TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present: Thiru. A. Dharmaraj. Electricity Ombudsman

Appeal Petition No. 34 of 2016

M/s Tamil Nadu Spinning Mills Association,
No.2, Karur Road,
Modern Nagar,
Dindigul 624 001.
Rep by its Chief Advisor Dr. K. Venkatachalam . .... Petitioner
(Dr. K. Venkatachalam)

Vs

Tamil Nadu Generation & Distribution Company Ltd.,
TANGEDCO,
144, Anna Salai,
Rep by its
(1) Chief Financial Controller/Revenue and
(2) Chief Financial Controller/General . .... Respondents
(Rep by Thiru. R. Jeyakumar on 6.7.2016 &
Tmty. V. Umamaheswari, CFC/Rev on 11.8.2016 & 23.8.2016)

Date of hearing : 6.7.2016 & 11.8.2016

Date of Order : 20.12.2016

M/s Tamil Nadu Spinning Mills Association, has filed a petition dt.12.4.2016 directly before the Electricity Ombudsman in pursuance of regulation 17(1) of the Regulations for CGRF & Electricity Ombudsman 2004 stating that the complaint is common in nature and it relates to several of the Distribution Circles/CGRFs and the consumers are located and operating at more than one forum. Accordingly the above

petition was registered as A.P.No.34 of 2016. The above petition came up before the Electricity Ombudsman for hearing on 6.7.2016, 11.8.2016 & 23.8.2016. Upon perusing the above petition, counter affidavit, written arguments and after hearing both sides, the Electricity Ombudsman passes the following order.

ORDER

1. **Prayer of the Petitioner:**

(i) It is prayed that the above matters may be enquired thoroughly and may be ordered to be clarified at the earliest by the CFC/Revenue (issues No.1, 2 and 3) and by the CFC/General (Issue No.4) and accordingly, the grievances may be redressed suitably.

(ii) Further, it is also prayed that a clear time limit may be ordered for adherence and compliance by all the authorities of the licensees, so as to issue the required clarifications as and when the matters are represented by Registered Consumer Organization by prescribing a time limit and accordingly orders may be issued.

2. Brief History of the case:

2.1 Tamil Nadu Spinning Mills Association (TASMA) is a Registered Society under the Tamil Nadu Socities Registration Act 1975, bearing Registration No.330/97. It is a State level Association of Spinning Mills and allied Industries, having member strength of 585 Spinning Mills. As the grievance is common nature applicable to more than one circle, the Association filed this petition directly to the Electricity Ombudsman.

2.2 The Association requested for clarification in respect three issues from the Chief Financial Controller/Revenue and one issue from the Chief Financial Controller/General. As no reply was forth coming from the above authorities the TASMA filed this petition before the Electricity Ombudsman.

3.0 Arguments furnished in the petition furnished by M/s TASMA

3.1 Tamil Nadu Spinning Mills Association (TASMA) is a registered society registered under the Tamil Nadu societies' Registration Act 1975, bearing Registration No.330/97 and therefore, it falls within the definition of Complainant under clause 2(e)(ii) of the Regulation. It is espousing the interest of its members in all related areas. It is a state level association of spinning Mills and allied industries, having member strength of 585 spinning mills on its roll, as of now. All the members of the Association are HT consumers and they are drawing power from the Respondent Corporation's Grid. All member mills are located at various Districts in the state of Tamil Nadu and falling under various Electricity Distribution Circles of the Respondent Corporation. This complaint is filed directly before the Electricity Ombudsman in pursuance of clause 17(1) of Tamil Nadu Electricity Regulation for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004 due to the common nature of the complaint, as it relates to several of the Distribution Circles/Consumer Grievance Redressal Forums and the consumers are located and operating at more than one forum.

3.2 Even though, few representations in the following issues were raised before the Chief Financial Controller/Revenue and the Chief Financial Controller/General such representations have not been found considered for issuing any replies and therefore, the threat of overcharging of CC bills is being continued and undue amounts are being collected from consumers without any authority of law by way of any approval by the Hon'ble Commission either specifically or through its Regulations.

3.3 Hence, under the above Regulations, not providing a reply to a registered

consumer association is a strong grievance and further not clarifying the matter even after a long time, makes the consumers to suffer by way of wrong and illegal collections of money without the authority of law. Hence, this complaint is filed for suitable redressal.

3.4 The issues represented and pending before CFC/Revenue till today are as follows :

Issue No.1: By letter No. /CFC/FC/DFC/AAO.HT/AS.3/D.NO.118/13, dated 22.08.2013, the CFC Revenue has provided working instructions, as how the adjustment of wind energy for the captive consumers has to be made, based on the Comprehensive Tariff Order on Wind Energy dated 31.07.2012 in Order No.6 of 2012 coupled with the Tariff Order dated 20.06.2013 of the Hon'ble Commission. Inter alia, in Illustration 4.1 found in Page NO.8 of the said letter, it has been provided that whenever energy is drawn from banking for adjustment, the line loss was ordered to be levied again. In this connection, we wish to state that while wheeling the energy from the point of generation to the point of consumption itself, already line losses have been worked out and recovered in kind by units and accordingly, already found deducted at the point of wheeling itself and thereafter only, the remaining units are sent for wheeling to the consuming end. After adjustment on wheeling, if any quantum of unit is left behind, such quantum is transferred to banking account. Hence, the quantum so transferred to banking account, has already suffered the line loss component at the wheeling point itself. Therefore, while drawing from the banking account, the banked units cannot be again put in to one more line loss as it amounts to double taxation. Hence, to that extent, the illustration requires to be modified. Without understanding the above spirit, simply based on the illustration provided by the CFC-Revenue, the SEs / DFCs are again deducting line loss by kind / units, which is nothing but a double taxation, when such units have already suffered line losses at the time of first wheeling at the wheeling point itself. Hence, we sought for a revised instruction by the CFC-Revenue as per our letter dated 20.12.2014 and however, no action is found taken by CFC-Revenue so far. Due to the same, consumers are losing heavy money on the T&D loss

both at wheeling point first and thereafter, at the time of taking back the banked units for adjustment.

Issue No.2: After the coming in to force of the TNERC Open Access Regulations 2014, collection of agreement fee by Superintending Engineers who issue only NOCs need not required to be paid as there is no agreement signed between the consumer and the SE/Distribution Circle. The agreement is getting signed only at the SLDC levels and therefore, depending up on the nature of agreement like STOA / MTOA / LTOA, fees is being collected at the SLDC levels. Even though such a fee called "LTOA" Agreement Fee" is not required to be paid at the level of SE except for buying IEX power, few SEs are in the habit of collecting the agreement fee at Rs. 10000. Such a procedure is not provided in the TNERC Open Access Regulations 2014. Hence, TASMA clarified this issues for suitable advice to the SEs with the CFC-Revenue and however, no reply is received for such representation made on 05.03.2016.

Issue No.3 Tamil Nadu Electricity Ombudsman through his Order dated 08.11.2013 in the Petition filed by TASMA in Appeal Petition No.21 of 2013/D1623 has ordered to pay the BPSC amounts collected on arrears of E-Tax for the period after 01.09.2004 to the consumers. Accordingly, for the period after 01.09.2004, already instructions have been provided by the Chief Financial Controller-Revenue to make the refund of BPSC amount collected on E-Tax arrears as per his Lr.No.CFC/FC/REV/AAO/ HT/D.S9/2014 dated 17.02.2014. For the period before 01.09.2004, it was advised to wait till the disposal of the matter at Supreme Court on the SLP filed by TANGEDCO. Now it has been confirmed that the SLP No.12282 of 2014 filed by TANGEDCO on the above matter has been dismissed by the Hon'ble Supreme Court on 01.03.2016 and accordingly, a Case Status Report is enclosed herewith. Hence, now there is no legal bar available in refunding the BPSC amount collected in respect of E-Tax amounts pertaining to the period before 01.09.2004 and therefore, suitable orders need to be issued to all SEs to refund the BPSC amounts collected from consumers pertaining to the period before 01.09.2004 suitably.

