner, FALTA:

"6. The Commission vide its letter 04.06.2012 has asked the Development Commissioner, FALTA to clarify about the validity of grant of approval to M/s. VAL-SEZ up to 07.04.2013 without establishment of Captive Power Plant. They have communicated that despite non-establishment of CGP of 1215 MW capacity, the SEZ approval is valid upto 07.04.2013 as M/s. VAL could not establish the CGP due to scarcity of land inside SEZ area."

While the matter stood thus, this Commission had sent its officials to visit the premises of M/s. Vedanta Ltd. & their findings are as under:

"Para 7 In pursuance to Regulation 39 of OERC (Conduct of Business) Regulation, 2004 the Commission before deciding the matter of grant of Distribution License to M/s. VAL SEZ in Case No. 70/2011 passed an order dated 07.05.2012 for a spot inquiry by a team of Officers of the Commission with certain terms of the reference. Some of them are:

i) The present status of supply of electricity to existing VAL DTA Unit from M/s. SEL- IPP Power Plant and electrical separation of M/s. VAL SEZ Unit.
ii) The status of proposed connectivity including metering arrangement between M/s. VAL SEZ and M/s. SEL-IPP power plant and M/s. SEL-IPP and M/s.VAL-DTA unit.
Thereafter Hon'ble Commission has raised certain queries to the petitioner and the response of petitioner was as follows:-
10. M/s VAL-SEZ furnished the following in compliance with the above queries raised by the Commission based on the inquiry team report are summarized below:
i) ....
ii)....
iii).....
iv)The Petitioner was unable to proceed with the CGP of 1215 MW because there was no contiguous land available which is a requirement of SEZ. Regarding the validity of SEZ status without the establishment of CGP of 1215 MW the clarification by Development Commissioner, FALTA SEZ may please be taken into consideration."

From the above, the confusing/wrong claim of the Petitioner for calculation of CGP status merging the entire generating units of the two plants located in different areas cannot be sustained.

dd) In view of aforesaid submissions, it is well inferred that, the contention of the Petitioner qua method of determination of CGP status by aggregate consumption of all the 12 units of two different generating plants, is unsustainable and untenable in the eyes of law and the same is contrary to the statutory intent. The Petitioner is liable to pay CSS to the Respondent No.1 for loss of CGP status of its three CGP units (Unit-I, III & IV) (VAL-SEZ) for the FY2015-16.

The actual quantum of self-consumption by the SEZ entity from (3x600) MW CGP (Power Plant-2) for the FY 2015-16

ee) The contents of the letter dated 18.09.2023 of the Petitioner to the CEI (WZ), Sambalpur, is disputed and denied by the Respondent No. 1 as being improper, uncorroborated and produced in a deliberate attempt to create ambiguity and disrupt the process of recovery of the CSS by the Licensee. The said document being an afterthought and conceived of malafide intention on part of the Petitioner to derelict and defy Respondent No. 1 to recover its legitimate claim.

ff) The Petitioner has never been transparent in providing the generation and self-consumption data of its (3x600) MW CGP (Power Plant-2) for the FY 2015-16. The Petitioner has been showing, communicating and providing different data on different occasions with respect to the said CGP. To substantiate the same, the Respondent No. 1 relies on following data/information of (3x600) MW CGP (Power Plant-2) as provided on different occasions.

- In the affidavit filed by Petitioner on 27.07.2015 in Case No.21 of 2015,the consumption from Unit-IV for the period April, 2015 to June, 2015 was shown as 734 MU.
- In the letter No.586 dated 02.02.2018 of the EIC-cum-PCEI, Bhubaneswar addressed to the Licensee, the consumption from (3x600)MW CGP was shown as 409.97 MU, which was based on the report of monthly deposit of ED by the Petitioner.
- In the letter No.319 dated 27.03.2018 of M/s. Vedanta Ltd. addressed to the CEI (WZ), Sambalpur, the self-consumption from (3x600)MW CGP is shown as 409.98 MU and export to Smelter-II SEZ is shown as 138.5 MU.
- In the letter No.01 dated 26.06.2023 of M/s. Vedanta Ltd. addressed to the CEI(WZ), Sambalpur,the self-consumption from (3x600)MW CGP is shown as 1574.35 MU (SEZ-Import+APC).
- In the letter No.729 dated 28.06.2023 of the CEI (WZ), Sambalpur addressed to the EIC-cum-PCEI, Bhubaneswar, the consumption from (3x600)MW CGP is shown as 1574.35 MU (based on data furnished by the Petitioner vide its letter dated 26.06.2023).
- In the letter No.02 dated 18.09.2023 of M/s. Vedanta Ltd. addressed to the CEI (WZ), Sambalpur, the consumption from (3x600) MW CGP is shown as 139.78 MU.

From the above,it is clear that the petitioner with oblique intention has taken a different view through its letter dated 18.09.2023 to the CEI (WZ),Sambalplur. Pertinently, the Petitioner is trying to convince that the consumption of 1574.35 MU as provided through its letter dt.26.06.23 includes some CGP power of other unit which is grossly incorrect.

gg) Without prejudice, on perusal of the data submitted by the Petitioner in the present petition, the gross generation of all the units is 8121 MU (Unit-I 1165 MU +Unit-II 3346 MU+ Unit-III1519 MU +Unit-IV 2091 MU) and at the same time, the export of power through different line is 6271 MU(Line-7 =297 MU+Line-8=345 MU+ Line-9=1 MU+Line-10=2265 MU+Line-11=1 MU+Line 12=1594 MU+ICT-1=883 MU+ICT-2=885MU),thereby leaving a balance of 1850 MU. Thus, after auxiliary consumption of 667 MU, the balance energy consumed inside the premises is 1183 MU. The auxiliary consumption of Unit-I, III & IV is 391 MU. So, 1183 MU plus 391 MU is 1574 MU. Therefore, the consumption of 1574 MU is from the units of

the CGP of 1800 MW (3 X 600 MW). The contention of Petitioner regarding consumption of 893 MU from 9 X 135 MW units may be over and above 1574 MU.

hh) The Petitioner has been trying to conceal the data pertaining to generation and consumption of its (3x600) MW CGP (Power Plant-2) for the FY 2015-16 for thereasons, first, the conscious knowledge on part of the Petitioner regarding definite loss of CGP status of the stated Power Plant for the FY 2015-16 and second, the futile attempt on part of the Petitioner to confine the quantum of CSS at Rs.18.28 Cr., which the Petitioner has already paid to the Licensee. The law is well settled that the onus of providing correct and concrete data of generation of consumption lies upon the concerned industry owning CGP. If the industry provides correct data to the Office of Electrical Inspector, then the later would be in a position to verify and decide on the CGP status of the said Power Plant. In the instant case, the figure and data provided by the Petitioner has been verified by the CEI (WZ), Sambalpur and after verification, held that the status of (3x600)MW Power Plant as "CGP status not satisfied". Thus, the information contained in the letter dated 28.06.2023 of the CEI (WZ), Sambalpur has to be taken as final figure and no further liberty is to be granted to the Petitioner to re-exercise on its data.

ii) **Once the Petitioner submits a data and acts upon the said data, it is estopped from disputing the said data, by virtue of the doctrine of estoppel. The Petitioner, vide its letter dated 12.07.2023, raised objection to the demand raised by the Respondent No.1 on several grounds, however, it did not dispute the generation and consumption figure provided by the CEI (WZ), Sambalpur. As such, the Petitioner acquiesced to the report provided by the CEI (WZ), Sambalpur albeit the method of determination of the CGP status of the Power Plants owned by it**. Therefore, since all the stake holders, specifically the distribution licensee and the owner of the Power Plant has already acted upon the said data provided by the CEI (WZ), Sambalpur, as such the Petitioner is estopped to dispute the said data which is nothing but the own data of the Petitioner submitted by it before the CEI(WZ), Sambalpur vide its letter dated 26.06.2023.

jj) The Petitioner cannot raise fresh cause and/or issue *qua* data pertaining to FY 2015-16 of its (3x600) MW Power Plant, as **Petitioner has never disputed the data provided by the CEI(WZ), Sambalpur vide its letter dated 28.06.2023**. Thus, the Petitioner has acquiesced to its own action by not disputing the quantum of self-consumption i.e.1574.35 MU. **Prior to the present proceeding and even in the proceeding, Petitioner has never shared the data which it has shared in its letter**

dated 18.09.2023. Therefore, by applying the doctrine of acquiescence to the present case, the contents of the letter dated 18.09.2023 ought not to be entertained at this juncture.

kk) Besides, the rule of estoppel and acquiescence, the conduct of the Petitioner falls under the domain of 'delays and laches'. Petitioner remained silent and did not co-operate the concerned authority in sharing the data qua (3x600)MW CGP (Power Plant-2) for the FY 2015-16. Even in the present proceedings, Petitioner did not raise (prior to amendment of its Petition) the contentions as mentioned in said letter dated 18.09.2023. Therefore, the said letter ought not to be taken into consideration at such belated juncture.

