

ಕರ್ನಾಟಕ ಸರ್ಕಾರ  
(ವಿದ್ಯುತ್ ಪರಿವೀಕ್ಷಣಾಲಯ)

ಸಂ: ಮುಖಪ/ತೆರಿಗೆ/ಲೆಸ3/  
ಲಗತ್ತು:ಅಪೀಲನ ಆದೇಶ 23229-31

/18-19

ಮುಖ್ಯ ವಿದ್ಯುತ್ ಪರಿವೀಕ್ಷಕರ ಕಛೇರಿ  
2ನೇ ಮಹಡಿ, ನಿರ್ಮಾಣ ಭವನ,  
ರಾಜಾಜಿನಗರ, ಡಾರಾಜ್ ಕುಮಾರ್ ರಸ್ತೆ,  
ಬೆಂಗಳೂರು 560 001.  
ದಿನಾಂಕ : 11/09/18

ರವರಿಗೆ,

M/s. STAR METALLICS & POWER PRIVATE LIMITED,  
Metal & Ferroalloys Plant, Vyasanakere,  
Mariyammanahalli – 583 222.

BY REG.POST.ACK.DUE.

ಉಪ ವಿದ್ಯುತ್ ಪರಿವೀಕ್ಷಕರು , ನಂ.37/1,  
2ನೇ ಮಹಡಿ, ಕಪಗಲ್ ರಸ್ತೆ,  
ಬಳ್ಳಾರಿ – 583 1031.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಕರ್ನಾಟಕ ವಿದ್ಯುಚ್ಛಕ್ತಿ (ಬಳಕೆ ಮೇಲನ ತೆರಿಗೆ ಅಥವಾ ಮಾರಾಟ ನಿರ್ಧಾರಣೆ) ಕಾಯ್ದೆ  
1959 ಸೆಕ್ಷನ್ 9(ಎ) ರಡಿಯಲ್ಲಿ ಸಲ್ಲಿಸಿರುವ ಅಪೀಲು ಕುರಿತಂತೆ.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ M/s. STAR METALLICS & POWER PRIVATE LIMITED,  
Metal & Ferroalloys Plant, Vyasanakere, Mariyammanahalli – 583 222, Hospet Taluk, Bellary  
Dist. ರವರು 2011-2012 ನೇ ಸಾಲಿನಲ್ಲಿ ಪಾವತಿ ಮಾಡಲಾಗಿದ್ದ ವಿದ್ಯುತ್ ತೆರಿಗೆಯನ್ನು ಹಿಂಪಾವತಿಸುವ ಬಗ್ಗೆ  
ಹಾಗೂ 2015-2016 ನೇ ಸಾಲಿಗೆ ಉಪ ವಿದ್ಯುತ್ ಪರಿವೀಕ್ಷಕರು, ಬಳ್ಳಾರಿ ರವರು ಒತ್ತಾಯಿಸಲಾಗಿದ್ದ ವಿದ್ಯುತ್  
ತೆರಿಗೆ ಮೊತ್ತವನ್ನು ಹಿಂಪಾವತಿಸುವಂತೆ ಕೋರಿ ಕರ್ನಾಟಕ ವಿದ್ಯುಚ್ಛಕ್ತಿ (ಬಳಕೆ ಮೇಲನ ತೆರಿಗೆ ಅಥವಾ ಮಾರಾಟ  
ನಿರ್ಧಾರಣೆ) ಕಾಯ್ದೆ 1959 ಸೆಕ್ಷನ್ 9(ಎ) ರಡಿಯಲ್ಲಿ ಅಪೀಲನ್ನು ಸಲ್ಲಿಸಲಾಗಿತ್ತು. ಈ ಬಗ್ಗೆ ಅಪೀಲನ್ನು ಆಲಿಸಿ,  
ಸಲ್ಲಿಸಲಾಗಿದ್ದ ಪೂರ್ಣ ಮಾಹಿತಿ, ವಿವರಗಳನ್ನು ಪರಿಶೀಲಿಸಿ, ಸದರಿ ಅಪೀಲನ ಬಗ್ಗೆ ಸೂಕ್ತ ಆದೇಶವನ್ನು  
ಹೊರಡಿಸಲಾಗಿದೆ. ಅದರ ಪ್ರತಿಯನ್ನು ಈ ಪತ್ರದ ಜೊತೆ ಲಗತ್ತಿಸಿ ಕಳುಹಿಸಲಾಗಿದೆ.