3.4 The issues represented and pending before CFC-General till today are as follows.

Issue No.4: It is a routine practice at each SE's office, to calculate the interest on the security deposit held by consumers and accordingly, to pay the interest to consumers at the rate notified by the Hon'ble Commission each year. Accordingly, the SE TANGEDCO would recover TDS also, suitably on the amount of such interest paid and is obligated to remit the same in the accounts of the IT Department within the time limit allowed to pay the TDS amount. This has been continuously in process, year after year and there was no difficulty felt in the system so far. However, towards the remittance of TDS amount for the year 2008-09, it seems that the SE's office, Dindigul has delayed the remittance of TDS in to the account of IT Department, for their own reasons and due to the delayed remittance of TDS, the IT Department has claimed interest for the delayed remittance. Based on the interest claims raised by the IT Department, the SE, Dindigul in turn is making a demand to pay the interest amount by the consumers by issuing letters to all consumers. It is the duty of the Recovering Officer of TDS, to make the remittance in time. The SE is the Recovery Officer for TDS and he has been exercising this function for quite a long time. The non-availability of PAN details is now quoted as reason for the delayed remittance of TDS which is not a factual matter. PAN is a permanent record and there could be no changes year after year. The details of PAN are available with the SE for quite a long time and this cannot be quoted as a reason for delayed remittance of TDS. Even though the amounts are small, considering the concept involved, we requested the CFC-General that the consumers when not responsible to pay the interest amount cannot be demanded with the same as the delay in remittance of TDS is solely due to the SE and therefore, the consumers cannot be penalized for the delays happened at the level of SEs. It is also pertinent to note that there was no communication from SE to consumers for providing the PAN details at any time either for the said year or earlier. Considering the situation as a whole, we requested the CFC-General, to intervene the situation and instruct all SEs not to demand interest when they themselves have delayed the

remittance of TDS within the due date of remittance. Apart from the same, it is also understood that during the year 2008-09, the TDS was recovered at 20% instead of 10% as if at the rate applicable for the non-PAN holders and as such, the question of delayed PAN information does not arise also. The representation even though filed before the CFC-General on 19.02.2016 has not yet been acted up on and no replies were provided. Hence, it is prayed that the above matters may be enquired thoroughly and may be ordered to be clarified at the earliest by the CFC-Revenue (Issues No.1, 2 and 3) and by the CFC- General (Issue No.4) and accordingly, the grievances may be redressed suitably., Further, it is also prayed that a clear time limit may be ordered for adherence and compliance by all the authorities of the licensees, so as to issue the required clarifications as and when the matters are represented by Registered Consumer Organizations by prescribing a time limit.

4.0 Arguments of the Respondent furnished in the Counter :

4.1 The petitioner herein has raised four issues in this complaint and stated that not clarifying the matter even after a long time makes the HT consumers to suffer by way of wrong and illegal collections of money without the authority of law. In this connection, the fact of issue is submitted as follows one by one.

4.2 Issue -1

4.2.1 TANGEDCO had issued working illustrations in order to implement the Order.No.6 of 2012 dated.31.07.2012 vide letter. No. CFC/FC/ DFC/ AAO.HT/ AS.3/D.No.118/13,dated.22.08.2013. Inter alia, in accordance with the illustrations, the line loss is being calculated for adjusted units only not entire generated units. In this connection, the illustration No.3 is furnished below for reference:

II. <u>After wheeling adjustment every month Banking:-</u>

<u>Illustration 3 : Month *08/2012* </u>[Here generation is higher than consumption]

Injection Voltage : 11 KV
Drawl Voltage : 11 KV
Loss component : 6.95%
Wheeling Charges : Re.0.09308/ Kwhr
Windmill capacity : 1800 KW X 2 or 1.8 MW X2
No. of days in the month: 31

<u>Available Banking as on 31.07.2012 (after banking charges @ 5% in units)</u>

Peak Hr	off-peak Hr	Normal Hr	Total
1,00,000	1,50,000	2,10,000	4,60,000

	Peak Hr	Off-peak Hr	Normal Hr	Total
Generation in a month	50,000	75,000	1,50,000	2,75,000
Less : Import	1,500	2,000	2,500	6,000
To be Wheeled Generation/Net Generation	48,500	73,000	1,47,500	2,69,000

	Peak Hr	Off-peak Hr	Normal Hr	Total
Industrial consumption in that month	40,000	60,000	1,20,000	2,20,000
Less wheeled energy	40,000	60,000	1,20,000	2,20,000
Net Billed units	0	0	0	0
	Peak Hr	Off-peak	Normal Hr	Total

		Hr		
To be wheeled energy	48,500	73,000	1,47,500	2,69,000
Actual wheeled energy including line loss	42,988	64,481	1,28,963	2,36,432
To be Banked Units	5,512	8,519	18,537	32,568

Available banking units before 01.08.2012:-

Peak Hr	off-peak Hr	Normal Hr	Total
1,00 000	1,50,000	2 10,000	4,60,OOO

Available banking units after 01.08.2012:-

Peak Hr	off-peak Hr	Normal Hr	Total
5512	8519	18537	32,568

The following charges have to be collected:-

1. Transmission charges:

[Rs.2593.2X 1.8 MW X 31] X 2 = Rs. 2, 89,401/-

2. Wheeling charges:

The Commission has determined the wheeling charge for the energy input at distribution periphery.

Illustration 3.1:

1. Actual energy wheeled including line loss =2,36,432
2. Actual energy adjusted excluding line loss = 2, 20,000

Total line loss = 16,432

Total loss units (2,36,432x6.95%) = 16,432 units

Less loss up transmission network (236432x2.45%) = 5793 units

Therefore energy injected into distribution network = (2,36,432units - 5793)

= 230639 units

Therefore wheeling charges = 2, 30,639xRs.0.09308

= Rs.21, 468/-

3. System operation charges:

[(Rs.600X1.8/2) X 31] X2 = Rs.33, 480/-

4.2.2 In the said illustration, the net energy generated energy is 48500 units, but the adjusted units are 40000 units. Hence, the actual energy wheeled/adjusted including line loss is arrived as 42988 units thus it is evident that the line loss is arrived only for adjusted units 40000 units not for net generated units 48500 and further it is stated that the balance 5512 units sent for banking for subsequent adjustments. In this regard, it is relevant to mention that the line loss is not deducted for 5512 units [Peak], 8519 units [off-peak], 18537 units [Normal units], which has been sent for banking. Further, it is most relevant to mention that while banked units are drawing for subsequent month for adjustment, the line loss is calculated to the extent of adjusted units only i.e [5512, 1030, 18537] and not for entire banked energy. Further, it is more relevant to state that the banking charges are calculated for the adjusted units including line loss in accordance with the illustration [4]. Therefore, the contention of the petitioner that if any quantum of unit is left behind, such quantum is transferred to banking account, has already suffered the line loss component at the wheeling point itself, therefore while drawing from the banking account, the banked units cannot be again put in to one more line loss as its amount to double taxation is not acceptable one.

4.3 **Issue: 3**

4.3.1 In the year 2006 a group of **HT** consumers had filed Writ Petitions vide WP.Nos. 41320,41424,41437,41739 and 41740 of 2006 challenging the levy of BPSC on E.Tax for the period from 10/2001 to 08/2004. In the above petitions, the Hon'ble High Court of Madras passed the order on 30.01.2013 as follows :

(i) The petitioner is challenging levy of belated payment of surcharge. A division bench of this court in Sivakasi Electro Chemicals Limited, rep. by its Chairman and Managing Director Vs Superintending Engineer, Viruthunagar Electricity Distribution Circle [2012] 4 MLJ 123] held that the Electricity Board has no jurisdiction to impose any interest on the belated payment of electricity tax.

(ii) That apart, as per Regulation 5, Clause 4(xi) of Tamil Nadu Electricity Supply Code,2004, the belated payment of surcharge shall not be levied on electricity tax.

(iii) Further, it is stated that in the similar case vide W.P.No.254 of 2007, the Superintending Engineer/Viruthunagar had filed Writ Appeal vide W.A.(MD) No.1590 of 2011 against the order issued on 18.06.2009 in the above writ petition. The Hon'ble High Court of Madras Madurai Bench has passed the following order on 22.12.2011.

" In short, on a consideration of the entire facts and circumstances of the present case in an integral fashion, this court comes to an inescapable conclusion that the Petitioner/Respondent is not entitled to levy any surcharge on the belated payment of Electricity Tax [based on the facts and circumstances which float on the surface, in the case before court]. Therefore, this court holds the Learned Single Judge has rightly allowed the writ petition and further, set aside the demand of the respondent in collecting the Belated Payment of Surcharge on the payment of arrears Rs.2, 34,308/- alone which are perfectly valid in the eye of law"

4.3.2 In continuation to the above, TANGEDCO has filed appeal before the Hon'ble Supreme Court of India vide Special Leave Petition (Civil) CC.No.367 of 2014 and Hon’ble Court has passed orders on 01.03.2016 dismissing the petition. In this connection, it is relevant to state that TASMA has filed a petition before the Hon'ble Electricity Ombudsman vide Appeal No.21 of 2013 to direct the TANGEDCO to refund the BPSC amount collected on E.Tax both prior and after 01.09.2004 based on the orders passed by the Hon'ble High Court of Madras in various writ petitions.

4.3.3 The Hon'ble Supreme Court of India has ordered on 01.03.2016 in Special Leave Petition *(Civil)* CC.No.367 of 2014 as follows:

ORDER

We find no merit in this petition. It is accordingly dismissed.

4.3.4 In accordance with the above, TANGEDCO could not levy BPSC on E.Tax before 01.09.2004 and hence if any amount collected in this regard, the same has to be refunded.

