

2. The brief fact, giving rise to both the aforesaid appeals are that the consumer/ M/s Sukh Sagar Metals Pvt. Ltd is a HTSS consumer bearing Consumer No. CKU-2 which was energized on 02/07/2005 for running its induction furnace having a contract demand of 3000 KVA of JSEB /appellant which is a licensee for distribution of electricity in the State of Jharkhand. The consumer had earlier filed a representation before the learned VUSNF of JSEB, Ranchi for redressal of its grievances. According to the consumer, the JSEB is still charging electrical bills of the HTSS consumer under repealed /lapsed tariff of erstwhile Bihar State Electricity Board (In short to be referred as BSEB) dated 07/05/2001 which has got no force of law within the area and jurisdiction of JSEB after the introduction of new tariff and regulations framed by the Jharkhand State Electricity Regulatory Commission (In short to be referred as JSERC) from 01/01/2004 as the earlier tariff schedule dated 07/05/2001 of BSEB has lost its validity on 31/03/2002. The tariff schedule is applicable on the JSEB from 01/01/2004 does not prescribe for charging 100% of the contract demand therefore the charging of electrical bills from the consumer/ M/s Sukh Sagar Metals Pvt. Ltd as maximum demand (KVA) on the basis of 100% of the contract demand instead of actual recorded KVA from the meter of the consumer, is illegal. As such the consumer/ M/s Sukh Sagar Metals Pvt. Ltd has prayed for quashing of electrical bills issued by the JSEB to the consumer/ M/s Sukh Sagar Metals Pvt. Ltd from July, 2005 and onwards and to revise its electrical bills from July, 2005 and onwards on the basis of tariff order, 2003-04 of JSERC which is applicable from 01/01/2004 which lays down to charge the electrical bills at the rate of Rs. 2.50/- per KWH on actual consumption of units and Rs. 300/- per KVA on actual consumption of maximum demand both subject to a monthly minimum charges of Rs. 400/- per KVA for the full contract demand. The learned VUSNF of JSEB, Ranchi has ordered the JSEB to charge KVA amount/demand charges at the rate of 75% of the contract demand instead of actual recorded in the meter of the consumer.

3. Being aggrieved by and dissatisfied with the aforesaid order/Judgment the consumer/ M/s Sukh Sagar Metals Pvt. Ltd has filed this appeal.

4. The case of the JSEB in brief is that the consumer/ M/s Sukh Sagar Metals Pvt. Ltd. is an induction furnace consumer and its bills from July, 2005 and onwards have been raised on the basis of the contract demand of consumer i.e, 3000 KVA. The further

case of licensee/JSEB is that the JSERC in its tariff order of 2003-04 has held that the design of tariff structure and analysis of tariff in Section 5 of the tariff order and the terms and conditions of supply has been dealt in clause 5.30 of tariff order of 2003-04 which reads that “The JSEB has submitted a number of other clauses, while, the others would have to be dealt with a later stage. This is due to the reason that a detailed and in-depth analysis of the issues involved is herewith required and hence they have not been dealt with in this tariff order”. Beside the clause 1.4 of the terms and conditions of supply at page 148 of the tariff order, 2003-04 also reads that “All other terms and conditions in respect of meter rent, supply at Lower Voltage, capacitor charge, circuit-Breaker charge, electricity duty, rebate, security deposit, surcharge for exceeding contract demand etc. shall remain the same as existing in the state”. The licensee/JSEB has also mentioned in its rejoinder which is mentioned in clause 3.6.1 of JSERC’s tariff order, 2003-04 at page 25 which reads as follows:-

“ It is to be noted that HTSS is meant for a specific category of consumers, and is highly power intensive and its tariff takes into account the tonnage capacity also. The existing tariff of induction furnace was decided at the request of Induction Furnace Association by the BSEB. However, this tariff is being proposed for consideration and approval of the Commission. The Commission has invited objections from everybody and the process is fully transparent so there is not question of any discussion with Induction Furnace Association. The existing tariff of Induction furnace came into force w.e.f. April, 2001, i.e. after a lapse of more than two year, therefore there is bound to be some increase in tariff has been nominal”.