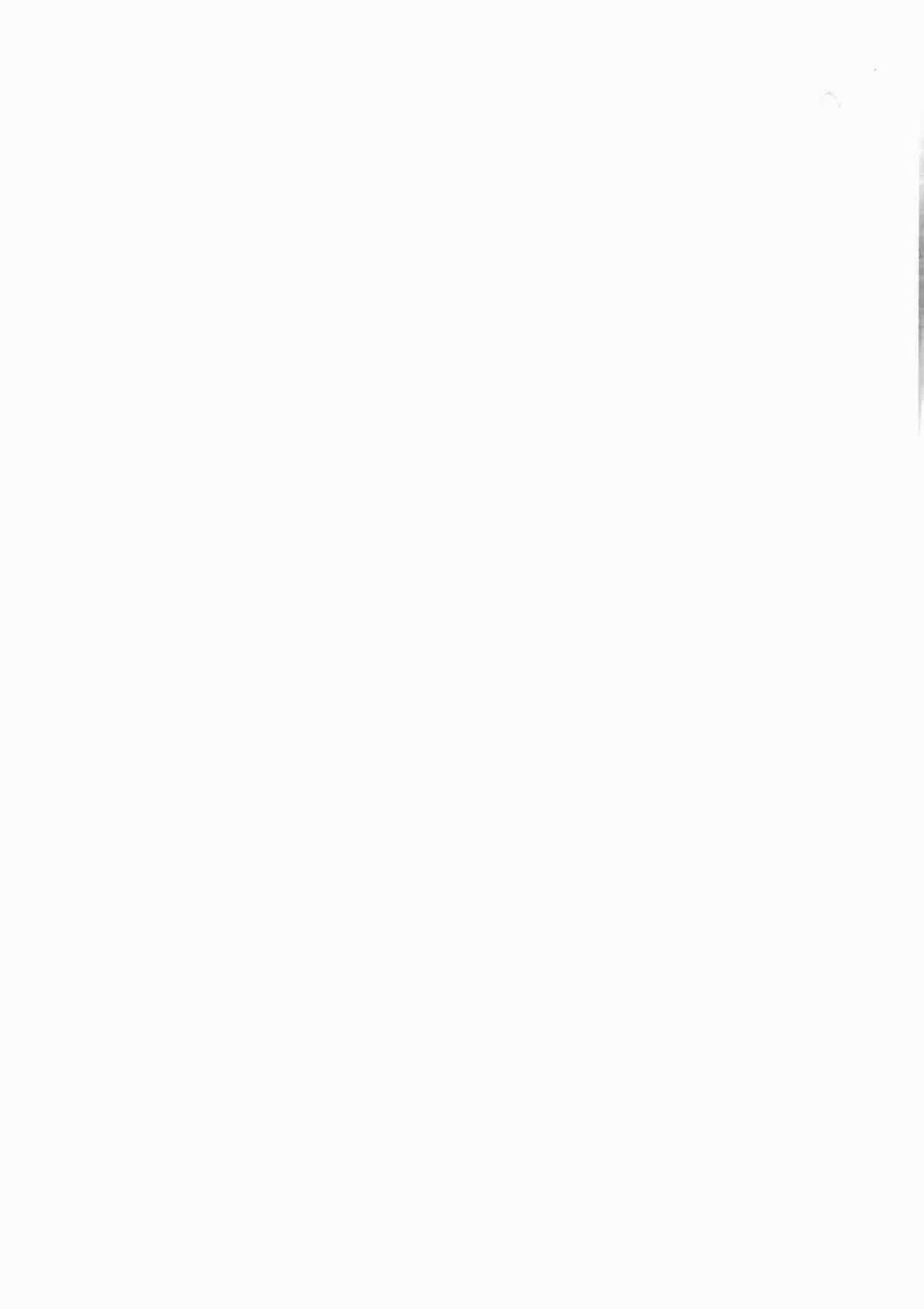
ತಮ್ಮ ನಂಬುಗೆಯು.

ಮುಖ್ಯ ವಿದ್ಯುತ್ ಪರಿವೀಕ್ಷಕರು  
Chief Electrical Inspector to Govt,  
Electrical Inspectorate,  
Bangalore. 10/9/18

ಪ್ರತಿಯನ್ನು:

ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿಗಳು, ಇಂಧನ ಇಲಾಖೆ, ವಿಕಾಸಸೌಧ, ಬೆಂಗಳೂರು – 560 001. ರವರ  
ಅವಗಾಹನೆಗೆ ಸಲ್ಲಿಸಲಾಗಿದೆ.