4.3.5 On the other hand, it is relevant to mention that as per section 5 and 8 of the Act, a duty is cast upon the licensee, the TANGEDCO to collect the tax from the consumer and pay the same to the Government and in case of default in the payment of tax, at the time and the manner prescribed, the Government may by general or special order fix interest on such payment, not exceeding 12% p.m. on the belated payment of *levied* tax. Therefore from the above provisions, it is made clear that the Electricity Tax is levied by the Government and the licensee is directed to collect the amount and pay the same to the Government and the Electricity Tax is not payable to the licensee and it is payable only to the Government. Article 265 of the Constitution of India says that no tax can be levied or collected except by authority of law and as such electricity tax can be levied and collected only in accordance with the provisions of law. It also follows that any additional levy such as interest or surcharge on tax too has to be levied only according to the law. The law which deals with levy of such tax is the Tamil Nadu Electricity (Taxation and consumption) Act 1962 and section 5(1) of the Act empowers Tamil Nadu Electricity Board to act as agent in the matter of collection of tax. Therefore, the HT consumers have to pay the 12% interest for delay payment. In this connection, the Electricity Ombudsman passed an order in OP.No.2 of 2006, the relevant portion that held as follows:

"xxxx

6. CONCLUSION:

Article 265 of the Constitution of India says that no tax can be levied or collected except by authority of law and as such electricity tax can be levied and collected only in accordance with the provisions of law. It also follows that any additional levy such as interest or surcharge on tax too has to be levied only according to law. The law which deals with levy of such tax is the Tamilnadu Electricity (Taxation and consumption) Act 1962 and section 5(1) of the Act empowers TNEB to act as agent in the matter of collection of tax. Hence, the terms and conditions (though derive authority from Electricity Supply Act 1948) cannot obliterate or can be said to be superior to the Tamil Nadu Electricity (Taxation on consumption) Act 1962, given its nature as a subordinate legislation. So also is the case with TN Electricity Supply Code, which too cannot go against the provisions of Tamil Nadu Electricity (Taxation on consumption) Act 1962. Hence, for all practical purposes and for solving the issue before this Forum, I find that only the Tamil Nadu Electricity (Taxation on consumption) Act 1962 is applicable and nothing else. Having settled the matter, let us see what are the powers conferred on the licensee by the said Act. Sec 5(1) of the Act empowers the licensee to collect tax on behalf of the Government but does not give unfettered powers to the licensee to impose surcharge or any other levy. This is further strengthened by the incorporation of See. 3-A which enables only the Government to levy additional tax and hence, there is no justification at all for TNEB to impose any other levy on the electricity tax. However, there is a provision for charging of interest at the rate of 12% p.a for default in payment of electricity tax and given the fact that the entire onus is placed on the licensee to collect tax on behalf of the Government and the tax so payable is a first charge on the amounts recoverable by the licensee, Electricity Board is justified in demanding additional levy for non-payment of tax, in time, subject to the maximum limit prescribed under the Act. Hence, the petitioner is bound to pay, not exceeding 12% p.a. as interest for the non-payment of tax, but not more than that, and such amount can be collected by the TNEB and remitted to Government.

7. Conciliation

The above position was explained to both sides and an attempt was made to explore the possibility of a compromise settlement by the Ombudsman in consonance with clause 20 of the Regulations for consumer grievance redressal forum and Ombudsman 2004.The representatives of the respondent Board expressed their inability to conciliate on behalf of the Board as it was not within their powers. The petitioner was willing to pay anything according to law and as such was agreeable to pay 12% interest for the delayed payments towards the tax . Though the petitioner side initially indicated for settlement of dispute and to furnish an undertaking to pay 12 % interest on the total tax as per the law, they had subsequently informed in their letter dated 5-5-2006 that the petition may be disposed of, on the merits of the case, the written submissions and oral arguments.

In view of the above findings, I direct TNEB to re-work the calculations in line with Sec. 5 and 8 of the Act 1962 and charge 12% interest for the period of delay, on the amount of tax collected. The 25 % of the disputed amount already deposited with TNEB, prior to the petition before Ombudsman shall be adjusted and the balance amount collected from the petitioner company. With these observations and order, the petition is disposed. The parties shall bear their respective costs. TNEB shall send a compliance report within 30 days from the date of receipt of this order."

4.3.6 From the above, it may be concluded that the consumer is bound to pay not exceeding 12% p.a. as interest for the non-payment of tax, but not more than that, and such amount can be collected by the TANGEDCO and remitted to Government.

4.3.7 Hence, all the Superintending Engineers of Distribution circles will be informed not to collected BPSC on E.Tax before/after 01.09.2004 and if any collected the BPSC on E.Tax prior to 01.09.2004 may refunded in the ensuing C.C bill. However, the consumer is bound to pay, not exceeding 12% p.a. as interest for the non-payment of tax before/after 01.09.2004.

4.4 Issue - 4

4.4.1 The superintending Engineer/Dindigul EDC has issued a letter to all the High Tension Consumers during February 2016, asking them to remit the penal interest for

belated payment of TDS on interest on security deposit pertaining to the Financial Year 2008-09 within 15 days or else the same will be included in the ensuing month's CC bill. It is stated that the non furnishing of PAN Number by the consumer in time is a reason for belated remittance of TDS for which the Income Tax Department has levied the penal interest. With reference to the above petitioner states that the PAN Number is a permanent record and available for quite a long time with Superintending Engineer and if it is not available for some of the consumers then TNEB could deduct TDS at a higher rate of 20% (i.e normally 10% under section 194A) as done in some cases. Moreover the petitioner also states that, deduction and remittance of TDS within the due date is the sole responsibility of circle SEs and penalty for the reasons it is delayed at their end cannot be passed on to the consumer. Further added that there is no communication from the Superintending Engineer to provide the PAN in 2008-09 or in earlier years. For, no default of the consumer they have been asked to bear the penalty. The petitioner states that he has represented CFC/GI in this regard on 19.02.2016 and no replies were provided. But in CFC/GI's office no such communication is received please.

4.4.2 In this regard, a detailed report has been called from the Superintending Engineer/Dindigul EDC, based on the above it is concluded that as per the provisions of Income Tax Act it is the sole responsibility of the Drawing and Disbursing officers (DDO's/SEs) to deduct income tax at appropriate rates and remit the same in time and file quarterly returns within due date. In this issue the due months for review of ACCD is April and May for the previous financial year and interest is allowed on the same. The due date for payment of interest other than interest on securities under section 194A of the Income Tax Act is 30th April for the financial year ending 31st March. The SE/Dindigul has remitted the same on 29.09.2009 instead of 30.04.2009. Intend for allotment of fund also not requested in time. The details of payment made and penal interest is stated below :

Amount of TDS remitted on 29.09.2009 Rs. 11931588

Due date 30.04.2009

Number of days delayed 151 days
Penalty levied by the Income Tax Department Rs.8, 46,150

4.4.3 The reason stated by the Superintending Engineer that the PAN is not furnished by the consumers in time is not acceptable, as it is the duty and responsibility of the DDOs to collect the same in time. Even the PAN is not available in time the Superintending Engineer has exercised the option of deduction of higher rate is 20% which is correct as per the provisions of Income Tax Act. However, the deducted tax has not been remitted in time, which has resulted in a penalty of Rs. 8.46 lakhs. Since the delay is on TNEB's part, it cannot be passed on to the consumers as done. Therefore, TANGEDCO will withdraw the letter requesting remittance of penal interest and thereby drop the issue.

6.0 Hearing held by the Electricity Ombudsman:

6.1 To enable the Petitioner and the Respondents to putforth their arguments in person, hearing were conducted before the Electricity Ombudsman on 6.7.2016, 11.8.2016 & 23.8.2016.

6.2 Dr. K. Venkatachalam, Chief Advisor has represented the M/s Tamil Nadu Spinning Mills Association on all the three hearings.

6.3 Thiru. Jayakumar, Accounts Supervisor, attended the hearing on 6.7.2016 on behalf of the Respondent.

6.4 Tmty. Umamahewari, CFC/Revenue attended the hearing conducted on 11.8.2016 & 23.8.2016 and putforth her side arguments.

7.0 Arguments of the Petitioner putforth on the hearing date :

7.1 Dr. K. Venkatachalam reiterated the contents of his petition.

7.2 He informed that the licensee's officer have not furnished any reply for the representation dt.20.12.2014, 5.3.2016, 12.4.2016 and 19.2.2016 and hence requested to prescribe a time limit for furnishing reply to the requested consumer organization.

7.3 He also argued that the grievances raised in his petition are to be redressed.

7.4 Dr. K. Venkatachalam argued that banking charges are levied without deducting T&D loss which is not correct. He argued that as per the seriatim of events, the recovery of T&D loss is by units on the exported energy and therefore, without suffering, T&D losses it cannot pass over to banking account. The instructions given in CFC/Revenue circular dt.22.8.2013 is incorrect as T&D loss is deducted only for the adjusted units. Hence, argued that the instruction needs modification. However, he agreed that line loss was not deducted twice as stated in the petition.