5. The further case of licensee/JSEB is that prior to the notification of tariff order, 2003-04 of JSERC, there was a tariff for Induction furnace consumers dated 15/03/2000 issued by the BSEB published in Bihar gazette on 06/04/2000 which was adopted by the JSEB on 20/03/2001. According to Clause 5 of the tariff notification dated 15/03/2000 the demand charge for the induction furnace consumers has to be raised on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher. According to the licensee/JSEB, the demand charge is a fixed charge and the same has been levied in order to meet the fixed expenses of the Board. Further clause 5.29 at page 114 of the tariff order, 2003-04 of JSERC goes to

show that the JSERC has introduced a voltage rebate on energy charge for receiving supply at higher voltage levels, as the cost of supply at higher voltage is lower. This provision is applicable for HTS categories of consumers but the same has not been provided in the HTSS tariff applicable to Induction Furnace Consumers. Further clause 1.4 of the terms and conditions of supply of the tariff order, 2003-04 itself contained the saving clause so far as the terms and conditions of supply which are existing in the State of Jharkhand. But the learned VUSNF of JSEB, Ranchi by its order/Judgement dated 20/08/2009 passed in case No. 29/2008 has allowed the petition filed by the consumer/ M/s Sukh Sagar Metals Pvt. Ltd. and the JSEB has been directed to raise monthly bills on account of demand charges against the consumer on the basis of actual maximum demand recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand and to give adjustment to the consumer against the bills raised earlier on account of demand charges and wherein it has been held by the learned VUSNF that the JSEB can not raise the bills on account of demand charge on the basis of 100% of the contract demand. As such, being aggrieved by and dissatisfied with the aforesaid order/Judgement dated 20/08/2009 passed in case no. 29/2008 by the learned VUSNF of JSEB, Ranchi, this appeal has been filed by the appellant/JSEB.

6. The case of the respondent in both the cases are the same as asserted in their respective memo of appeals, therefore it is needless to mention the case of respondent of both the aforesaid appeals. As such the case of the respondent of both the appeals is not being mentioned to avoid repetition.

FINDINGS

7. On perusal of the case of both the parties, it transpires that the JSEB is claiming itself to raise 100% of the contract demand on the basis of the tariff notification dated 15/03/2000 of BSEB which was also published in Bihar gazette. On the basis of a consensus which was arrived in between the BSEB and the representatives of the existing Induction Furnace Consumers in the State of Bihar i.e. Bihar Steel Manufacturers Association and according to the new tariff for induction furnace consumers was introduced with effect from 01/09/1999 and according to the case of JSEB in accordance

with the Clause 5 of the aforesaid tariff on the actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher and thereafter the aforesaid tariff was notified on 15/03/2000. On the basis of aforesaid facts it has been submitted by the learned counsel, Shri Rajesh Shankar on behalf of the JSEB that the learned VUSNF has failed to appreciate that the consumer/ M/s Sukh Sagar Metals Pvt. Ltd. is a consumer covered under the induction furnace tariff is liable to pay the electric bills from July, 2005 and onwards raised on account of maximum demand on the basis of 100% of the contract demand from the very day of commencement of electrical supply. It has been further submitted on behalf of the JSEB that tariff order dated 15/03/2000 is a complete tariff in respect to the induction furnace consumers consisting of the complete terms and conditions of supply of electricity and the mode of billing. The consumer can not be allowed to take a plea that it is not bound to make the payments of the bills on the aforesaid contract demand. Therefore, according to the learned counsel appearing on behalf of JSEB, the learned VUSNF has committed an error in holding that the consumer is not liable to pay the demand charges on the basis of 100% of the contract demand or the actual demand recorded in the meter whichever is higher and as such the aforesaid order/Judgement of the VUSNF is fit to be set aside. The learned counsel of JSEB has further relied the clause 5.30 of the tariff order, 2003-04 and clause 1.4 of the terms and conditions of supply of the tariff order of 2003-04.