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**BEFORE THE CHIEF ELECTRICAL INSPECTOR TO  
GOVERNMENT, BANGALORE**

Dated: 10<sup>th</sup> September, 2018

Present:

Sri. D H Basavaraju,  
Chief Electrical Inspector to Government

**Appeal No: 1/2017**

**Between:**

M/s. STAR METALLICS & POWER PRIVATE LIMITED  
HOSPET TALUK, BELLARY DIST. : Appellant

**AND**

DEPUTY ELECTRICAL INSPECTOR, BELLARY : Respondent

**ORDER**

This Appeal is filed under Section 9A of the Karnataka Electricity (Taxation on Consumption or Sale) Act 1959, the brief facts of the case is as follows,

1. The Appellant submits that, it is a subsidiary of the Sandur Manganese and Iron Ores Limited. To meet the energy requirement of its Furnace and also to make available secure and stable power on a continuous basis, the appellant has established a 32 MW Captive Thermal

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Power Plant, which is considered as Captive Generating Plant falling within the definition under Section 2(8) of the Electricity Act, 2003.

2. The Appellant submits that, it is running both submerged electric furnaces for production of Manganese alloys such as Silicomanganese, Ferromanganese when the business was thriving. The appellant contents that for the present, it is unable to operate economically both furnaces due to market constraints as there is a severe drop in demand of Ferroalloys. Therefore, the Appellant have proposed to restrict its production by operating only one furnace reducing its captive consumption of electricity, so that the Appellant can retain the captive status of its generating plant by consuming not less than 51% of the aggregate electricity generated in such plant determined on an annual basis.
3. The Appellant submits that, previously it had approached the Karnataka Electricity Regulatory Commission with the question through a letter to accord a Captive status for reducing the installed capacity of the Appellant Plant. The Karnataka Electricity Regulatory Commission prima facie felt that there might be no bar to run the plant with a minimum operational capacity. However, it felt that the better procedure would be for the Appellant to file a petition before the Karnataka Electricity Regulatory Commission. Accordingly, the Appellant, approached the

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Hon'ble Karnataka Electricity Regulatory Commission vide their Petition No. 15/2015. Hon'ble KERC after hearing the parties has allowed captive status to the Appellant's plant upon fulfilment of requirement stated in Rule 3 of the Electricity Rules, 2005 vide KERC order 19.11.2015.

4. The Appellant also submits that, it has filed a Petition No. 14/2016 before Hon'ble Karnataka Electricity Regulatory Commission, praying to offset of the adverse financial impact, in the event the Appellant has to pay any higher tax under The Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 as a consequence of supply of energy to the maximum exportable capacity of the Appellant's generating plant under Section 11 of The Electricity Act, 2003.
5. The Appellant also submits that but for the Govt. Orders Dt. 27.01.2017 and 16.09.2015, the appellant would have met the captive status consuming 51% and above as made out in the details below:

Details	Units
Total generation for the year 2011-12	783,05,000
SMPPL was asked to operate at the maximum load and asked to supply to the grid for the month of February and March 2012 due to invoking of Section 11 of The Electricity Act 2003	184,64,000
Net energy excluding Section 11 supply	598,41,000,
Captive consumption for the year 2011-12	364,71,984
The percentage of captive generation	60.95%

excluding Section 11 supply	
Details	Units
Total generation for the year 2015-16	181,146,060
Total Section 11 sales from 17th September 2015 to 31st March 2016	112,409,200
Net captive generation	68,736,560
Captive consumption	48,831,160
Captive consumption in percentage till 31st March 2016	71.04%

6. The Appellant submits that, through correspondence dated 23.03.2015, 11.04.2017, 24.04.2017, 25.5.2017 it had taken up the issue pertaining to generation made for the year 2011-12 and for the year 2015-16 at the Appellant's maximum capacity and thus the Appellant is entitled to relief under Section 11 (2) of the Electricity Act, 2003.
7. The Appellant submits that, the Hon'ble Karnataka Electricity Regulatory Commission upon the submission made by the Appellant for adverse financial impact caused by the Government in their Order EN PPC 2012 dated 27.1.2012 and EN PPT 2015 dated 16.9.2015. The Hon'ble KERC vide order dated 25.7.2017 have advised the Appellant to approach the authority indicated in the Act under Section 162(2) of the Electricity Act, 2003.
8. The Appellant further submits that, the amount of Rs. 93,43,548/- were paid under protest on 31.01.2015 for the year 2011-12 fearing invoking penal interest etc., from the Respondent and no assessment was made. Further Respondent, have affirmed that the amount has been paid

by the Appellant for the year 2011-12 during 2015 under protest and no claim has been raised regarding the same from the office of Respondent.