7.5 He also pointed out that due to the above instructions, there were audit paras raised by the audit and because of the audit paras, the members are suffering.

7.6 He also informed that in Salem EDC, STO agreement fees of Rs.10,000/- was collected from M/s K.G.R. Spinning Mills Pvt Ltd., He argued that there is no provision in the open access Regulation to levy Rs.10,000 as STOA agreement fees. Hence, the above fees collected may be ordered to be refunded by the SEs concerned. He also submitted a copy of the receipt issued by Salem EDC in support of the payment.

7.7 The Chief Advisor has also argued that the above grievance is complaint as defined in regulation 2f(iii) of CGRF & Electricity Ombudsman Regulation. As the collection of such fee is not approved by Commission, he argued that it amounts to charging of a price in excess of the price fixed by the Commission for consumption of

electricity and allied services and therefore falls within the jurisdiction of Electricity Ombudsman for redressal.

7.8 The next issue he raised is refund of BPSC collected for the period prior to 1.9.2004 on the E.Tax arrears. As the SLP No.12282 of 2014 filed by the TANGEDCO has been dismissed by the Hon'ble Supreme Court on 1.3.2016, he argued that the CFC/Revenue may issue suitable instructions to all SEs to refund the BPSC amounts collected for the period prior to 1.9.2004.

7.9 The fourth issue raised by the petitioner for the belated remittance of TDS collected from the HT consumer on the interest accrued for the security deposit amount available, the consumers have been requested to pay the penal interest demanded by the Income Tax department. As the delay in remittance of the TDS collected is on the licensee's side, the petitioner argued that the consumer shall not be asked to pay the interest. As the licensee has agreed for the above, he argued that the issue may be treated as settled.

8. <u>Argument putforth by the Respondent on the hearing dates :</u>

8.1 The CFC/Revenue reiterated the contents of the counter affidavit.

8.2 The CFC/Revenue argued that the working instructions given in circular dt.22.8.2013 is correct only. She argued that as per the order no.6 of 2012 dt 31.7.2012 issued by the Hon'ble Commission, the banking charges are levied on the units drawn from the banked units on the month in which it was drawn.

8.3 She also argued that as per the direction of the Commission the units are adjusted only when it was consumed. Therefore, the T&D loss will also come into

picture when the units were drawn for consumption by the consumer. Hence, she argued that the banking charges will be levied for the banked units which has not suffered any T&D loss.

8.4 The Chief Financial Controller/Revenue also argued that there will not be any complication in accounting the Generation & Consumption due to various wind mills supplying to various consumers at different injunction points.

8.5 Regarding issue-2, the CFC/Revenue argued that TANGEDCO is only a collecting agent for the above charges and the fees was collected as per the directions of the LD Centre which is based on open access regulation 2005.

8.6 Regarding issue-3, the CFC/Revenue informed that the SEs of Distribution Circles will be informed that not to collect BPSC on E.Tax prior to 1.9.2004 also and the BPSC if any collected will be arranged to be refunded. However, she informed that the consumer has to pay interest at 12% for the belated remittance of the E.Tax.

8.7 Regarding the issue of collection of penal interest from the consumer for the late remittance of TDS collected, the CFC/Revenue informed that the SE/Dindigul EDC has been informed to withdraw the letter addressed to all HT consumers to remit the Penal Interest for the belated remittance of TDS collected, relating to the Financial year 2008-09 as the delay is not on the consumers part. In view of the above, she argued that the issue has been settled.

9. <u>Written arguments of the petitioner :</u>

9.1. The petitioner has furnished written arguments dt.23.8.2016 & 31.8.2016. As the written submission dt.31.8.2016 is the final written submission, the arguments furnished in the above are furnished below :

9.2 Issue No.1

9.2.1 The crux of the issue involved in this appeal petition, as far as Issue No.1 is concerned, is at what point of time, the T&D losses have to be recovered. Whether it is on the net energy exported or on the net energy adjusted at first phase and subsequently at the time of re-drawl from the banking account at the second phase? Hence, when the point of recovery of T&D loss is decided, the whole issue will get sorted out.

9.2.1 The Complainant / Petitioner submits that the events of generation of energy from the windmills till its final disposal go as follows.

a. Generation of electricity through WEGs (Normally called as Gross Generation at generation end)
b. Recovery of Units towards import (By units at generation end) and recovery of reactive power charges.
c. Net generation called as net export (Available by units and sent to wheeling end)
d. T&D Loss (First Recovered by units at wheeling end based on the injection voltage and drawl voltage)
e. Transmission Charges (Charged by Cash at wheeling end)
f. Wheeling Charges (Charged by Cash at wheeling end)
g. Scheduling and System Operation Charges (Charged by Cash at wheeling end)
h. Net Energy available for consumption
i. Adjustment of energy against consumption
j. Balance units if available sent for banking, called as banked units
k. When redrawn from banking account, banking charges leviable by cash / units.
l. On the closure of financial year, unutilized banked units if any would be sent for encashment to the generation end at the 75% of the applicable tariff values.

9.2.2 Hence, from the seriatim of events as narrated above, the recovery of T&D losses, is by units only on the net exported energy and therefore, without suffering T&D losses, it cannot pass over either to adjustment or to banking account if any excess over adjustment is there. To this extent the impugned instruction of the CFC-Revenue dated 22.08.2013 is incorrect and defective. Hence, the whole instruction requires to be modified with a revised illustration showing the appropriate point at which the T&D losses have to be recovered.

9.2.3 Further, the CE NCES while issuing the instructions on the implementation of the recent order of Hon'ble TNERC in Order No.3 dated 31.03.2016 has mentioned in Paragraph 15 (iii) as follows.

"15. Open Access Charges:
(iii) Transmission and Distribution Loss:
The captive consumer/generator has to compensate the actual transmission and distribution loss in unit on the net export energy as per the respective orders. "

9.2.4 The above instruction fits with the prayer of the complainant to revise the illustration totally as far as T&D losses are concerned and this has been the historical practice hither to followed in the matter of recovery of T&D losses.

9.2.5 The draft of the Energy Wheeling Agreement, as vetted by the Hon'ble Commission inter alia goes as follows as far as the recovery of T&D loss is concerned. On a combined reading of the draft of EWA in its entirety, the events as narrated above would be proved to be the seriatim of events as far as wind energy wheeling arrangements are concerned.

8. *Charges:*
    1. *Transmission and Wheeling Charges: Transmission and wheeling charges including line losses shall be 5% of the energy wheeled uniformly for captive use and third party sale of wind energy in the case of HT/EHT consumption. Transmission and Wheeling charges in regard to captive use and third party sale in L T services shall be at 7.5%* ***which include line loss also.***

9.2.6 Hence, the T&D losses or line losses should be recovered just at the net energy exported and the balance energy only could be sent for wheeling / banking and therefore, the T&D losses cannot be kept under covered on the banking units alone. Hence, the system of recovering T&D losses on the banked units while redrawn from banking is a procedure not approved anywhere and therefore, the illustration provided by CFC-Revenue on 22.08.2013 is incorrect to the above extent.

9.2.7 The complainant states that most of the wind energy captive consumers are having more than one windmills at various locations and accordingly, they are wheeling the energy to their wheeling ends and the total energy so generated by all the windmills is adjusted against their consumption. The T&D losses are being calculated based on different injection and drawl voltages at various percentages. When windmills are situated at different injection voltage points, when pooled together as net export energy, before any adjustment happens, based on the injection and drawl voltage, the wheeling end SE can recover the T&D losses correctly, fairly and justifiably after verifying the injection voltage correctly and the applicable T&D loss percentage. If it is attempted to be recovered at the time of drawl from banking, at what injection voltage it should be considered for recovery of T&D loss would make the issue more

complicated and unsolvable at any point. Hence, altogether T&D losses are recovered on the net export energy based on the right injection and drawl voltages. This is the system followed everywhere. Throughout Tamil nadu the above system alone is being followed.

9.2.8 Further to the same, it is also submitted that the Hon'ble TNERC while passing an order on wind energy called as "Comprehensive Tariff Order on Wind Energy" No.1 of 2009 on 20.03.2009, has provided a clear illustration at Page No.22 [Illustration (8.2.3)] which is attached herewith for the sake of reference of convenience. According to the same, the recovery of T&D loss is always on the net energy exported and not as per the Illustration provided by the CFC-Revenue in the communication dated 22.08.2013.

9.2.9 The argument of CFC-Revenue that the banking charges are being collected, only at the time of drawing the units from banking account and therefore, T&D losses have also to be recovered only at the time when the banked units are drawn from the banking account, is not sustainable in any manner. For recovering the banking charges, the Hon'ble Commission has provided specific orders to recover the same while it is redrawn from the banking account and therefore, Mutatis Mutandis it cannot be construed that the T&D losses also should be recovered only at the time of re-drawl from banking. The T&D loss recovery is always on the net energy exported from the inception of the wind energy concept for captive consumption and as such, to support the illustration provided by the CFC- Revenue there was no approval or authority available from the Hon'ble Commission and therefore, it is totally arbitrary and hence, it is unsustainable and hence, it needs to be struck down.