ll) Notwithstanding the sustainability of the said letter dated 18.09.2023, the data qua import of energy from (9x135)MW CGP (893.83/891.38 MU) and GRIDCO (195.31 MU) under STOA for the stated FY 2015-16 is over and above the self-consumption of 1574.35MU and as such the same has no bearing on determining the CGP status of the Petitioner's Power Plant-2 for FY 2015-16.

mm) The Respondent No.1has prayed that the letter dated 18.09.2023 of the Petitioner and averments of the Petitioner for re-determining the status of the (3x600)MWPower Plant-2 of the Petitioner for the FY 2015-16 ought not to be taken into consideration by the Commission. Otherwise, it would become a never-ending process, thus frustrating the very object and intent of the provisions contained in Rule 3(1) of the Electricity Rules, 2005 and resulting into continuous violation to the directions of this Commission as issued vide their Order dated 27.01.2016 passed in Case No.21 of 2015. If the contents of the letter dated 18.09.2023 is taken into account, the Respondent No.1 would be prejudiced in terms of recovery of CSS for the stated period. The Commission would accept the data provided by the CEI(WZ), Sambalpur vide its letter dated 28.06.2023 and hold the same as final and binding on all stakeholders.

nn) The instant petition filed by the Petitioner-M/s. Vedanta Ltd. is liable to be dismissed at the threshold on the ground of maintainability as well as on merit. The Petitioner may be directed to pay to the Respondent No.1, the amount of Rs.181.65 Crores towards CSS for loss of CGP status of its generating units (Unit-I, III & IV) of VAL SEZ, for which demand has been raised by the Respondent No.1 vide demand notice dated 28.06.2023, dated 07.08.2023 and disconnection notice dated 16.08.2023.

4. The submissions of the **Respondent No.2- the CE-cum-CEI (Western Zone), Sambalpur in brief, are as under**:

a) The Commission, vide its RST order dated 23.03.2015 for the FY 2015-16, had directed the concerned CEI to supply the annual data/information to the Commission for declaration of the CGPs owned by the industries. The CEI relies on the concerned industries for generation and consumption data in the prescribed form related to Electricity Duty and verification of the same is done along with the EBC data issued by GRIDCO. The Petitioner vide its letter dated 21.04.2017, had submitted the generation and consumption data of its converted CGP Units I, III & IV for the FY 2016-17. **Since there was a gross mismatch of the generation and consumption data furnished by M/s. Vedanta Ltd. in the prescribed form in respect of its 4x600 MW Thermal Power Plant from the very beginning i.e. from the month of August, 2010 with the EBC data received from GRIDCO, the same had been intimated to the Petitioner vide letter dated 16.03.2021 and it was requested to resubmit the same after proper reconciliation to arrive at the conclusion like consideration of exemption of units against SEZ and captive status of the CPPs**. After several requests, the Petitioner vide its letter dated 26.06.2023, finally submitted the month wise generation and consumption data of the 3x600 MW converted CGP units for the period from April, 2015 to March, 2023. **After receipt of the above data, it was found that the consumption data provided by the Petitioner for FY 2016-17 was different from the data furnished by the Petitioner in April, 2017. Thus, the Respondent No.2 was handicapped in retrieving the correct data from the Petitioner**.

b) Further, the generation and consumption data for the converted CGP units I, III & IV received earlier from the Petitioner in the prescribed form relating to ED for the FY 2015-16 was shared by the office of the EIC-cum-PCEI, Bhubaneswar with the TPWODL (erstwhile WESCO Utility) vide letter dated 02.02.2018, where generation for FY 2015-16 was 4774.67 MU and consumption was 409.97 MU. Since the consumption was less than 51% as per this data, the units have lost its CGP status. Further, as per the data submitted by the Petitioner on 26.06.2023 in respect of the converted CGP units I, III & IV for FY 2015-16, the gross generation is 6590 MU and consumption is 1574.35 MU, thus here also, it has lost its captive status as the consumption is less than 51%. **The Petitioner has never submitted the correct data of its SEZ unit in time.However,from the data furnished by the**

Petitioner at both the times above, it is not satisfying the CGP status of its converted CGP units I, III & IV.

c) The EIC-cum-PCEI, Odisha, Bhubaneswar vide its letter dated 20.01.2023 intimated the Respondent No.2-CE-cum-CEI (Western Zone), Sambalpur to furnish the generation and consumption data of 3x600 MW unit of M/s. Vedanta Ltd. from FY 2015-16 onwards for transmission to the OERC.Accordingly, the Respondent No.2, vide its letter dated 20.01.2023, had requested the Petitioner to furnish the same. The Petitioner furnished the data to the Respondent No.2 on 26.06.2023 and the same was forwarded to the EIC-cum-PCEI, Odisha, Bhubaneswar vide letter dated 28.06.2023 serving a copy to the Respondent No.1. **Thus, the Section 56(2) of the Electricity Act, 2003 may not be applied in the instant case as the correct demand cannot be raised if the correct data is not provided by the Petitioner**.

d) The Petitioner is enjoying several exemptions as per Section 50 of the SEZ Act, 2005 and in the meanwhile Electricity Duty is also exempted. As per the SEZ Act, 2005, the very definition of Domestic Tariff Area (DTA) means *the whole of India (including the territorial waters and continental shelf) but does not include the areas of Special Economic Zones,* which means the area coming under DTA shall not come under SEZ. Thus, the SEZ units of the Petitioner (VAL-SEZ) is different from DTA of the Petitioner (VAL-DTA) and that is why the Petitioner is enjoying several exemptions in SEZ area but not in DTA. So the claim of single entity by the Petitioner by combining the DTA and SEZ area is not correct and accordingly the captive user of the units of SEZ area (3x600 MW) is given exemption of Electricity Duty but the same is not in case of 9x135 MW units situated in DTA. Hence, both the entities are different from each other.

e) **The Petitioner itself has been consciously providing the data related to ED to the Respondent No.2 separately for the units of 3x600 MW and 9x135 MW for enjoying several exemptions, but at this point of time clubbing the consumption data of both DTA and SEZ area by mentioning both the entities as one, will defeat the very purpose of SEZ status**.

5. **The submissions of the Respondent No.3-GRIDCO, in brief, are as under**:

a) The Petitioner operates 9x135 MW CGP having Aluminium Smelter-I (VAL-I) in Domestic Tariff Area (DTA), 4 x 600 MW Thermal Power Plant (IPP Unit #2: 600 MW dedicated to the State supplying power to GRIDCO and rest three Units (3x600 MW) are CGP Units converted w.e.f 01.04.2015 vide Commission's order dated

27.01.2016 in Case No.21of 2015 and Aluminium Smelter_II within Special Economic Zone (SEZ) area respectively. All these Units are interconnected through 400kV/220kV Transmission Lines.Thus, the power transactions were going on when the three Thermal Units # 1, #3 and #4 were IPPs and connected CTU. The Petiotioner had also sold power outside through CTU connectivity from these three UnitsDuring FY 2015-16.

b) The issue raised by the Petitioner pertains to payment of CSS to TPWODL for FY 2015-16 towards quantum of power availed from its converted CGP Units (3x600 MW) for consumption at its SEZ smelter plant for the FY 2015-16. The data pertaining to gross generation of power from 3 x 600 MW CGP and consumption of power by VAL-SEZ Smelter during FY 2015-16 was well within the knowledge of the Petitioner from the beginning. The stand taken in the amended petition appears to be an after-thought and the Petitioner must be put to strict proof of the facts stated in its amended petition.

c) The Contract Demand (CD) VAL-I and VAL-SEZ are to the tune of 67 MVA and 200 MVA respectively (in FY 2015-16, CD was 5MVA only) and are the consumers of TPWODL. Based on the request of the Petitioner before ERLDC, the three converted CGP Units (3 x 600MW) became State Embedded Entities and were disconnected from CTU w.e.f. 00:00 Hrs of 24.10.2016 and connected to STU along with shifting of control area jurisdiction from ERLDC to SLDC. The Smelter-II of SEZ was connected with STU from the beginning. The conditions of connectivity at STU were discussed amongst the Petitioner, GRIDCO, WESCO, OPTCL and SLDC and laid down in Minutes of Meeting (MoM) dated 01.11.2016.

d) **The following sequence of events are relevant for the present proceeding**:

19.12.2012	Consolidated Power Purchase Agreement (PPA) was executed between GRIDCO and Vedanta for supply of entire power from Unit#2 (600MW) and 5% of Energy Sent Out (ESO) from the power plant.
12.06.2013	Consolidated PPA dated 19.12.2012 approved by OERC.
01.04.2015	Change of name of the company from Sesa Sterlite Ltd to Vedanta Ltd became effective.
17.06.2015	Vedanta filed Case No. 21 of 2015 for conversion of its 4 x 600 MW IPP Units to CGP or to convert # 4 to CGP along with undertaking to pay CSS for FY 2015-16 in the event of loss of Annual CGP Status. In the said petition, it was, inter-alia, stated by Vedanta as under:

"67. XXX XXX captive status of the thermal power plant can only be determined at the end of the FY by the Hon'ble Commission after receiving the information from the Chief Electrical Inspector. In view of the same, it is submitted that the decision of levy of CSS on Vedanta

may be taken only after this Hon'ble Commission verifies the generation and consumption data on annual basis at the end of the financial year as per Electricity Rules."