8. On the other hand the case of the consumer/ M/s Sukh Sagar Metals Pvt. Ltd. is that the bills of the consumer from July, 2005 and onwards have been raised on the basis of repealed tariff of BSEB @ 100% of the contract demand which is not provided in the tariff order of 2003-04, notified by the JSERC and on the aforesaid basis the JSEB from the very first month of billing itself started raising wrong and erroneous bills of maximum demand (KVA) on the basis of 100% of the contract demand instead of actual recorded KVA from the meter of the consumer/ M/s Sukh Sagar Metals Pvt. Ltd. Thus the case of the consumer is that the JSEB should have raised the bills on the basis of actual recorded in the meter of the consumer. In this regard the learned counsel appearing on behalf of the consumer/ M/s Sukh Sagar Metals Pvt. Ltd. has submitted that instead of the tariff order, 2003-04 of JSERC, the JSEB is illegally relying on the repealed/lapsed tariff schedules of erstwhile BSEB dated 24/09/1999, 15/03/2000 and 07/05/2001 and the

JSEB is still charging to the consumer on the basis of 100% of the contract demand which is not provided in the tariff order, 2003-04 of JSERC. In view of JSERC Regulations which is applicable from 01/01/2004 prescribes for only one “Minimum Gurantee” amount in the name of “Monthly Minimum Charge” in terms of Rs. 400/KVA/Month and no other minimum gurantee unit /maximum demand have been prescribed in the JSERC regulations and on the basis of aforesaid JSERC regulations the bills of the consumers are to be only charged on the basis of actual consumed units and actual recorded/consumed maximum demand (KVA). The tariff structure for HTSS consumers have been laid down in JSERC regulations is as follows:-

“2. Tariff.

Tariff for H.T.S.S. Consumers

Description	Tariff
Rs./KVA/Month	DEMAND CHARGE
HTSS	300
	ENERGY CHARGE
Rs./Kwh/Month	
HTSS	2.50
	Minimum monthly charge
HTSS	Rs. 400/KVA/month

Voltage rebate for HTSS Consumers

Load Factor	Voltage Rebate
Supply at 33KW	5%
Supply as 132KW	7.5%

Load factor rebate for HTSS Consumers

Load factor	Load factor rebate
40-60%	5%
60-70%	7.5%
Above 70%	10%

On the basis of the aforesaid tariff structure of JSERC, the bills of the consumer is to be revised from July, 2005 and onwards and the monthly demand of KVA must be calculated on the basis of actual maximum demand recorded in the meter. It has been further contended on the behalf of the consumer/ M/s Sukh Sagar Metals Pvt. Ltd that the JSERC vide its letter dated 19/12/2005 which was in reply to the letter of JSEB authorities of its letters dated 21.09.2005/05.12.2005, the JSERC has specifically held about non-applicability of the earlier tariff schedules of 1999 or 2001 of BSEB and in support of its contention, the learned counsel Sri Ajit Kumar, of the consumer/ M/s Sukh Sagar Metals Pvt. Ltd has relied and filed the photocopy of certified copies of the rulings held in case of JSEB Vrs. M/s Kumardhubi Steel Pvt. Ltd. in WP© No. 5150 of 2007 and the order of the Hon'ble Supreme Court in SLP© no. 20104/2009 of JSEB Vrs. M/s Kumardhubi Steel Pvt. Ltd. confirming the order of the Jharkhand High Court passed in WP© No. 5150 of 2007.