9.2.10 It is true that till the issuance of orders of Hon'ble TNERC in Order No.6 of 2012 dated 31.07.2012, only two charges have been collected towards wheeling and banking at 5% of the units wheeled and banked. The wheeling charges included the components of, wheeling charges, T&D losses and Transmission Charges. Banking charge was an event at the time of banking. By Order No.6 of 2012, the wheeling charge was trifurcated in to three charges namely, 1) T&D Loss by units, 2) Transmission Charge by cash and 3) Wheeling charge by cash. However, on the point of collection of T&D loss, there was no change as illustrated by the CFC-Revenue and therefore, the argument of CFC-Revenue has no relevance to the point of collection of T&D loss. Since the banking charges collected earlier by units at the time of banking, were ordered to be collected at the time of re-drawl of banked units, it would not automatically mean that T&D losses should also be split in to two phases and should be collected one on the units adjusted and other on the units when re-drawn from bank.

9.2.11 Hence, the various submissions made by the Respondent CFC-Revenue has no relevancy to the issue to be decided and therefore, we pray the TN Electricity Ombudsman to fix the point of recovery of T&D losses at a correct stage as per the orders of this Hon'ble Commission and declare the instruction/illustration of CFC-Revenue as unsustainable and also declare the consequential Audit Slips raised as unsustainable.

9.3 Issue No.2

The Issue No. 2 involves the collection of fees in the guise of agreement fee when there is no such agreement happening at all at the level of SEs when OA consumers apply for grant of NOC to receive OA power. Since an instruction has already been provided to all

SEs on the matter of regulating the Grid Connectivity and Intra-State Open Access Regulation 2014, it is admitted that there is no authority provided in the law to collect such fees and therefore, all the fees collected without the authority of Hon'ble Commission need to be repaid back to such consumers forced to pay the fees at the levels of SEs and therefore, in line with the instruction already provided by the SLDC, orders may be passed that the SEs can be directed to refund the fees by way of adjustment wherever it was collected as STOA charges. The excess collection without the authority of any fee by the SE is in excess of their powers and as such, they are not authorized to collect such fees. Hence, this issue is a grievance and it rightly fits with the term "Complaint" as defined under Clause 2(f) (iii) of the TN Electricity CGRF and EO Regulation, which goes as follows.

"2(f)(iii) Charging of a price in excess of the price fixed by the Commission for consumption of electricity and allied services".

9.3.2 Hence, we wish to state that the STOA fees are not found authorized in anyway to be collected from OA consumers for buying OA power either as per the Grid Connectivity and Intra-State Open Access Regulation 2014 or as per the SLDC communication dated 02.01.2016. Hence, such a collection of an unauthorized fee, would fall under allied services and therefore, would be falling within the jurisdiction of the TN Electricity Ombudsman and hence, a specific order to refund the amounts already collected as STOA charges from OA consumers by the SEs of EDCs without the authority of the Hon'ble Commission.

9.4 Issue No.3

9.4.1 On the matter of issuing instructions to all SEs in the matter of refund of BPSC collected for the period prior to 01.09.2004 on the E- Tax arrears paid, during which period no Supply Code was available, the Respondent the Chief Financial Controller-Revenue has agreed to provide instructions to all SEs to refund the BPSC amounts collected on the E- Tax arrears amount paid pertaining to the period before 01.09.2004 and accordingly, after receiving a copy of the instructions provided by the CFC-Revenue to all SEs, the matter may be treated as "Settled to through mediation" as per Clause 20(3) of the Regulation.

9.5 Issue No.4

9.5.1 During the process of the enquiry of the Complainant by the TN Electricity Ombudsman, the Respondents have agreed to withdraw the demand notices issued for levying penalty on the reason of late filing of TDS returns and accordingly, the Respondent, Chief Financial Controller- General has issued a letter to the SE, DEDC through his letter No.CFC/GL/FC/ACCTS/DFC/AO/Taxation/F.TDS/D.38/2016 dated 12.05.2016. By the said letter, all the demands raised against the consumers for payment of penalty on the reason of late filing of TDS returns were instructed to be withdrawn and therefore, the Issue No. 4 stands settled. Hence, this fact may kindly be recorded as per Clause 20(3) of the Regulation as "Grievance Redressed through Mediation" and accordingly, the complainant / Petitioner is not pressing the issue for disposal.

9.6 Even though the complainant has the support of dealing the matter under the provisions of TNERC- TN Electricity Distribution Standards of Performance Regulation

2004 for having not replied for any of the clarifications raised by such an Association of 600 HT consumers, we pray that an observation may kindly be recorded so as to make the authorities of the Utilities to provide clarifications as and when sought for within a reasonable time to avoid unnecessary proceedings under TNERC-TN Electricity Distribution Standards of Performance Regulation 2004.

10. Written Arguments of the Respondent :

10.1 Issue No.1

10.1.1 Banking Account is a book transaction.

10.1.2 In order No.6, of 2012 dated 31.7.2012, whose control period is from 1.8.2012, the banking charges has been levied in terms of money value. Earlier, until the issue of this order, the banking charges was levied in kind.

10.1.3 The banking charges which was hitherto in kind, was levied upfront, before taking the units into banking. However, this has been changed by order No.6 of 2012 wherein it has been ordered that the banking charges would be levied on all the units drawn from banking in the month in which it is drawn.

10.1.4 It has further been ordered in para 8.2.13 of the above, mentioned wind energy order, the energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as the banked energy. The generation in May shall be first adjusted against the consumption in May. If the consumption exceeds the generation during May, the energy available in the baking shall be drawn to the required extent. If the consumption during May is less than the generation during May, the balance shall be added to the banked energy. This procedure shall be repeated every month.

10.1.5 Further more, in para 8.2.14 of the above mentioned wind energy order, unutilized energy as on 31 March every year may be encashed at the rate of 75% of the relevant purchase tariff. As and when the distribution licensee enforces restriction and control measures and such measures restrict WEGS to consume their power in any manner, the unutilized energy at the end of the banking period may be encashed at full value of the relevant tariff as sale to the licensee.

10.1.6 Furthermore, in para 9.2 of the above mentioned wind energy order, other related charges and terms and conditions specified in the order shall be applicable to all the wind energy generators, irrespective of the date of commissioning.

10.1.7 This clearly indicates that whatever specified in this order alone is applicable during the control period.

10.1.8 Similarly, until the order no.6 of 2012, line losses were composite. In tariff order No.1 of 2012, the Hon'ble Commission has fixed Transmission loss and Distribution loss as a percentage at the injection voltage and drawal voltage. The wheeling charges are levied on the energy injected for adjustment, i.e. on the energy wheeled after deducting the transmission loss in kind. This energy is the energy taken for adjustment against the captive consumption. The wheeling towards adjustment against consumption happens both from current month generation as well from banked energy. At every time, the energy is wheeled for adjustment, the wheeling charges is levied only on the energy wheeled after deducting transmission loss. This wheeled energy undergoes wheeling line loss (ie) Distribution line loss) This energy is adjusted after deduction of distribution loss. However, it should be noted that allotment of energy is different from adjustment of energy. Further, to this, if no energy is taken for adjustment unutlised energy, as per EWA may be sold to TANGEDCO. TANGEDCO purchases this power at the rate as fixed in the respective wind energy tariff order. In this case, such energy is not subjected to any loss as it is purchased by TANGEDCO at the injunction point itself. Banking charges are levied on the units banked to the extent it is drawn towards adjustment at the time of such drawal. As for as the captive power plants are concerned, the HT consumers are also the owners of the generated unit.

10.2 Issue : 2

10.2.1 It is stated that all the Superintending Engineers were communicated vide letter (Lr.No.SE/OA/CO/EE/OA/AEE1/F.MTOA CPP/D.14/15 dt.2.1.2016 regarding major difference between Hon'ble TNERC intrastate open access regulations 2005 and TNERC Grid connectivity and intrastate open access regulation 2004 for implementation.

10.3 Issue : 3

10.3.1 All the Superintending Engineers of Distribution Circles will be informed not to collect BPSC on E.Tax before/after 1.9.2004 and if any collected the BPSC on E.Tax to 1.9.2004 may be refunded in the ensuing CC bill. However, the consumer are bound to pay, not exceeding 12% .p.a. as interest for the non-payment of tax before/after 1.9.2004.