07.07.2015 Vide interim order, OERC directed Vedanta to submit Bank Guarantee in favour of WESCO Utility towards securing the payment of CSS in the contingency of loss of CGP Status.

" 9. *The Petitioner has submitted that since the issue of CGP/IPP status is sub-judice before this Commission and the CGP status cannot be ascertained before the closure of the financial year 2015-16 WESCO Utility may not bill them the cross subsidy surcharge for the current period. We direct WESCO Utility not to press for collection of cross subsidy surcharge for this financial year getting a bank guarantee till the next date of hearing."*

27.07.2015 Vide affidavit in Case No. 21 of 2015 Vedanta submitted before OERC that it undertakes to pay estimated CSS towards one Unit (#4:600MW) amounting to Rs.260Crs considering energy consumed from Unit #4 to be 734MU.

08.10.2015 Vedanta submitted Bank Guarantee amounting to Rs.260 Crores in favour of WESCO Utility with validity upto 10.06.2016.

09.10.2015 Unit #4(600MW) of Vedanta synchronized with STU.

Oct, 2015 to Jan, 2016 VAL_SEZ availed power from IPP Unit #4 (600MW) under Open Access, as per Short Term Open Access application and approval thereof.

27.01.2016 OERC allowed conversion of #1, #3 and #4 of Vedanta to CGP retrospectively from 01.04.2015.

12.04.2016 WESCO Utility requested Chief Electrical Inspector, Western Zone, to provide the Annual Generation and Consumption Data of the Power Plant 3X600MW for FY: 2015-16.

30.04.2016 Vedanta informed WESCO that it may not be able to achieve the CGP Status for FY: 2015-16. Moreover, without CEI Certified Data, Vedanta suo-moto made payment of Rs.18.28 Crores along with DPS of Rs.0.59 Lakhs and requested WESCO to release the Bank Guarantee with an undertaking that necessary payment adjustment shall be made only after finalization of the CGP status by the Commission. However, WESCO returned the Bank Guarantee.

21.04.2017 Vedanta submitted the Generation and Consumption Data of converted CGPs (3 x 600 MW) to Chief Electrical Inspector (CEI), Sambalpur for FY:2016-17 and not for FY:2015-16.

24.06.2017 WESCO requested Principal Chief Electrical Inspector (PCEI), Bhubaneswar to provide data pertaining to 3x600 MW CGP of Vedanta for FY:2015-16 & FY 2016-17.

02.02.2018	PCEI, Bhubaneswar furnished the Generation and Self-Consumption Data of 3 x 600 MW for FY:2015-16 & FY 2016-17 based on Electricity Duty (ED) Return submitted by the CGP.
12.03.2018	WESCO raised demand of payment of CSS of an amount of Rs.146.79Crores for FY: 2015-16 along with CSS payable for FY: 2016-17.
27.03.2018	Vedanta disputed claim of WESCO and raised anomaly regarding the generation and self–consumption data of 3 X 600 MW for FY:2015-16 & FY:2016-17 provided by PCEI, Bhubaneswar.
15.10.2019	WESCO raised issue of outstanding of CSS demand made on Vedanta for FY: 2015-16 and FY: 2016-17
29.12.2016, 07.02.2017, 21.04.2017, 27.03.2018, 16.10.2020, 20.11.2020, 22.12.2020, 07.04.2021, 11.05.2021, 25.05.2021, 11.06.2021, 03.07.2021, 27.07.2021, 28.08.2021, 11.10.2021, 29.12.2021, 20.01.2023, 26.06.2023 & 28.06.2023	Correspondences made by CEI, Sambalpur and PCEI, Bhubaneswar with Vedanta in respect of Gross Generation and Consumption Data of 3 x 600 MW converted CGPs for FY2015-16 & FY 2016-17.
28.06.2023	CEI, Sambalpur certified that 3 x 600 MW converted CGPs have lost CGP status in FY 2015-16.
28.06.2023	TPWODL raised fresh demand towards CSS payable by Vedanta for FY 2015-16 amounting to Rs.181.65 Crores
18.09.2023	Vedanta informed CEI, (WZ) Sambalpur that it disputes the claim of TPWODL made vide letter dated 28.06.2023 stating that they have consumed 139.78 MU only from 3x600MW CGP during FY: 2015-16 and not 1574.35 MU as claimed by TPWODL.
25.09.2023	Vedanta filed amended petition before OERC citing same reasons as informed to CEI, (WZ) Sambalpur on 18.09.2023.

e) The crux of the present matter is limited to the following issues:

   i. Loss of CGP Status of 3x600 MW converted CGP units of the Petitioner during FY 2015-16;

   ii. Whether CGP Status of 3x600 MW converted CGP units supplying power to Smelter-II of SEZ during FY 2015-16 is to be computed along with VAL-I (9x135 MW) CGP that is situated under DTA?

   iii. Quantum of power consumed by Smelter-II of SEZ which shall be considered for computation of correct CSS payable by the Petitioner to TPWODL.

f) As per the APTEL order dated 21.02.2011 in Appeal No. 270 of 2006, the Chief Electrical Inspector (CEI) shall provide the information to the Commission for declaration of any industry as Captive Generating Plant annually. Further, vide Order dated 23.03.2015 in Case Nos. 69,70,71 & 72 of 2014 and Case Nos. 61,62,63 and 64 of 2014, the Commission has held that:

"*the captive status of the thermal power plant can only be determined at the end of the financial year by the Commission after receiving the information from the Chief Electrical Inspector".*

The Commission, vide RST order for FY 2015-16 dated 23.03.2015 (Para 334) had observed that:

"*…as per the relevant provisions of the Electricity Act 2003 read with Indian Electricity Rules, 2005 the CGPs are mandated to utilize at least 51 % of power for self-consumption per annum. Thus, there should be annual verification of the status of the industries operating as CGPs. We agree with the suggestion of DISCOMs that Chief Electrical Inspector (Generation) should be authorised to verify the CGP status of the Captive Generators since that office gets information on self-consumption of industries from their CGPs for calculation of Electricity Duty to be levied by the Government".*

g) As per the provisions under Clause 3(1) (a) (ii) & 3(2) of the Electricity Rules, 2005, requisite conditions for an Industry to qualify for being entitled to hold the CGP Status for its plant are as under:

3(1) (a) (ii): *"not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use".*

3(2): *"it shall be the obligation of the captive users to ensure that consumption by the captive users at the percentage mentioned in the sub-clauses (a) (b) of sub rule (1) above is mentioned and in case the minimum percentage of captive use is not complied in any year, the entire electricity generated shall be treated as if it is supply of electricity by generating company*."

h) From the sequence of events on record, the following position has emerged:

(i) The VAL-I CGP units (9x135 MW) belongs to Domestic Tariff Area (DTA) whereas converted CGP units (3x600MW) belong to SEZ Area, thereby availing a number of exemptions such as State's taxes, levies and duties as per Section 50(a) of the Special Economic Zone Act,2005. Both are two different entities and therefore, both the CGPs cannot be construed together for the purpose of determining CGP Status annually;

(ii) As per the practices, the CEI (WZ), Sambalpur prepares and provides Gross Generation vis-à-vis Consumption Data in respect of VAL-I and converted (3x600 MW) CGP Units separately on annual basis and declares the CGP Status separately.

(iii) On 08.10.2015, the Petitioner submitted the Bank Guarantee amounting to Rs.260 Crore as per interim order dated 10.07.2015 of the Commission in Case No.21 of 2015. The Petitioner hadthen submitted before the Commission that

they had already consumed 734 MU in their SEZ Unit during April, 2015 to July, 2015 and accordingly they computed CSS and submitted the aforesaid BG.

(iv) The Petitioner had connected its IPP Unit#4(600MW) at STU for supply of power to the Smelter-II of its SEZ and had availed Short Term Open Access (STOA) during the period October, 2015 to January, 2016 as indicated hereunder:

Month	Oct-15	Nov-15	Dec-15	Jan-16
Quantum of Power availed by the Petitioner under STOA from the 600MWIPP Unit #4(in MU)	38.76	0.00	101.04	38.74

(v) On verification of information/data in respect of gross generation & consumption of power by VAL-I CGP (9x135 MW) and converted CGP Units (3x600 MW) during FY 2015-16 as provided by the Petitioner in its first Petition, the following position emerges:

Sl. No.	Description	VAL-I CGP (9x135 MW)	Converted CGP (3 x 600MW) As per TPWODL	Converted CGP (3 x 600MW) As per M/s. Vedanta Ltd.
1	Gross Generation[A] (MU)	9396.33	4774.67	4774.67
2	Auxiliary Energy Consumption [B] (MU)	922.83	391.1688	391.1688
3	Electricity Consumed by the Industry for self-use (MU)	7184.65	1574.353515	1183.19
4	Total Consumption D=[B]+[C] MU	8107.48	1965.522315	1574.35
5	% of Consumption [D/A *100] %	**86.28**	**41.17**	**32.97**

With the above submission, the Petitioner has considered generation and consumption data of both the entities to prove that the converted CGP Units had maintained CGP Status for FY 2015-16.