9. The Appellant has prayed for the following relief against the impugned order passed by the respondent vide Lr. No. DCEI/DEI/BLY/2017-18/2407-11 Dt. 23.09.2017

a) Request to give instructions to Respondent to adjust the Advolorem tax paid for the financial year 2011-12, paid during 2015 i.e., on 31.01.2015 amounting Rs. 93,43,548/- which was paid from their end under protest, the amount pertains to Tax liability raised on account of the generation of electricity as per the orders of Government of Karnataka issued under Section 11 of the Electricity Act, 2003.

b) Request to give instructions to Respondent to withdraw Rs. 1,35,05,749/- the demand of Electricity Tax for the financial year 2015-16 raised on account of the generation of Electricity by the Appellant as per the orders of the Government of Karnataka under section 11 of the Electricity Act, 2003. It is also requested to waive 5% charges as required to be paid under Section 9A(2) of the Karnataka Electricity (Taxation on Consumption or sale) Act, 1959 as charges if paid required to be reimbursed by the Government under Section 11(2) of the Electricity Act, 2003. However,

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amount paid by the Appellant is more than 25% of the disputed amount.

10. On the other hand the Respondent argued denying the facts, opposing the reliefs sought by the Appellant, on the following grounds.
11. The Respondent contend that, "captive consumption" is defined under section 2(1A) of the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959. The Appellant does not fulfil the requirements as stipulated in the above said provision.
12. The Respondent further contends that any captive generating plant, to claim the captive status, it has to fulfil the requirements as stated in Rule 3 of the Electricity Rule, 2005. But the Appellant has not fulfilled the requirements, as in Rule 3 of the Electricity Rules, 2005.
13. The Respondent further contends that, the consumption of electricity tax is being governed by the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 and the Karnataka Electricity (Taxation on Consumption or Sale) Rules, 2014. As the Appellant does not fulfil the requirement as defined in section 2(1A) of the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 and also Rule 3 of the Electricity Rules, 2005. Hence, the

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Appellant to be considered under sub-rule 2 of Rule 3 of the Electricity Rules, 2005.

14. The Respondent states that, the Government of Karnataka vide Order No: EN 2 PPC 2012 Bangalore dated 27.01.2012 issued a Govt. Order that all the Generators in the State of Karnataka shall operate and maintain their generating stations to maximum exportable capacity and shall supply all exportable electricity generated to the state grid for utilization within the state subject to conditions. Hence, the Appellant should have supplied the electricity available after accounting for the captive consumption by its captive use. The Appellant has not supplied electricity according to the maximum exportable capacity. Hence, the Appellant is liable to pay electricity tax accordingly.
15. Further, the Respondent states that as per the joint certified reports, use of minimum 51% is not satisfied by the Appellant. Hence, the generating plant of the Appellant cannot be treated as Captive Generating Plant. Accordingly applicable electricity tax shall be payable by the Appellant.
16. The above Appeal was posted for hearing on 19.12.2017. As per the request of the appellant for adjournment, this office vide letter dated 20.12.2017, adjourned the matter to 26.12.2017 at 3.00 PM. The Appellant was also directed

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to produce the documents in connection with the appeal along with the challan for having paid the appeal charges equal to 5% (five percent) of the amount of the assessment objected to and also the challan for having remitted 25% (twenty five percent) of the electricity tax to be paid against assessment order under appeal.

- 17.. The Appellant appeared on 26.12.2017 and furnished the challan for having paid Rs. 11,42,465/- towards appeal charges equal to 5% (five percent) of the amount of the assessment objected to and requested to adjust 25% of the electricity tax to be paid against assessment order which is already paid towards the tax. The appellant also produced the information as per the direction Dt. 20.12.2017. Since, difference in the statements, the Appellant was directed to file fresh statement with regard to (1) Total units generated, (2) Units utilised for self consumption, (3) Units supplied to grid, (4) Units supplied to Auxiliary consumption in form "B" & "D" for the year 2011-12 to 2014-2015, and in form "F" & "G" for the year 2016-2017.
18. The Appellant submitted the information on 13.01.2018 and on verification the differences were noticed. Hence, direction was given to clarify the differences noticed vide letter Dt. 01.02.2018. Further, the Appellant did not comply the orders, hence reminder was issued vide letter dated 14.02.2018 fixing the date of hearing on 21.02.2018

at 3.00PM. Meantime appellant submitted the clarification on 14.02.2018 vide their letter Dt. 13.02.2018 without certifying the information furnished, claiming that it is evident that the Energy consumed by the generator constitutes 51%. On 21.02.2018 the Appellant appeared and further requested time to 26.02.2018 to submit the certified copies of the clarification as directed by this authority.