11. Findings of the Electricity Ombudsman :

11.1 There are four issues in the petition. The findings of the Electricity Ombudsman in issuewise is furnished below :

12. Findings on the First Issue :

12.1 The arguments of the complainant are furnished below :-

(i) The complainant informed that the events of generation of energy from wind mills till its final disposal is as below :

a. Generation of electricity through WEGs (Normally called as Gross Generation at generation end)
b. Recovery of Units towards import (By units at generation end) and recovery of reactive power charges.
c. Net generation called as net export (Available by units and sent to wheeling end)
d. T&D Loss (First Recovered by units at wheeling end based on the injection voltage and drawl voltage)

e. Transmission Charges (Charged by Cash at wheeling end)
f. Wheeling Charges (Charged by Cash at wheeling end)
g. Scheduling and System Operation Charges (Charged by Cash at wheeling end)
h. Net Energy available for consumption
i. Adjustment of energy against consumption
j. Balance units if available sent for banking, called as banked units
k. When redrawn from banking account, banking charges leviable by cash / units.
l. On the closure of financial year, unutilized banked units if any would be sent for encashment to the generation end at the 75% of the applicable tariff values.

(ii) The crux of the issue involved in this appeal petition, as far as Issue No.1 is concerned, is at what point of time, the T&D losses have to be recovered. Whether it is on the net energy exported or on the net energy adjusted at first phase and subsequently at the time of re-drawl from the banking account at the second phase? Hence, when the point of recovery of T&D loss is decided, the whole issue will get sorted out.

(iii) pointing out the above, the Petitioner argued that as per the seriatim of events, the recovery of T & D losses is by units on the net exported energy and therefore the energy can pass over to banking account only after suffering T & D loss.

(iv) The complainant also argued that the CE/NCES while issuing the instructions on the implementation of the recent order of Hon'ble TNERC Order No. 3 dated 31-3-2016 has mentioned in paragraph 15 (iii) as follows:-

15) Open Access Charges
(iii) Transmission and Distribution loss :

The captive consumer / generator has to compensate the actual transmission and distribution loss in unit on the net export energy as per the respective orders" citing the above, the Petitioner argued that the above instruction fits with his prayer.

(v) Further, the complainant informed that ,-

1) The draft of the Energy Wheeling Agreement, as vetted by the Hon'ble Commission inter alia goes as follows as far as the recovery of T&D loss is concerned. On a combined reading of the draft of EWA in its entirety, the events as narrated above would be proved to be the seriatim of events as far as wind energy wheeling arrangements are concerned

> *8. Charges:*
> *1. Transmission and Wheeling Charges: Transmission and wheeling charges including line losses shall be 5% of the energy wheeled uniformly for captive use and third party sale of wind energy in the case of HT/EHT consumption, Transmission and Wheeling charges in regard to captive use and third party sale in LT services shall be at 7.5%* ***which include line loss also.***

(vi) Hence, the T&D losses or line losses should be recovered just at the net energy exported and the balance energy only could be sent for wheeling / banking and therefore, the T&D losses cannot be kept under covered on the banking units alone. Hence, the system of recovering T&D losses on the banked units while redrawn from banking is a procedure not approved anywhere and therefore, the illustration provided by CFC-Revenue on 22.8.2013 is incorrect to the above extent.

(vii) The complainant states that most of the wind energy captive consumers are having more than one windmills at various locations and accordingly, they are wheeling the energy to their wheeling ends and the total energy so generated by all the windmills

is adjusted against their consumption. The T&D losses are being calculated based on different injection and drawl voltages at various percentages. When windmills are situated at different injection voltage points, when pooled together as net export energy, before any adjustment happens, based on the injection and drawl voltage, the wheeling end SE can recover the T&D losses correctly, fairly and justifiably after verifying the injection voltage correctly and the applicable T&D loss percentage. If it is attempted to be recovered at the time of drawl from banking, at what injection voltage it should be considered for recovery of T&D loss would make the issue more complicated and unsolvable at any point. Hence, altogether T&D losses are recovered on the net export energy based on the right injection and drawl voltages. This is the system followed everywhere. Throughout Tamilnadu the above system alone is being followed.

(viii) Further to the same, it is also submitted that the Hon'ble TNERC while passing an order on wind energy called as "Comprehensive Tariff Order on wind Energy" No.1 of 2009 on 20.03.2009, has provided a clear illustration at page No. 22[Illustration (8.2.3)] which is attached herewith for the sake of reference of convenience. According to the same, the recovery of T&D loss is always on the net energy exported and not as per the Illustration provided by the CFC-Revenue in the communication dated 22.08.2013.

(ix) The argument of CFC-Revenue that the banking charges are being collected, only at the time of drawing the units from banking account and therefore, T&D losses have also to be recovered only at the time when the banked units are drawn from the banking account, is not sustainable in any manner. For recovering the banking charges, the Hon'ble Commission has provided specific orders to recover the same

while it is redrawn from the banking account and therefore, Mutatis Mutandis it cannot be construed that the T&D losses also should be recovered only at the time of re-drawl from banking. The T&D loss recovery is always on the net energy exported from the inception of the wind energy concept for captive consumption and as such, to support the illustration provided by the CFC-Revenue there was no approval or authority available from the Hon'ble Commission and therefore, it is totally arbitrary and hence, it is unsustainable and hence, it needs to be struck down.

(x) It is true that till the issuance of orders of Hon'ble TNERC in Order No.6 of 2012 dated 31.07.2012, only two charges have been collected towards wheeling and banking at 5% of the units wheeled and banked. The wheeling charges included the components of, wheeling charges, T&D losses and Transmission Charges. Banking charge was an event at the time of banking. By Order No.6 of 2012, the wheeling charge was trifurcated in to three charges namely, 1) T&D Loss by units, 2) Transmission Charge by cash and 3) Wheeling charge by cash. However, on the point of collection of T& D loss, there was no change as illustrated by the CFC-Revenue and therefore, the argument of CFC-Revenue has no relevance to the point of collection of T&D loss. Since the banking charges collected earlier by units at the time of banking, were ordered to be collected at the time of re-drawl of banked units, it would not automatically mean that T&D losses should also be split in to two phases and should be collected one on the units adjusted and other on the units when re-drawn from bank.

12.2 The Respondent has putforth the following arguments :

(i) The Respondent argued that the Banking account is only a Book transaction. In order No.6, of 2012 dated 31.7.2012, whose control period is from 1.8.2012, the

banking charges has been levied in terms of money value. Earlier, until the issue of this order, the banking charges was levied in kind.

(ii) The banking charges which was hitherto in kind, was levied upfront, before taking the units into banking. However, this has been changed by order No.6 of 2012 wherein it has been ordered that the banking charges would be levied on all the units drawn from banking in the month in which it is drawn.

(iii) It has further been ordered in para 8.2.13 of the above, mentioned wind energy order, the energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as the banked energy. The generation in May shall be first adjusted against the consumption in May. If the consumption exceeds the generation during May, the energy available in the banking shall be drawn to the required extent. If the consumption during May is less than the generation during May, the balance shall be added to the banked energy. This procedure shall be repeated every month.

(iv) Further more, in para 8.2.14 of the above mentioned wind energy order, unutilized energy as on 31 March every year may be encashed at the rate of 75% of the relevant purchase tariff. As and when the distribution licensee enforces restriction and control measures and such measures restrict WEGS to consume their power in any manner, the unutilized energy at the end of the banking period may be encashed at full value of the relevant tariff as sale to the licensee.

(v) Furthermore, in para 9.2 of the above mentioned wind energy order, other related charges and terms and conditions specified in the order shall be applicable to all the wind energy generators, irrespective of the date of commissioning.

(vi) This clearly indicates that whatever specified in this order alone is applicable during the control period.

(vii) Similarly, until the order no.6 of 2012, line losses were composite. In tariff order No.1 of 2012, the Hon'ble Commission has fixed Transmission loss and Distribution loss as a percentage at the injection voltage and drawal voltage. The wheeling charges are levied on the energy injected for adjustment, i.e. on the energy wheeled after deducting the transmission loss in kind. This energy is the energy taken for adjustment against the captive consumption. The wheeling towards adjustment against consumption happens both from current month generation as well from banked energy. At every time, the energy is wheeled for adjustment, the wheeling charges is levied only on the energy wheeled after deducting transmission loss. This wheeled energy undergoes wheeling line loss (ie) Distribution line loss) This energy is adjusted after deduction of distribution loss. However, it should be noted that allotment of energy is different from adjustment of energy. Further, to this, if no energy is taken for adjustment unutlised energy, as per EWA may be sold to TANGEDCO. TANGEDCO purchases this power at the rate as fixed in the respective wind energy tariff order. In this case, such energy is not subjected to any loss as it is purchased by TANGEDCO at the injunction point itself. Banking charges are levied on the units banked to the extent it is drawn towards adjustment at the time of such drawal. As for as the captive power plants are concerned, the HT consumers are also the owners of the generated unit.

(viii) The Respondent also argued that because of fixing of transmission loss and Distribution loss as a percentage of injection and Drawal Voltage and lines of wheeling

charges, the illustration issued vide Lr. CFC/FC/DFC/AAO/HT/AS3/Dt.118/13 dt.22.8.2013 is in order.