(vi) As per letter dated 30.04.2016 of the Petitioner, it is evident that,

- The Petitioner has admitted that it may not be able to achieve CGP Status of their Generating Units I, III & IV (600 MW each) for FY2015-16;
- Accordingly, the Petitioner has paid CSS for an amount of Rs.18.28 Crore along with DPS for an amount of Rs.0.59 Crore;
- The Petitioner has submitted that necessary payment/ adjustment shall be made only after finalization of the CGP Status;

(vii) From the submissions of O/o: CEI, (WZ), Sambalpur, it is evident that the Petitioner did not provide correct information regarding Gross Generation

from its 3x600 MW converted CGP units& consumption of power by VAL-SEZ in time and thereby consequently delayed correct determination of CGP Status as well as payment of CSS to TPWODL for more than 7 years.

(viii) Several correspondences have been made by O/o CEI (WZ), Sambalpur as well as the EIC-cum-PCEI, Bhubaneswar to the Petitioner to obtain the correct information /data pertaining to gross generation &consumption of power by the Petitioner from its 3x600MW converted CGP Units during FY 2015-16. However, data was not submitted correctly by the Petitioner in time, because of which the CGP status could not be ascertained earlier.

i) Regarding "CGP Status" of 3x600 MW Units during FY 2015-16, GRIDCO has submitted that:

- The Petitioner had submitted specific undertaking in Case No. 21 of 2015 to make payment of CSS to erstwhile WESCO (now TPWODL) in terms of correct computation of CSS and further undertook to provide a Bank Guarantee (BG) as per direction of the Commission, which may be encashed if it does not qualify to be a CGP. Moreover, on several occasions the Petitioner has admitted the fact that it shall not be able to maintain CGP status during FY 2015-16.
- Though several attempts were made by the Respondent No.1 & Respondent No.2, correct data was not furnished by the Petitioner, which resulted in delay in determination of CGP Status for FY 2015-16. The claim is, therefore, not barred under Section 56 (2) of the Electricity Act, 2003.
- From the data available on record, the 3x600MW CGP Units of the Petitioner did not qualify to be CGP as the said Units have not met the criteria of 51% consumption of power during FY2015-16;
- As per contentions of TPWODL, after deducting the total Auxiliary Consumption and Export of Power from total Gross Generation from all four Units, balance 1574.35 MU is consumed by VAL-SEZ and thus attracts CSS (i.e. 1574.35*10^6*1.2662 = Rs.181.65 Cr.)
- As per letter dated 18.09.2023 of the Petitioner addressed to the CEI, (WZ), Sambalpur, excluding auxiliary consumption of 391 MU, balance electricity consumed by VAL-SEZ during FY 2015-16 is 1183MU.

j) The Petitioner was well aware of the fact that, 9x135 MW CGP (VAL-I) and 3x600 MW converted CGP are placed under different Regions/Zones i.e. DTA and SEZ respectively and thereby availing different facilities and exemptions as per appropriate Order and the SEZ Act, 2005. Moreover, Vedanta has never disputed

declaration of CGP Status separately for VAL-I (9x135 MW) and converted CGP (3 x 600MW) by O/o CEI /PCEI for all other years. Consideration of gross generation and consumption of power in respect of both the CGPs together by the Petitioner is an afterthought to misguide and mislead the Commission and take advantage of non-payment of CSS to TPWODL for FY 2015-16. Such contention was never raised by the Petitioner either before the Commission, O/o CEI (WZ), Sambalpur, O/o PCEI, GRIDCO or SLDC till date.

k) The contention of the Petitioner that the claim raised by the Respondent No.1 is barred by limitation period, is devoid of any merit in view of continued and consistent communications made by the O/o CEI (WZ) Sambalpur and O/o PCEI, Bhubaneswar since without the certification of annual gross generation and consumption data by these offices, declaration of "CGP status" cannot be carried out under any circumstances.

l) The data pertaining to Generation, Consumption and Sale of power by the Petitioner from its 3x600MW Power Plant during FY2015-16 is as summarized below:

Statement of Gross Generation, AEC, SEZ Consumption, Injection of energy at CTU, by 3x600 MW converted CGP Units during FY 2015-16

Sl. No	Description	As per GRIDCO	As per Vedanta	Remark
1	Gross Generation from Unit #1, 3 and 4 (3 x 600MW) of Vedanta	4774.67	4774.67	As per data provided by Vedanta to O/o CEI(WZ), Sambalpur
2	SEZ Consumption	1209.78	1183.19	GRIDCO has considered energy Billing Centre (EBC) certified Meter data
3	Auxilliary Energy Consumption	391.16	391.16	As per data provided by Vedanta to O/o CEI(WZ)
4	Energy available for CTU injection (1-3)	4383.51	4383.51	The converted CGP Units (#1,#3 and #4 were connected to CTU in FY:2015-16)
5	Actual Energy injected through CTU	3861	3861	As per the Regional Energy Accounting (REA) statement issued by ERPC, this quantum of energy has been reconciled in Joint Reconcilliation between Vedanta and GRIDCO in 2023.
6	Difference betweenactual energy available vis-à-vis actual energy injected at CTU from the Units #1, #3 and #4 (4-5)	**522.51**	**522.51**	Vedanta may be directed to clarify.

7	Energy supplied from Unit#4 to VAL-SEZ under STOA for interim period Oct, 2015 to Jan, 2016	178.54	139.78	As per the STOA application and approval available in records of GRIDCO
8	**Difference (6-7)**	**343.97**	**382.73**	Vedanta may be directed to clarify.

During FY 2015-16, Unit #1, #3 and #4 (3x600MW), SEZ were connected to the 400 kV Bus-bar of the Petitioner, which was connected to CTU through Rourkela-Raigarh LILO Line. During the said period, the Petitioner was carrying out Merchant Sale of Power to the tune of 600MW-1000MW.

m) The SEZ was availing power to the tune of 100-150MW (maximum) from VAL-I through STOA which was physically availed from Unit#2 connected to STU under displacement method. In view of difference worked out in the table above, the Petitioner may be directed to clarify the aforesaid difference with sufficient supporting documents/data.

n) TPWODL acted as per the data certified on 28.06.2023 and provided by the O/o CEI, (WZ), Sambalpur and PCEI, Bhubaneswar, who was consistently taking action to obtain correct information from the Petitioner. However, the Petitioner did not actbonafidelyto comply with the request of O/o CEI, (WZ), Sambalpur.

o) The prayer of the Petitioner for refund of payment of Rs.18.28 Cr towards CSS along with DPS payment of Rs.0.59 Cr for FY 2015-16, unilaterally made by the Petitioner, is liable to be rejected. Moreover, the said amount needs to be adjusted against the correctly computed claim towards CSS to be claimed by TPWODL for FY 2015-16 as decided by the Commission.

6. **The Respondent No.5-SLDC** has stated that M/s. Vedanta Ltd. had availed open access from different sources to the tune of 1226.471588 MU during FY 2015-16. These sources are:

i) CGP of M/s. Vedanta Ltd. (9x135 MW)

ii) GRIDCO Ltd.

iii) STU connected unit (II) of M/s. Vedanta Ltd. (4x600 MW)

7. The Petitioner has submitted the Rejoinders on the replies of the Respondent No.1-TPWODL and Respondent No.3-GRIDCO Ltd. and it has reiterated its averments made in the amended Petition and as such, the same are not repeated for the sake of brevity. Additionally, the Petitioner has submitted as under:-

Generation power balance in MUs during FY 2015-16:-

Gross Generation of 4x600 MW units – 8120

Auxiliary Consumption – 667

Export through CTU – 3861

Export to SEZ Smelter – 139.78

Export to GRIDCO – 3414

Balance power available - 39

SEZ Power Consumption Balance in MUs:-

SEZ actual consumption – 1210

Power wheeling from CGP of 1215 to SEZ – 891

Power Scheduled from GRIDCO to SEZ – 195

Power Wheeled from IPP to SEZ Smelter – 139.78

Balance Power - 16

In his written note of argument submitted on 25.10.2023, it has also reiterated the stand taken in the earlier submissions and as such, the same are not reproduced here with for the sake of brevity. Additionally, it has submitted that data furnished by CEI and SLDC vide affidavits on 18.10.2023 and 19.10.2023 respectively affirms the data submitted by the Petitioner. It also requests the Commission that since CEI has ascertained the quantum of 139.777 MUs sourced by the Petitioner from 3x600 MW units, it becomes clear that CSS (in case applicable) can only be levied upon in the said consumption which amounts to Rs.18.28 crores along with DPS which was paid by the Petitioner in FY 2016-17.