9. On perusal of the order of the Hon'ble Jharkhand High Court in WP© No. 5150 of 2007 the Hon'ble Court has held that the letter dated 19/12/2005 has attended its finality as the JSEB does not choose to file any appeal against the order of the JSERC therefore I also find myself in agreement with the contention of the learned counsel of the consumer/ M/s Sukh Sagar Metals Pvt. Ltd that the JSEB can not raise the bills of the consumer from July, 2005 and onwards on the basis of earlier repealed tariff dated 24/09/1999 or 07/05/2001 after passing the JSERC's tariff order, 2003-04 dated 01/01/2004. On perusal of the order of the Hon'ble Jharkhand High Court passed in WP© No. 5150/2007, it is found that the Hon'ble Jharkhand High Court at Para 15 has held that "Be that as it may, even otherwise the Board is bound by the Agreement and the tariff of 2003-04 and its schedule thereto". The Hon'ble Jharkhand High Court has also held in WP© No. 1687 of 2007 in case of M/s T & T Metals Pvt. Ltd. that the Board is liberty to charge bills in terms of agreement between the Board and the consumers, though the order of the Electricity Ombudsman order has not been stayed.

10. On perusal of the case of both the parties, this is an admitted fact that the consumer/ M/s Sukh Sagar Metals Pvt. Ltd has taken an electrical connection from the licensee/JSEB bearing Consumer No. CKU-2 under HTSS mode of tariff from July, 2005 of 3000 KVA. This is also admitted fact that an agreement was executed in between both

the parties. This is a settled law that the agreement binds both the parties. Clause 4© of the aforesaid agreement reads as follows:-

4© “Maximum demand charges for supply in any month will be based on the maximum KVA demand for the month or 75 % of the contract demand whichever is higher subject to provision of Clause 13 “For the first twelve months” service the maximum demand charges for any month will however, be based on the actual monthly maximum demand for that month”. As such, in view of the aforesaid agreement as mentioned in Clause 4©, the JSEB can only levy on maximum demand charges for supply in any month on the maximum KVA demand for the month or 75% of the contract demand whichever is higher and for the first 12 months service the maximum demand charges for any month will however, be based on the actual monthly maximum demand for that month. The learned counsel appearing on behalf of the consumer has also prayed in its supplementary petition dated 22/05/2010 that in view of the aforesaid agreement the first 12 months may be ordered to be charged on actual recorded in the meter and the order/Judgement of the learned VUSNF can be modified to this extent.

11. Thus, from the aforesaid discussions and findings made above, I am led to hold that the JSEB is not entitled to raise the bills from the consumer/ M/s Sukh Sagar Metals Pvt. Ltd on the basis of 100% of the contract demand as KVA charges in monthly bills even it is recorded less than the contract demand in the meter. Therefore the impugned bills issued for the period from July, 2005 and onwards in which the KVA charges raised by the respondent on the basis of 100% of the contract demand are therefore quashed and the licensee/JSEB is directed to issue the revised bills of the consumer/ M/s Sukh Sagar Metals Pvt. Ltd from July, 2005 and onwards in future on the basis of actual KVA recorded in the meter for the first 12 months from the date of connection and thereafter on the basis of actual KVA recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand. The licensee/JSEB is further directed to adjust the excess money realized from the consumer/ M/s Sukh Sagar Metals Pvt. Ltd in the subsequent bills with interest as per the Supply Code Regulation of JSERC within a period of one month from the receipt of this order failing which the consumer will be at liberty to move this Forum for implementing of this order.

12. In the result the order/Judgement of the learned VUSNF dated 20/08/2005 passed in case No. 29/2009 is hereby confirmed with aforesaid modification and both the appeals No.EOJ/09/09 of M/s Sukh Sagar Metals Pvt. Ltd. Vrs. JSEB and others and No. EOJ/07/09 of JSEB and others Vrs. M/s Sukh Sagar Metals Pvt. Ltd. stand dismissed with the aforesaid modifications and directions as stated above.

Let a copy of this order be served on both the parties.

Sd/-
Electricity Ombudsman