(ix) The Respondent also argued that every wind generator has separate generation details and drawal details. Hence, accounting of units while drawing may not be an issue as pointed out by the Petitioner.

12.3 During the hearing both the parties have accepted that the accounting is done at the HT consumer end.

12.4 As the complainant has cited the illustration given in para 8.2.3 provided in the comprehensive tariff order on wind energy No. 1 of 2009 dated 20.3.2009, the same is extracted below:-

"8.2.3. Therefore, the Commission decides to retain banking charges at 5%. Banking charges will be levied on the net energy saved by the generator in a month after adjustment of the consumption during that month. The banking period commences on 1st April and ends on 31st March of the following year. The energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as the banked energy for April. The generation in May shall be first adjusted against the consumption in May. If the consumption exceeds the generation during May, the energy banked in April shall be drawn to the required extent. If the consumption during May is less than the generation during May, the balance shall be reckoned as the banked energy for May and banking charges for May will be leviable only for this component. This procedure shall be repeated every month. The following illustration would clarify the above formula.

Illustration (8.2.3)

Case I

Month	Generation	Trans. & Wheeling Charges @ 5%	Net Available for captive use	Consumption	Banking for the month	Banking Charges @ 5%	With drawl from bank	Net energy banked for the month	Cumulative balance in the bank
	(units)	(units)	(units)	(units)	(units)	(units)	(units)	(units)	(units)
April	110000	5500	104500	84500	20000	1000	0	19000	19000
May	84000	4200	79800	70000	9800	490	0	9310	28310
June	100000	5000	95000	115000	0	0	20000	0	8310

Case II

Month	Generation	Trans. & Wheeling Charges @ 5%	Net Available for captive use	Consumption	Banking for the month	Banking Charges @ 5%	Withdrawal from bank	Net energy banked for the month	Cumulative balance in the bank
	(units)	(units)	(units)	(units)	(units)	(units)	(units)	(units)	(units)
April	110000	5500	104500	84500	20000	1000	0	19000	19000
May	84000	4200	79800	90800	0	0	11000	0	8000
June	100000	5000	95000	115000	0	0	8000	0	0

"

12.5 On a careful reading of the said para 8.2.3. it is noted that Banking Charges will be levied on the net energy saved by the generator after adjustment of the consumption during that month. As per the illustration, the Transmission and wheeling charges are first deducted from the generation of the month and the net unit available for the captive use in the month was arrived. The consumption for the said month was deducted from

the net available unit for the captive use and the units available for Banking is arrived for the said month and the Banking charges are levied on the Banked units. As per the illustration, the Transmission and wheeling charges at 5% was deducted first.

12.6 As the issue here is T&D loss, I would like to refer para 8.3 of the comprehensive wind order No. 1 of 2009 dated 20.3.2009 which is extracted below:-

"8.3 Transmission and wheeling charges

The transmission and wheeling charges were initially fixed by the TNEB at 2% in 1986 The charges were enhanced to 5% by the TNEB in September 2001. They remained at that level till 2006. The Commission adopted the same rate of 5% towards the transmission and wheeling charges including line losses in order No.3 dated 15-5-2006. The TNEB has now pleaded for stepping up the charges to 15% on the ground that transmission and distribution losses have gone up in the recent years. The transmission and distribution losses of the TNEB has remained static at 18% since 2003 and therefore, the Commission does not see merit in the plea of the TNEB to abruptly raise the charges to 15%. The Commission decides to retain the wheeling and transmission charges including line losses at 5% uniformly for captive use and third party sale of wind energy in the case of HT / EHT consumption. However, the charges in regard to captive use and third party sale in LT services are fixed at 7.5%."

12.7 On a careful reading of the above para, it is noted that the Transmission and wheeling charges at 5% for HT/EHT consumption includes the line loss also.

12.8 Therefore, on a conjoint reading of para 8.2.3 and 8.3, it is noted that the line loss was deducted from the generated energy and the Banking charges are levied on the banked units which do not have the line loss component.

12.9 As the Respondent has argued that the Banking Charges were levied upfront in kind before taking the units in banking before issue of order No.6 of 2012 and was levied on the units drawn from banking in the month in which it was drawn after issue of order of 6 of 2012, I would like to refer clause 8.2.12.3 of the said order No.6 of 2012.

"8.2.12.3 Transactions through traders CERC has approved a large number of traders for inter state trading in Electricity. These inter state traders can also trade intra state. The trading activities are monitored by CERC regularly. The CERC also publishes the market monitoring report every month. This information is available in public domain. The Commission had examined the details available for the period April 2010 to March 2012 for the sake of better approximation of traded prices. The volume of purchases through bilateral trading in MUs and the total cost for the same are available and tabulated. This exercise, when done for the period April 2010 to March 2012 indicates the average cost of Rs.4.45 per kWhr as per annexure VII. This is taken as a bench mark for adjustment for the purpose of banking. The banking charges would be the difference between the average power purchase cost of Rs.4.45 per kWhr, as arrived above, and the maximum preferential tariff for wind energy as contained in this Order. As per this Order, this amount would work out to Rs.4.45 (-) Rs.3.51 which is equal to Rs.0.94 per kWhr. This banking charge would be levied on all the units drawn from the bank in the month in which it is drawn and would continue till 31st March 2013. For arriving at the average power purchase cost applicable for the financial year 1st April 2013 to 31st March 2014, the details pertaining to the period April 2011 to March 2013 shall be considered and the revised average power purchase cost through bilateral trading would be worked out based on the details available in the CERC's market monitoring report for the relevant period. In this type of calculation there is no need for any prior approval of the Commission in deciding the banking charges. TANGEDCO shall work out these details and publish the same in its website for the period 1-4-2013 onwards. A copy of the same shall also be submitted to the Commission."

12.10 On a careful reading of the above, It is noted that as per Order No. 6 of 2012, the banking charges would be levied on all the units drawn from the bank in the month in

which it is drawn. As per the previous wind order the Banking Charges is levied while banking the units. Therefore, there is a change in the pattern of levy of banking charges.

12.11 The line loss component was included along with the Transmission and wheeling charges in Order No. 3 of 2006. As the Respondent is arguing that there is a change in pattern of calculation of line loss the para No. 8.3 of the Order No. 6 of 2012 is extracted below:-

"8.3 Transmission charges, wheeling charges and line losses

8.3.1 The transmission and wheeling charges were initially fixed by the TNEB at 2% in 1986. The charges were enhanced to 5% by the TNEB in September 2001. They remained at that level till 2006. The Commission adopted the same rate of 5% towards the transmission and wheeling charges including line losses in order No.3 dated 15-5-2006. In the last order, Commission retained the wheeling and transmission charges including line losses at 5% uniformly for captive use and third party sale of wind energy in the case of HT / EHT consumption. With regard to captive use and third party sale in LT services, it was fixed at 7.5%.

8.3.2 The TANGEDCO has now requested that for wheeling of wind power at 110 kV and above, the transmission charges and losses may be fixed as those applicable to normal open access consumers. For wheeling of wind power below 110 kV, wheeling charges and losses may be made as applicable to normal open access consumers depending upon the voltage of injection and drawal. Further the TANGEDCO has requested the Commission to permit wheeling of wind power only for two locations. If wheeling was required for more than two locations additional charge of 5 paise per unit on energy fed into the grid shall be paid as in the case of Gujarat.

8.3.3 Commission in its order No. 1 of 2012 and 2 of 2012 has fixed Transmission Charges of Rs.6483/MW/day and wheeling charges of 23.27 paise/kWh. Now that the

TNEB has been unbundled, charging a single charge in kind as transmission and wheeling charges is not implementable. Therefore it has been decided to fix transmission and wheeling charges in terms of rupees/paise as in the case of conventional power. As a promotional measure, under section 86(1) (e) of the Act, the Commission has decided to fix 40% of the transmission charges and 40% of the wheeling charges as applicable to the conventional power to the Wind power. Apart from these charges, the WEGs shall have to bear the actual line losses in kind as specified in the respective orders of the Commission and amended from time to time."

12.12 On a careful reading of para 8.3.3 of the Order No. 6 of 2012, dt.31.7.2012, it is noted that due to unbundling of TNEB, instead of charging of single charge in kind as transmission and wheeling charges including line loss it was ordered to fix transmission and wheeling charges in terms of rupees/paise as in the case of conventional power. Regarding the line loss, it was ordered that the WEGs shall have to bear the actual line losses in kind as specified in the respective order of the Commission. The above clarifies that the actual line loss has to be in the account of the WEGs (i.e) the net energy generated minus the line loss alone available for adjustment or payment.

12.13 Though there is a change in procedure for levying the Transmission, and wheeling and line loss in Order No. 6 of 2012, there is no change in the accounting of the generated units. The Commission has not modified the illustration given in para 8.2.3 of the Order No. 3 of 2009. Instead of charging the Transmission and wheeling charges including line loss at a percentage of Generated units (say 5%), Commission has splitted the above, into three categories (Viz.,) Transmission charges, Wheeling charges and line loss and has given direction to levy 40% of the transmission charges and 40% of the wheeling charges as fixed by the Commission applicable to

conventional power. Regarding line loss, it has been categorically ordered that the WEGs have to bear the actual line loss.