8. Heard the rival sides through hybrid mode of arrangement and carefully considered their respective contentions. The facts which are not in dispute and/or matter of record, may be stated hereunder:

   i) The Petitioner was running a CGP of (9x135 MW) capacity & operating a thermal power plant of 4 x 600 MW as an IPP. The PPA was executed between the Petitioner and GRIDCO for purchase of power from above IPP which was approved by the Commission vide its order dated 12.06.2013 in Case No.117 of 2009.

   ii) The Petitioner vide its application dated 17.06.2015 (Case No.21 of 2015) filed before this Commission had sought for a declaration of its IPP units of 4x600 MW as CGP with effect from 01.04.2015 with an undertaking to pay the CSS for the year 2015-16 in the event of loss of annual CGP status as to be determined by the CEI at the end of the financial year 2015-16. In its application, the Petitioner had volunteered to furnish Bank Guarantee to the

then licensee (WESCO Utility) as may be directed by the Commission with an undertaking that in the event the Petitioner does not qualify to be a CGP at the end of FY 2015-16, the said Bank Guarantee shall be encashed.

iii) Pending final disposal of the aforesaid application of the Petitioner, this Commission, vide its interim order dated 10.07.2015, had directed the Petitioner to furnish Bank Guarantee, and the Petitioner had deposited the Bank Guarantee of Rs.260.00 Crore with the Respondent No.1 (erstwhile WESCO Utility), with validity upto June, 2016, towards the security for payment of the CSS in the contingency of loss of the status of the CGP of the power plant.

iv) The Commission vide the final order dated 27.01.2016 passed in Case No.21 of 2015, had declared Units-I, III & IV of 4x600 MW thermal power plant as CGP by rejecting the request of the Petitioner for grant of CGP status in a staggered manner/time segregated manner with observation that the prayer of the Petitioner was apparently a design to avoid paying CSS to WESCO Utility by not maintaining specified power consumption criteria as per Rule 3 of the Electricity Rules, 2005.

v) The CGP (VAL-DTA) of 1215 MW (9 x 135 MW) Power Plant-1 & Aluminium Smelter-I of 0.5 MMTPA come under the Domestic Tariff Area (DTA) of the Respondnet-1 (TPWODL) and the CGP (VAL-SEZ) of 1800 MW (3x600 MW) (Power Plant-2) & Aluminium Smelter-II of 1.1 MMTPA come under Jharsuguda SEZ area.

vi) Originally three Thermal Units (Unit-I, III&IV) were IPP having CTU connectivity and power was sold through CTU network during 2015-16. These three units were converted / declared as CGP w.e.f. 01.04.2015 & became the State embedded entity.

vii) After closure of the financial year 2015-16, the licensee (the erstwhile WESCO), vide its letter dated 12.04.2016 requested the Chief Electrical Inspector (WZ), Sambalpur to provide annual gross Generation and Consumption data of the power plant in respect of Captive generating Units I, III & IV (3x600 MW) of the Petitioner for the year 2015-16 for verification of the CGP status. A copy of the said letter/reference was also communicated to the Petitioner requesting it to supply the required information to the Chief Electrical Inspector (WZ), Sambalpur.

viii) The Petitioner, however, instead of waiting for the report of the CEI (WZ), Sambalpur deposited an amount of Rs.18.28 crores provisionally towards CSS along with DPS of Rs.0.59 crores with the licensee and under its letter dated 30.04.2016, informed the licensee that the CGP status of the converted CGP units (3x600 MW) may not be achievable for the year 2015-16, for which it has already paid the aforesaid amount of CSS and DPS, obviously basing upon its calculation/assumption, and requested the Licensee for return of the Bank Guarantee of Rs.260.00 crores with an undertaking that the necessary payment/adjustment shall be made only after finalisation of the CGP status by the Commission. Accordingly, the Licensee returned the Bank Guarantee to the Petitioner on 30.04.2016.

ix) The Petitioner, vide letter dated 21.04.2017, submitted the data regarding Generation and Consumption in respect of the Power Plant-2 (3x600 MW) for the FY 2016-17 before the CEI (WZ), Sambalpur omitting the data for the FY 2015-16.

x) The Principal Chief Electrical Inspector (PCEI), Bhubaneswar however, provided the annual Generation and self consumption data in respect of various industries having the CGPs in the State for the FYs 2015-16, 2016-17 on 07.06.2017 followed by the revised data on 08.06.2017. Still in those reports, the data pertaining to the said Power Plant-2 of the Petitioner was not reflected.

xi) Pursuant to the request made by the Respondent No.1-Licensee, under letter No.273 dated 24.06.2017 followed by reminders, the PCEI, Bhubaneswar vide his letter dated 02.02.2018 furnished the data in respect of the Power Plant-2 of the Petitioner for the FY 2015-16 and FY 2016-17 as obtained from the monthly ED return submitted by the CGP.

xii) During the final hearing on 17.10.2023, the Respondent No.5-SLDC had sought for two weeks time to file its submission after receipt of the required data from ERLDC. Subsequently, on 19.10.2023, the SLDC submitted the required data in respect of STOA transaction of M/s. Vedanta Ltd. (SEZ) on receipt of the same from ERLDC and the said data is taken into consideration. As observed, these STOA transaction data submitted by SLDC broadly matches with the STOA data submitted by the Petitioner as well as the data

submitted by the CEI (WZ), Sambalpur. It is presumable that the Petitioner is well aware of the data presented by SLDC before this Commission.

xiii) As per the submissions of the Respondent No.1-Licensee, on obtaining the Short Term Open Access (STOA) drawal data from the SLDC, it found additional self consumption of 893.835 MU by the Petitioner for FY 2015-16 over and above the consumption data as reported by PCEI, Bhubaneswar. On the basis of the data so obtained, the Distribution Licensee raised the demand of Rs.186.79 crores in respect of CSS for the FY 2015-16 besides the demand raised for the FY 2016-17 from the Petitioner. However, SLDC in its submission dated 19.10.2023 has stated that the Petitioner has scheduled/availed 1226.471588 MU in terms of Short Term Open Access during the FY 2015-16.

xiv) The Petitioner disputed the said demand vide its letter dated 27.03.2018 by pointing out certain anomalies regarding the said data.

xv) Pending resolution of the said disputes, the Petitioner approached this Commission by filing the Case No.34 of 2018 seeking for declaration of Unit-II of its Power Plant as CGP. Vide the application in the said case, he averred that it was operating two distinct and separate power plants VAL-SEZ and VAL-DTA. Respondent No.1-Licensee, in its reply in the said case, raised the issue of non-payment of dues by the Petitioner including the aforesaid demand of CSS and the Petitioner in its rejoinder has reiterated the same stand as taken vide its letter dated 27.03.2018 addressed to the Chief Electrical Inspector (WZ), Sambalpur.

xvi) This Commission disposed of the Case No.34 of 2018 vide its order dated 05.10.2021.

xvii) The Distribution Licensee, vide its letter dated 24.02.2021, had requested the PCEI, Bhubaneswar for providing generation and consumption data of the industries having the CGPs including that of the present Petitioner.

xviii) After receiving the letter dated 09.06.2021 of the PCEI, Bhubaneswar advising to contact the concerned CEI, the Distribution Licensee requested CEI (WZ), Sambalpur, vide its letter dated 17.06.2021, seeking data of the industries having CGPs.

xix) The CEI (WZ), Sambalpur, vide letters dated 23.06.2022 and 24.06.2022, furnished the Generation and Consumption data of the industries, having CGPs without the required data of the converted CGP of the present Petitioner.

xx) The Respondent No.1-Distribution Licensee, vide letter dated 13.01.2023, requested PCEI, Bhubaneswar for providing Generation and Consumption data of the industries including the CGP of the present Petitioner.

xxi) PCEI, Bhubaneswar, vide its letter dated 20.01.2023, and Respondent No.1, vide its letter dated 15.05.2023, urged the CEI (WZ), Sambalpur for providing the Generation and Consumption data of the Petitioner's CGPs for the FY 2015-16.

xxii) CEI (WZ), Sambalpur, vide its letter dated 17.06.2023, provided the provisional generation and consumption data of (3x600 MW) CGP of the Petitioner in SEZ areas for the FY 2015-16 with a declaration that CGP status was not satisfied.

xxiii) CEI, WZ, Sambalpur, vide its letter dated 28.06.2023, advised the PCEI, Bhubaneswar with a copy to the Respondent No.1 providing the revised generation and consumption data of (3x600 MW) CGP of the Petitioner for FY 2015-16 onwards wherein the CGP status for the FY 2015-16 was declared not satisfied. Basing thereupon, the Respondent No.1-TPWODL issued the demand letter dated 28.06.2023 to the Petitioner M/s. Vedanta Ltd. due to loss of CGP status.

xxiv) As per the tariff order dated 23.03.2015 issued by this Commission for the FY 2015-16, it was the CEI (WZ), Sambalpur who was required to verify the data to be furnished by the CGP concerned and to submit the required information to the Commission for declaration asto generating plant owned by any industry as CGP annually. The relevant part of the said Tariff Order is extracted here below:

"We observe that as per the APTEL order dated 21.02.2011 in Appeal No. 270 of 2006, the Chief Electrical Inspector (CEI) shall provide the information to the Commission for declaration of the captive status of the thermal power plant of any industry annually. Further, the Commission, vide RST order for FY 2015-16 dated 23.03.2015 (Para 334) had observed that:

…….as per the relevant provisions of the Electricity Act 2003 read with Indian Electricity Rules, 2005 the CGPs are mandated to utilize at least 51 % of power for self-consumption per annum. Thus, there should be annual verification of the status of the industries operating as CGPs. We agree with the suggestion of DISCOMs that Chief Electrical Inspector (Generation) should be authorised to verify the CGP status of the Captive Generators since that office gets information on self-consumption of industries from their CGPs for calculation of Electricity Duty to be levied by the Government".