19. The Appellant submitted the attested copy of the generation and consumption details on 01.03.2018 vide their letter dated 28.02.2018. Again on verification it was noticed that clarification was not correct. The Appellant was directed to submit the information to the Respondent for verification and then to submit the information to this authority along with an acknowledgment for having submitted the data for verification to the Respondent vide letter Dt. 16.03.2018.
20. The Appellant was directed to submit the clarification sought vide letter dated 16.03.2018 by issuing reminder letter dated 23.05.2018. The Appellant vide their letter dated 31.05.2018 intimated this authority that they have already clarified all the queries vide their letters dated 13.02.2018 and 28.02.2018 respectively and further clarification will be made during the course of hearing requesting to post the appeal on 04.06.2018.

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21. On 04.06.2018, it was noticed that the data furnished was again not tallying, differences were found. Hence to determine the correct assessment as per the powers vested in Rule 13 of the Karnataka Electricity (Taxation on Consumption or Sale) Rules 2014, the Appellant and the Respondent were directed to have joint verification, of the books of accounts maintained as per Rule 4 of the Karnataka Electricity (Taxation on Consumption or Sale) Rules 2014, in the presence of the Additional Chief Electrical Inspector, Mysore and submit the joint certified reports.

22. Accordingly the Joint Certified reports dated 07.06.2018, was filed on 11.06.2018. The appeal was posted for hearing on 23.06.2018.

23. The joint certified reports are as here under.

2011-2012								
Month	Generation	Export	Plant consumption (1-2)	Total Auxiliary consumption including import	Auxiliary consumption from the Grid (45MVA/52-5 Import)	Auxiliary consumption from generator (4-5)	Captive consumption from generator (3-6)	Remarks
	1	2	3	4	5	6	7	
Apr-11	10585000	8980000	1605000	1803840	213300	1590540	14460	
May-11	13500	10000	3500	191460	190860	600	2900	
Jun-11	9748500	3078000	6670500	1830720	80550	1750170	4920330	
Jul-11	10859500	3062000	7797500	1868160	59500	1808660	5988840	
Aug-11	0	0	0	110400	116200	0	0	Negative value taken as zero
Sep-11	0	0	0	81120	102300	0	0	Negative value taken as zero
Oct-11	14188500	8798000	5390500	2206080	64200	2141880	3248620	
Nov-11	743500	424000	319500	225600	102900	122700	196800	
Dec-11	0	0	0	97440	120000	0	0	Negative value taken as zero
Jan-12	2598000	1392000	1206000	429120	92100	337020	868980	
Feb-12	11311500	7070000	4241500	1514880	100500	1414380	2827120	Sec-11
Mar-12	18257000	11394000	6863000	2297760	90000	2207760	4655240	Sec-11
Total	78305000	44208000	34097000	12656580	1332410	11373710	22723290	

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## 2012-13

Month	Generation	Export	Plant consumption (1-2)	Total Auxiliary consumption including import	Auxiliary consumption from the Grid (45MVA/52-5 Import)	Auxiliary consumption from generator (4-5)	Captive consumption from generator (3-6)	Remarks
	1	2	3	4	5	6	7	
Apr-12	18009500	11078000	6931500	2249280	55800	2193480	4738020	Sec-11
May-12	15358500	13308000	2050500	1984320	139200	1845120	205380	Sec-11
Jun-12	0	0	0	73920	96600	0	0	Negative value taken as zero
Jul-12	0	0	0	80160	101700	0	0	Negative value taken as zero
Aug-12	12775500	11098000	1677500	1613280	101100	1512180	165320	
Sep-12	18028500	11334000	6694500	2307840	71700	2236140	4458360	
Oct-12	14099000	8394000	5705000	2069760	121800	1947960	3757040	
Nov-12	12830500	7860000	4970500	1715520	79500	1636020	3334480	
Dec-12	17663500	10586000	7077500	2107200	69000	2038200	5039300	
Jan-13	16479500	9820000	6659500	2027040	97500	1929540	4729960	
Feb-13	17669500	9072000	8597500	2307840	5700	2302140	6295360	
Mar-13	19277000	11196000	8081000	2495040	37800	2457240	5623760	
Total	162191000	103746000	58445000	21031200	977400	20098020	38346980	