12.14 As per the definition given in 2(8) of the Electricity Act 2003, A Captive Generating Plant means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of person for generating electricity primarily for use of member of such co-operative society or association. Therefore, the units generated are for consumption of the captive users (ie) power is allotted to the captive users which will be used by them and the surplus if any will be lapsed. But, in respect of WEG, there is a provision to Bank the energy for its future use if the captive user is unable to utilize the energy generated. Therefore, the power (wind energy) which are not consumed at the end of the captive consumer will go to banking. The energy which is at the consumption end and not consumed alone will go to banking(ie) after suffering the line loss it will be banked.

12.15 Here, I would like to point out that both the Petitioner and the Respondent have argued that the accounting of the wind energy is done at consumer end. If the accounting is done at consumer end, then, the unit available for consumption or banking at the consumer end will be after suffering the line loss only. The illustration given in para 8.2.3 of Order No.3 of 2009 also points out the same.

12.16 In view of the discussion in the foregoing paras 12.13, 12.14 & 12.15 and as illustration given in paras 8.2.3 of order No.3 of 2009 has not been altered, I am of the view that the line loss has to be deducted from the net energy generated and the

balance energy alone will be accounted for consumption or banking as the case may be. Therefore, the banking charges will be levied on the units drawn from the Bank which has already suffered line loss. Hence, the issue is decided in favour of the Petitioner

13. <u>Findings on issue No.2 :</u>

13.1 The Petitioner informed that a sum of Rs.10,000/- was collected as agreement fee when Open Access consumer apply for NOC to receive Open Access Power.

13.2 He also argued that instructions has already been provided to all SEs on the matter of regulating the Grid connectivity and Intra-State Open Access Regulation 2014 vide SE/OA&CO lr. dt. 2.1.16. As per the above circular, there is no such fee is to be collected.

13.3 As there is no authority provided in the law to collect such fees, the fees collected without the authority of Hon'ble Commission need to be repaid back to such consumers.

13.4 The Petitioner also argued that the above issue is a grievance and it rightly fits with the term complainant as defined under clause 2(f)(iii) of the Tamil Nadu Electricity CGRF and Electricity Ombudsman Regulation. The Petitioner argued that as per the above clause 2(f)(iii) charging of a price in excess of the price fixed by the Commission for consumption of Electricity and allied service is a complaint.

13.5 He further argued that the STOA fees collected are not found authorized either as per the Grid connectivity and Intra State Open Access Regulation 2014 or as per

SLDC's communication dt.2.1.2016. Hence, collection of such an unauthorized fee would fall under allied services and therefore, would be falling under the jurisdiction of the Electricity Ombudsman.

13.6 The CFC/Revenue argued that in respect of collection of STOA Agreement fees the TANGEDCO is only acting as a Collection Agent. Hence, the SLDC has to decide the issue.

13.7 She also informed that all the open access charges except open access application fees are collected at respective EDCs only. The above charge of Rs.10,000/- was collected as per clause 13(d) of TNERC Intra State Open Access Regulation 2005.

13.8 The subject matter of the issue is refund of the STOA Agreement fees collected by the Electricity Distribution Circle. The open Access charges, that are to be collected are covered in Grid connectivity and Intra State Open Access Regulation 2014. Regarding redressal of the Grievances in respect of Open access, I would like to refer regulation 44 of the Grid connectivity and Intra State Open Access Regulation 2014 which is extracted below:-

"44. Redressal Mechanism

(1) All disputes and complaints relating to open access shall be made to the respective Nodal agency, which may investigate and endeavour to resolve the grievance within thirty days; and

(2) Whenever the Nodal agency is unable to resolve a grievance, the matter may be referred to the Commission."

13.9 As per the said regulation 44(1), all disputes and complaints relating to Open Access shall be made to the nodal agency, which may investigate and endeavour to resolve the issue within 30 days.

13.10 As per regulation 44(2), if the nodal agency is unable to resolve the grievance then the matter may be referred to Commission.

13.11 In view of the above regulation 44(1), the Petitioner is directed to address the nodal agency to redress his grievance.

14. <u>Findings on Third Issue:</u>

14.1 The Petitioner argued that the BPSC collected on the E-Tax arrears for the period prior to 1-9-2004 has to be refunded as the SLP No. 12282 of 2014 filed before the Hon'ble Supreme Court has been dismissed on 1-3-2016.

14.2 The Respondent agreed that all the Superintending Engineers of Distribution Circle will be informed not to collect BPSC on E-Tax before/after 1.9.2004 and the BPSC if any collected on E-Tax prior to 1-9-2014 may be refunded in the ensuing CC Bill. However, the consumer is bound to pay not exceeding 12% as interest for the delayed payment of tax.

14.3 The Respondent has agreed to issue instructions to refund the BPSC collected on the E-Tax prior to 1-9-2014, and have also issued instruction in this regard vide their Memo No.CFC/Rev/FC/Rev/DFC/AS-3/Rev/D.No.302/16, dt.23.11.2016. Hence, I am of the view that the above grievance of issuing an instruction has been redressed by the Respondent. Hence, the above issue is treated as settled.

15. Findings on the Fourth Issue:

15.1 The Petitioner prayed for withdrawal of the demand notice issued for levying the penalty on the reason of late remitting of the TDS collected to the Income Tax department.

15.2 The Respondent in its communication No. CFC/Gen/FC/ACCTS/DFC/AO/ Taxation/FTDS/D38/2016 dt.12.5.2016 has instructed to withdraw the demands raised against the consumer for payment of penalty on the reason of delay in filing the TDS return.

15.3 As the above Grievance has been redressed, the above issue is treated as settled.

16. General issue :

16.1 The Petitioner has prayed that a clear time limit may be ordered for adherence whenever a matter was represented by the Registered consumer organizations by prescribing a time limit.

16.2 In this regard, I would like to refer regulation 17 of the Tamil Nadu Electricity Distribution Standards of Performance Regulation 2004.

" 17. Responding to Consumer's Complaint

If any consumer makes a complaint in writing to the Territorial Engineer of the concerned licensee then, the Territorial Engineer concerned shall reply to the consumer within ten days after receipt of the letter. In case the Territorial Engineer requires to visit the site or consult any other officer to give a comprehensive reply, the Territorial Engineer shall explain to the consumer as to why a substantive response cannot be sent immediately and intimate the name address and telephone number of the Officer dealing with the complaint. The Territorial Engineer shall also ensure that a substantive response is sent to the consumer within twenty days of receiving the complaint letter."

16.3 On a careful reading of the said regulation, it is to be noted that a time limit has been specified to send replies to the consumer who makes a complaint in writing to the Territorial Engineer.

16.4 In this regard, I would like to refer the definition given for consumer in section 2(15) of the Electricity Act 2003. The said section 2(15) of the Act is extracted below :

“2(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be; ”

16.5 On a careful reading of the definition given for the consumers, it is noted that the consumer associations representing the member’s cause are not coming under the definition of consumer. Hence, the above regulation is not applicable to the consumer organization / association for raising the issue of members.

16.6 As per regulation 16(a) of the Regulations for CGRF & Electricity Ombudsman 2004, the Electricity Ombudsman can pass award in accordance with Act and Rules or Regulations made thereunder.

16.7 Therefore, as per the regulations, there is no provision for the Electricity Ombudsman to prescribe a time limit for responding to the representation of the consumer organization. Hence, I am unable to give any direction fixing a time limit for issuance of clarification by the licensee officers on the issues raised by the registered consumer organization. However, it is opined that whenever a consumer organization

or association is representing a issue of the consumers, the licensee officers shall send suitable reply / clarification within a reasonable time in order to maintain consumer-licensee relationship.

17. Conclusion:

17.1 In view of the findings on the first issue in para 12, it is held that, the T&D Loss has to be deducted on the net energy exported as illustrated in para 8.2.3 of Comprehensive Tariff Order No.3 of 2009 dated 20.3.2009. Therefore, the units banked or consumed are after suffering the T&D loss.

17.2 In view of my findings on the second issue in para 13, the Petitioner is directed to address the Nodal Agency for redressing his grievance about the refund of STOA agreement charges collected.

17.3 As the Respondent has issued instruction about refund of the BPSC collected on E.Tax prior to 1.9.2014, the above issue is treated as settled.

17.4 As the Respondents has issued instructions to withdraw the demands raised for payment of penal interest for delayed remittance of TDS, the issue is treated as settled.

17.5 With the above findings the AP 34 of 2016 is finally disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To
1) M/s Tamil Nadu Spinning Mills Association,
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Rep by its Chief Advisor Dr. K. Venkatachalam.

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5) The Secretary,
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6) The Assistant Director (Computer) – **For Hosting in the TNEO Website.**
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