9. From the rival contentions of the parties, the issues which emerge for determination in the proceeding are as below:

ISSUES

(I) Whether the burden lies upon the Respondent No.1, Distribution Licensee to verify the status of the CGP for the FY 2015-16 so as to levy the Cross Subsidy Surcharge (CSS) on the Petitioner ?

(II) Whether the claim of the CSS raised by the Respondent No.1, Distribution Licensee vide its bill dated 03.08.2023 against the Petitioner is barred by Limitation invalidating the power supply disconnection notice dated 16.08.2023 ?

(III) Whether the determination of CGP status of the Generating Units (3x600 MW) of the Petitioner for FY 2015-16 has been done in accordance with the provisions of the Rule 3 of the Electricity Rules, 2005 ?

(IV) Whether the computation of liability of the Petitioner amounting to Rs.181.65 Crore in respect of CSS for FY 2015-16 is erroneous ?

(V) Whether the Petitioner is entitled to get refund of Rs.18.28 Crore along with the DPS of Rs.0.59 crore with interest from Respondent No. 1 –TPWODL ?

10. **Issue No.(I)**

a) The Petitioner has referred to the Regulation 4 of the OERC (Determination of Open Access Charges) Regulation, 2006 which provides inter alia, CSS payable shall be computed by the Distribution Licensee and approved by the Commission. Moreover, the Rule 3(2) of the Electricity Rules, 2005 provides that the onus lies upon the captive user to ensure/maintain the CGP status.

b) It is the contention of the Petitioner that the onus lies upon the Respondent No.1-the Licensee to take appropriate steps for verification of the CGP status by collecting the generation and consumption data pertaining to the Power Plant-2 in question of the Petitioner to raise the timely claim towards the CSS for the FY 2015-16, if any. In the context, a reference may, however, be made to the own version of the Petitioner-M/s. Vedanta Ltd. made in paragraphs 67 to 69 of his application dated 17.06.2015, registered as Case No.21 of 2015, vide which, it had undertaken to place the consumption data before the Chief Electrical Inspector as well as before this Commission for facilitating the assessment for review, as the case may be, to find out, as to if the power plant does not qualify to be the CGP at the end of the FY 2015-16. From the above, a legitimate inference can be drawn that the Petitioner is /was aware of his duty and obligation to furnish the relevant data to the CEI concerned for quantification/ computation to be made at that level, to enable the Distribution Licensee to raise the bill, if any, found leviable.

c) As per the Tariff order dated 23.03.2015 issued by this Commission for the FY 2015-16, the CEI, WZ, Sambalpur was required to verify the data to be furnished by the CGP concerned and submit the information in that regard to the Commission for decision. The Commission vide the said order authorised the CEI to verify the CGP status with an observation that the Office of the CEI gets information on self consumption of industries from their CGPs for calculation of the Electricity Duty (ED) to be levied by the Government.

d) A reference may also be made to the order dated 21.02.2011 of the Hon'ble APTEL passed in Appeal No.270 of 2006 vide which it has been stated that the CEI shall provide the information to the Commission for declaration of any industry as CGP annually.

e) The rule of evidence vide Section 106 of the Indian Evidence Act, 1872 provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person. In the case at hand, undeniably, the generation and consumption data were within the knowledge of the Petitioner, and upon furnishing of the same by it, the CEI was to verify/ assess the CGP status and provide report/information to the Respondent No.1-Distribution Licensee and the Commission.

f) In view of the factual position and legal requirements as stated above, it cannot be held that the onus lies upon the Respondent No.1-Distribution Licensee to verify the

status of the CGP for FY 2015-16. On the other hand, it remains evident on record that the Petitioner lacked diligence in furnishing the correct information to the CEI and there is nothing from the side of the Petitioner to deny that the data furnished by it for the FY 2015-16, vide its letter dated 26.06.2023, had not been placed before the CEI or the Commission at any point of time earlier. Basing upon the generation and self consumption data, the CEI (WZ), Sambalpur submitted the report dated 28.06.2023 giving rise to the bill dated 03.08.2023 raised by the Respondent No.1-TPWODL. Hence, the Commission answers this issue against the Petitioner-M/s. Vedanta Ltd., with the conclusion that the onus does not lie on the Respondent No.1-Distribution Licensee to prove the CGP status of the Petitioner.

11. **Issue No.(II)**

a) According to the Petitioner, the claims / bills raised by the Respondent No.1 to the tune of Rs.181.65 crores is barred by time both under the Limitation Act, 1963 and under Section 56 of the Electricity Act, 2003. On the other hand, the Respondent No.1-the licensee contends that the provisions of the Limitation Act are not applicable to the present case and if the issue is examined from the view point of the Section 56 of the Electricity Act, 2003, the claim, vide the bill dated 03.08.2023 is well within the time inasmuch as the date of 'first due' is to be construed as the date 03.08.2023 when the bill was raised by the Distribution Licensee against the Petitioner.

b) Heavy reliance is placed by the Petitioner M/s. Vedanta Ltd. on the judgement of the Hon'ble Supreme Court of India in AP Power Coordination Committee and Ors Vrs. M/s. Lanco Kondapalli Power Ltd. & Ors. reported in (2016) 3 SCC 468, in support of its contention that the claim in question raised by the Respondent No.1-TPWODL is barred by the Law under the Limitation Act, 1963.

Controverting such plea of the Petitioner, the Respondent No.1-TPWODL submits that the claim in question being covered under regulatory powers/functions of the Commission, the provisions of the Limitation Act, 1963 are not strictly applicable to such a proceeding in view of the principles cited by the Hon'ble Supreme Court in the aforecited case. The paragraphs 28, 29 & 30 of the said judgement are quoted here below:

> *"28. Coming back to the issues relating to limitation, in view of law noticed above and for the reasons noted in M.P. Steel Corporation (supra), we respectfully concur and hold that by itself the Limitation Act will not be applicable to the Commission under the Indian Electricity Act 2003 as the Commission is not a Court stricto sensu. Further stand of the respondents that the Commission being a statutory tribunal, cannot act beyond the four walls of the Electricity Act also does not brook any exception. In the case of PPN Power Generating Co. (P) Ltd. (supra) this Court examined the issue of limitation in a very summary manner and without referring to the relevant provisions of the Electricity Act 2003, at the end of para 64 it was observed in a single sentence that the Limitation Act is inapplicable to proceeding*

before the State Commission. But in view of detailed discussion in the case of M.P. Steel Corporation (supra), we have held above that by itself the Limitation Act is inapplicable to proceeding or action brought before the State Commission. However, the Electricity Act 2003 requires a further scrutiny to find out whether by virtue of Section 175 of the Electricity Act or otherwise it can be inferred that the provisions of Limitation Act will govern or curtail the C.A.No.6036/2012 etc. powers of the Commission in entertaining a claim under Section 86(1) (f) of the Electricity Act. Section 175 reads thus:

"175. Provisions of this Act to be in addition to and not in derogation of other laws. – The provisions of this Act are in addition to and not in derogation of any other law for the time being in force." A plain reading of this Section leads to a conclusion that unless the provisions of the Electricity Act are in conflict with any other law when this Act will have overriding effect as per Section 174, the provisions of Electricity Act will not adversely affect any other law for the time being in force. In other words, as stated in the Section the provisions of the Electricity Act will be additional provisions without adversely affecting or substracting anything from any other law which may be in force. Such provision cannot be stretched to infer adoption of the Limitation Act for the purpose of regulating the varied and numerous powers and functions of authorities under Electricity Act 2003. In this context it is relevant to keep in view that the State Commission or the Central Commission have been entrusted with large number of diverse functions, many being administrative or regulatory and such powers do not invite the rigours of the Limitation Act. Only for controlling the quasi judicial functions of the Commission under Section 86(1)(f), it will not be possible to accept the contention of the appellant that by Section 175 the Electricity Act, 2003 adopts the Limitation Act either explicitly or by necessary implication.

C.A.No.6036/2012 etc.

29. The only other weighty contention of Mr. Giri that there is nothing in the Electricity Act 2003 to create a right in a suitor before the Commission to seek claims which are barred by law of limitation merits a serious consideration. There is no possibility of any difference of opinion in accepting that on account of judgment of this Court in Gujarat Urja (supra) the Commission has been elevated to the status of a substitute for the Civil Court in respect of all disputes between the licencees and generating companies. Such dispute need not arise from the exercise of powers under the Electricity Act. Even claims or disputes arising purely out of contract like in the present case have to be either adjudicated by the Commission or the Commission itself has the discretion to refer the dispute for arbitration after exercising its power to nominate the arbitrator. It is in view of such far reaching judicial powers vested in the Commission that in the case of PPN Power Generating Co. (P) Ltd. (supra) this Court advised the State to exercise enabling power under Section 84(2) to appoint a person who is/has been a Judge of a High Court as Chairperson of the State Commission. In such a situation it falls for consideration whether the principle of law enunciated in State of Kerala v. V.R. Kalliyanikutty (supra) and in the case of New Delhi Municipal Committee v. Kalu Ram (supra) is attracted so as to bar entertainment of claims which are

legally not recoverable in a suit or other legal proceeding on account of bar created by the Limitation Act. On behalf of respondents those judgments were explained by pointing out that in the first case the peculiar words in the statute – "amount due" and in the second C.A.No.6036/2012 etc. case "arrears of rent payable" fell for interpretation in the context of powers of concerned tribunal and on account of aforesaid particular words of the statute this Court held that the duty cast upon the authority to determine what is recoverable or payable implies a duty to determine such claims in accordance with law. In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Section 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86(1)f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time barred claims, there is no conflict between the provisions of the Electricity Act and Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation on account of provisions in Section 175 of the Electricity Act or even otherwise the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular C.A.No.6036/2012 etc. proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike Labour laws and Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.

30. We have taken the aforesaid view to avoid injustice as well as possibility of discrimination. We have already extracted a part of paragraph 11 of the judgment in the case of State of Kerala v. V.R. Kalliyanikutty (supra) wherein Court considered the matter also in the light of Article 14 of the Constitution. In that case the possibility of Article 14 being attracted against the statute was highlighted to justify a particular interpretation as already noted. It was also observed that it would be ironic if in the name of speedy recovery contemplated by the statute, a creditor is enabled to recover claims beyond the period of limitation. In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor - electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence we hold that a claim coming before the Commission cannot be entertained or allowed

if it is barred by limitation prescribed for an ordinary suit before the civil court. But in appropriate case, a specified period may 36 Page 37 C.A.No.6036/2012 etc. be excluded on account of principle underlying salutary provisions like Section 5 or 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of subsection (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory"

c) By the aforesaid authoritative pronouncement, the principle has been settled that the provisions of the Limitation Act, 1963 shall not apply to the powers and functions of the Commission which are administrative/regulatory in nature. In the light of the nature of judicial/quasi judicial power conferred upon the Commission, the claims coming for adjudication before it cannot be entertained/allowed, if it is not found legally recoverable in a regular suit or any other regular proceeding on account of law of Limitation. But in appropriate cases, a specified period may be excluded on account of the principle incorporated under Section 5 and Section 14 of the Limitation Act, 1963, when the Commission is called upon to exercise the judicial power under Clause-f of sub-section 1 of the Section 86 of the Electricity Act, 2003.

d) In this context, a reference may be made to another decision of the Hon'ble Supreme Court as reported in (2017) 14 SCC 80 Energy Watchdog vrs. CERC (para 19 & 20). In the said case, the Hon'ble Supreme Court held that the tariff determination under the Electricity Act, 2003 is a part of regulatory function of the Commission. According to the Petitioner, in the present case, the issue regarding demand/recovery of the amount in question having not fallen under the regulatory domain or tariff determination, the provisions of the Limitation Act are squarely applicable.

Needless to mention that the amount claimed by the Respondent No.1-TPWODL is the surcharge raised on the Petitioner towards CSS due to alleged failure on the part of the Petitioner to maintain CGP status of its power plants. It is relevant to mention here that the determination of CSS is made under Section 42(2) and Section 61(g) of the Electricity Act, 2003 by the Commission. Tariff policy notified by the Government of India prescribes a formula for such a determination. Cross Subsidy Surcharge is so determined that collection of the same is utilised for compensating revenue deficit arising out of tariff of group of consumers, who pay below the cost of supply. Therefore, CSS is a revenue balancing mechanism while determining tariff of different group of consumers. Hence, viewed from any angle, the CSS is a part of tariff as envisaged under the Electricity Act, 2003 and as such, the Limitation Act, 1963 has no application in respect of the collection of the Cross Subsidy Surcharge.

e) The provisions of Section 5 & Section 14 of the Limitation Act, 1963, which can be applied by the Commission in a proceeding before it, as per the principles settled by Hon'ble Supreme Court in AP Power Coordination and Ors. Vrs. Lanco Kondapalli Power Ltd and Ors, supra are not attracted to the present issue, inasmuch as, here the Petitioner itself is the Applicant under Section 86(1)(f) of the Electricity Act, 2003

before this Commission and the question regarding delay on his part in making such application is not in issue. **In view of the discussions made as above, the Petitioner cannot claim to have got any assistance from the decision in AP Power Coordination and Ors. Vrs. Lanco Kondapalli Power Ltd and Ors, supra.**

f) Both the sides have referred to Section 56 of the Electricity Act, 2003, in respect of their respective contentions. For the sake of ready reference, said Section is reproduced here below:

> *"56. (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*
> *Provided that the supply of electricity shall not be cut off if such person deposits , under protest, -*
> *(a) an amount equal to the sum claimed from him, or*
> *(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*
> *(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity"*

g) According to the Petitioner, the date 03.08.2023, when the bill was raised by the Respondent No.1-TPWODL cannot be construed as the 'first due', under Section 56(1) of the Electricity Act, 2003 inasmuch as the dues, if any, on account of CSS became due after end of the FY 2015-16. The cause of action for the licensee to levy CSS would arise only after correct data regarding generation and self consumption is furnished by the captive user. The process of raising the claim towards CSS thus passes through different courses beginning with the submission of aforesaid data by the captive user, verification/assessment/quantification of the same by the CEI, determination of the CSS status by the said office and finally, raising of the demand by the Distribution Licensee. In the instant case, as held under Issue No.I, although the Petitioner was never diligent to furnish the correct data to the CEI or the Distribution Licensee, rather he disputed the bill/demand raised by the Respondent No.1 (erstwhile WESCO) on 12.03.2018. In the wake of such dispute being raised by the Petitioner, the Respondent No.1 Licensee acted bonafide by referring the matter to

PCEI, Bhubaneswar and not pressing for the same, pending final report/assessment. While the matter stood thus, the Petitioner approached the Commission by filing an application registered as Case No.34 of 2018 and the question regarding propriety of the claim of CSS remains stagnated. It is also apparent from the record that notwithstanding the application so made by the Petitioner, the Respondent No.1 kept on agitating its entitlement to that claim in course of the proceeding of the said case or otherwise. It is also the case of the CEI (WZ), Sambalpur, Respondent No.2 that his office intimated the petitioner, vide letter dated 16.03.2021, for resubmission of the correct data regarding generation, self consumption and after several requests the Petitioner submitted the data vide letter dated 26.06.2023. It is further pleaded by the Chief Electrical Inspector-Respondent No.2 that from the data furnished by the Petitioner, vide letter dated 26.06.2023, it was found that the CGP status in respect of the converted CGP Units I, III & IV (3x600 MW) was not satisfied in view of the Rule 3 of the Electricity Rules, 2005.

h) To reiterate that only after submission of the report by the Respondent No. 2-CEI, Respondent No.1- Licensee was able to raise the bill as per the quantification and verification made by the Respondent No. 2

From the facts on record, no omission, dereliction or negligence can be attributed to the Respondent No.1-Distribution Licensee in raising the impugned bill. Rather the delay is attributable to the lapse and negligence on the part of the Petitioner. The Petitioner cannot seek advantage from its own negligence. Since the requisite materials were not made available to the Respondent No.1, in the aftermath of the dispute raised by the Petitioner on 27.03.2018 and the matter was referred to PCEI, until the data was furnished by the Petitioner belatedly on 26.06.2023, there was no occasion on the part of the Respondent No.1-Distribution Licensee to raise any claim towards the CSS at any point of time prior to receipt of the report dated 28.06.2023 from the CEI (WZ), Sambalpur. In that view of the factual position, for the purpose of application of Section 56(1) of the Electricity Act, 2003, the date of 'first due' can be legitimately held as the date 03.08.2023, when the bill was raised by the Respondent No.1-TPWODL.

In this context, a reference may profitably be made to the case of ***'Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Ltd. & Anr. Vrs. Rahamatullah Khan' reported in (2020) 4 SCC 650*** **wherein the Hon'ble Supreme Court held as follows:**

> **"***The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid. Electricity charges would become "first due" only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.*
> *xxxxxxxxxxx*
> *The period of limitation of two years would commence from the date on which the electricity charges became "first due" under sub-section (2) of* Section 56. *This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period."*

i) The aforesaid principle was reaffirmed by the Hon'ble Apex Court in Prem Cottex vrs Uttar Haryana Vijli Bitaran Ltd. & Others (decided on dated 05.10.2021) reported in 2021 SCC Online SC 870. Here in this case, it was held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the Licensee. It was further held that the questions involved in subsection 1 of the Section 56 of the Electricity Act, 2003, is negligence on the part of a person to pay for Electricity dues and not anything else nor any negligence on the part of the Licensee. In the factual situation of the present case, the demand raised by the Respondent No.1-TPWODL does not attract the provisions of sub-section 2, but sub-section 1 of the Section 56 of the Electricity Act, 2003.

j) In the facts and circumstances narrated above and having regard to the provisions of the statute and the principles settled by the Hon'ble Apex Court as referred to above, we are of the considered view that the claim made by the Respondent.1-TPWODL, vide the bill dated 03.08.2023, is not barred by limitation inasmuch as, the amount claimed is found to have become 'first due' on the date of the bill so raised.

k) This issue is accordingly answered rejecting the plea of limitation raised by the Petitioner-M/s. Vedanta Ltd.

Issue No.(III)

12. So far as the present issue is concerned, the contention of the Petitioner is that gross generation and consumption of both of its CGPs i.e. the 9x135 MW CGP (VAL-DTA) and the 3x600 MW CGP (VAL-SEZ) shall be combined for the purpose of determination of CGP the status as per the Rule 3 of the Electricity Rules, 2005. The Power Plant-1 of 1215 MW (9x135 MW) and Power Plant-2 of 1800 MW (3x600MW) are two separate entities/power plants and the same has already been settled vide the Case No. 70 of 2011 before this Commission and subsequently upheld by the Hon'ble APTEL and the Hon'ble Supreme Court vide Civil Appeal No.5479 of 2013. The present CGP of Power Plant-2 was established as an IPP and subsequently, it was converted to CGP on an undertaking furnished by the Petitioner in Case No. 21/2015. The relevant portion of the Commission's order is quoted below:

"35 a) Unit – II of the 4 x 600 MW power plant of Vedanta Ltd. will continue to remain as IPP and connected to the State Grid.

b) Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out from the power station (4 x 600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.

c) *Unit – I, III & IV of the same power plant are converted to CGP w.e.f. 01.04.2015. The above conversion is based on the assurance of the Petitioner that in case of low or no generation in Unit-II the Petitioner shall meet its commitment in the PPA from the CGP units and its pricing shall be as per the relevant IPP Regulations of the Commission."*

From the above order, it is clear that Units-I, III & IV of Power Plant–2 (3x600 MW) are declared as CGP under the condition that Unit-II (600 MW) shall remain as IPP. The above order of the Commission interlinks the generation of Unit-II with rest of the Units of the power plant which are CGPs, as far as its obligation to meet the State share/entitlement is concerned. Therefore, their existence cannot be mutually exclusive or in otherwords, they are interdependent. The Power Plant-1 (9 x 135 MW) operates in Domestic Tariff Area (DTA) of the Distribution Licensee, contrary to the Power Plant-2 (3x600 MW) which operates in SEZ area as a legally different entity. As per Section 50 of the SEZ Act, 2005, the Petitioner enjoys several exemptions like Electricity Duty (ED), State's Taxes and Levies etc. for the CGP (3x600 MW) located in SEZ area, but not for the CGP (9x135 MW) located in DTA area. Moreover, the Power Plant-2 (3x600 MW) is a conditional CGP. Hence, we do not agree to the contentions of the Petitioner that the generation and self consumption of both the CGPs should be combined for determining the CGP status. Thus, both the CGPs are to be treated separately.

From the data placed before the Commission by the parties, it is evident that CGP Unit (9x135 MW) and CGP Unit (3x600 MW) are having different legal characteristics and as such, all those units cannot be legally accepted as single CGP for the purpose of assessment of CGP status. Accordingly, Issue No.III is answered against the Petitioner-M/s. Vedanta Ltd.

Issue No. (IV)

13. Coming to the present issue, it may be stated here that the total consumption of M/s.Vedanta Ltd. (SEZ) as per the GRIDCO Energy Billing Centre (EBC) is 1209.78 MU whereas the gross generation of CGPs of Power Plant-2 (3x600 MW) after auxiliary consumption of 391.96 MU is 4383.81 MU during FY 2015-16. The above facts are not disputed by the Petitioner as evident in its amended petition and also reiterated in the averments of the Rejoinder of the Petitioner. Therefore, the consumption of Vedanta Ltd. (SEZ) from Power Plant-2 is less than 51% of the generation from the CGPs during FY 2015-16 and thus, it has lost its CGP status for the said period. When CGP status of an industry is lost, the entire generation from such CGP shall be treated as if it is supply of Electricity by a Generating Company

and accordingly, the Cross Subsidy Surcharge is payable/leviable. In the instant case, the Petitioner has availed power through Short Term Open Access (STOA) in addition to the power consumption from its own CGP. Any drawal through Open Access also attracts the Cross Subsidy Surcharge. In the present case, SLDC, the independent system operator of the grid, has submitted that the Vedanta Ltd. (SEZ) had scheduled 1226.471588 MU in FY 2015-16 from following sources through Open Access.

(a) 891.384918 MU from (9 x 135 MW) captive units of Vedanta Ltd. (in DTA area)

(b) 195.308570 MU from GRIDCO

(c) 139.778100 MU from (3x600 MW) captive units of Vedanta Ltd. (in SEZ area)

The above data almost matches with the data submitted by the Petitioner as well as the CEI (WZ), Sambalpur.

As stated above, Vedanta Ltd. (SEZ) draws 1226.471588 MU through Open Access. Accordingly, the Open Access charges shall be calculated on the self-consumption (1209.78 MU) and the open access drawl (1226.471588 MU) and therefore, the appropriate bill should be raised by the Respondent No.1-TPWODL against the Petitioner-M/s. Vedanta Ltd. This issue is answered accordingly.

Issue No. (V)

14. As discussed above, the Cross Subsidy Surcharge (CSS) shall be re-calculated by the Respondent No.1-TPWODL and the bill shall be raised accordingly. Any payment made by the Petitioner towards the CSS including Rs.18.28 Crore, and the DPS towards loss of CGP status of (3x600 MW) Unit for the FY 2015-16, shall be adjusted against the claims/billed amount. Hence, the issue is answered accordingly.

15. It is contended on behalf of the Petitioner in his written notes of argument dated 25.10.2023 that the Petitioner has been deprived of the opportunity of fair hearing. It is pointed out by the Petitioner that the SLDC was impleded as Respondent No.5 to the proceeding and when the SLDC filed a petition on 16.10.2023 praying for two weeks time for submitting the relevant data with regard to date wise drawal schedule of the Petitioner from different sources collecting the same from ERLDC, the Commission did not accept the prayer of Petitioner for adjournment of hearing on the ground that there was adequate data/information available in the submissions of the parties and as such, adequate opportunity of hearing was not afforded.

The aforesaid contention of the Petitioner read as a whole does appear to be without any substance inasmuch as the petition for two weeks time of the SLDC-Respondent 5 was disposed of with the observation that the data already submitted

before the Commission was adequate for final disposal of the case. This apart, on 19.10.2023, the data were submitted by the SLDC. It is presumable that the Petitioner is well aware of the data submitted by SLDC before the Commission. Further the data submitted by SLDC are almost similar to the data submitted by the Petitioner as well as the Chief Electrical Inspector. The submission of the Petitioner that it was denied fair opportunity of hearing is of no substance. From the order sheet of the proceeding, it is clear that the Petitioner has been provided with adequate opportunity of hearing and in such circumstances, the contention of the Petitioner of denial of fair opportunity of hearing fails.

16. It may be mentioned here that after closure of the argument on 17.10.2023, yesterday i.e. on 25.10.2023, the written submission was received from the Petitioner M/s. Vedanta Ltd. vide which it has mentioned that in the meantime, the Petitioner has received an affidavit dated 25.10.2023 filed by Respondent No. 2-CEI (WZ), seeking liberty to withdraw its earlier written statement filed on 18.10.2023 before this Commission in order to file a consolidated written statement. CEI being arrayed as Respondent No.2 in this proceeding has already filed his written statement supported by an affidavit dated 18.10.2023 and the argument was also advanced by him in course of hearing conducted through hybrid mode. Needless to mention here that this Commission in foregoing paragraphs of this order has dealt with the submissions made by the CEI-Respondent No.2 while deciding the relevant issues. In these circumstances, the communication received by the Petitioner directly from the Respondent No.2-CEI, in the aftermath of the conclusion of the hearing of the present matter, particularly when the case stands reserved for orders, is most likely to take Respondent No.1-TPWODL by surprise and as such, the so called communication of Respondent No.2-CEI (WZ), Sambalpur to the Petitioner does not merit any consideration at this stage. This kind of communication by a party after closure of the argument is undesirable.

17. In view of the foregoing discussions and conclusions, the Petition along with the Interim Application filed by the Petitioner-M/s.Vedanta Ltd. stand disposed of.

18. The directions of this Commission as aforesaid shall be complied with by the parties within one month hence.

Sd/-	Sd/-	Sd/-
(S.K. Ray Mohapatra)	**(G. Mohapatra)**	**(S. C. Mahapatra)**
Member	**Member**	**Chairperson**