## 2013-14

Month	Generation	Export	Plant consumption (1-2)	Total Auxiliary consumption including import	Auxiliary consumption from the Grid (45MVA/52-5 Import)	Auxiliary consumption from generator (4-5)	Captive consumption from generator (3-6)	Remarks
	1	2	3	4	5	6	7	
Apr-13	19296500	11722000	7574500	2432640	98700	2333940	5240560	
May-13	20585000	17604000	2981000	2578560	72600	2505960	475040	
Jun-13	0	0	0	76800	96600	0	0	Negative value taken as zero
Jul-13	0	0	0	91680	112800	0	0	Negative value taken as zero
Aug-13	11203500	3326000	7877500	1498080	127800	1370280	6507220	
Sep-13	16775000	4764000	12011000	2146560	35100	2111460	9899540	
Oct-13	18326000	5688000	12638000	2347680	12000	2335680	10302320	
Nov-13	15946500	2808000	13138500	1887840	57600	1830240	11308260	
Dec-13	20852500	11588000	9264500	2270400	0	2270400	6994100	
Jan-14	9269500	4098000	5171500	1103040	50700	1052340	4119160	
Feb-14	19691500	12340000	7351500	2174880	6900	2167980	5183520	
Mar-14	17777500	10456000	7321500	2052000	63900	1988100	5333400	
Total	169723500	84394000	85329500	20660160	734700	19966380	65363120	

2014-15								
Month	Generation	Export	Plant consumption (1-2)	Total Auxiliary consumption including import	Auxiliary consumption from the Grid (45MVA/ 52-5 Import)	Auxiliary consumption from generator (4-5)	Captive consumption from generator (3-6)	Remarks
	1	2	3	4	5	6	7	
Apr-14	17939000	10190000	7749000	2076480	39000	2037480	5711520	
May-14	20792000	11224000	9568000	2393280	0	2393280	7174720	
Jun-14	17656000	5134000	12522000	2176320	9600	2166720	10355280	
Jul-14	21035500	9786000	11249500	2338080	3300	2334780	8914720	
Aug-14	20514500	11382000	9132500	2312640	31800	2280840	6851660	
Sep-14	18488000	4398000	14090000	2332320	18000	2314320	11775680	
Oct-14	19020000	10808000	8212000	2198400	71700	2126700	6085300	
Nov-14	17998500	4938000	13060500	2145600	31500	2114100	10946400	
Dec-14	19820500	6868000	12952500	2217600	30900	2186700	10765800	
Jan-15	19153500	6720000	12433500	2232000	30000	2202000	10231500	
Feb-15	19151500	5996000	13155500	2217120	1200	2215920	10939580	
Mar-15	18397000	16038000	2359000	2201760	66000	2135760	223240	
Total	229966000	103482000	126484000	26841600	333000	26508600	99975400	

2015-16								
Month	Generation	Export	Plant consumption (1-2)	Total Auxiliary consumption including import	Auxiliary consumption from the Grid (45MVA/ 52-5 Import)	Auxiliary consumption from generator (4-5)	Captive consumption from generator (3-6)	Remarks
	1	2	3	4	5	6	7	
Apr-15	1391500	1228000	163500	215520	84600	130920	32580	
May-15	0	0	0	55200	76800	0	0	Negative value taken as zero
Jun-15	0	0	0	53760	75000	0	0	Negative value taken as zero
Jul-15	16837500	2336000	14501500	2236320	18300	2218020	12283480	
Aug-15	16333000	3258000	13075000	2041920	50700	1991220	11083780	
Sep-15	20818500	16924000	3894500	2370720	25500	2345220	1549280	Sec.11
Oct-15	22818000	16272000	6546000	2525760	8100	2517660	4028340	Sec.11
Nov-15	21034500	18554000	2480500	2302560	46500	2256060	224440	Sec.11
Dec-15	19693500	17368000	2325500	2194560	73200	2121360	204140	Sec.11
Jan-16	21942000	19408000	2534000	2382720	60000	2322720	211280	Sec.11
Feb-16	19759000	17402000	2357000	2216160	56700	2159460	197540	Sec.11
Mar-16	20518000	18016000	2502000	2347680	75300	2272380	229620	Sec.11
Total	181145500	130766000	50379500	20942880	650700	20335020	30044480	

24. Having heard the parties and after perusal of the case papers as well as the documents made available, it would emerge that the consumption of electricity tax is being governed by the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 and also Rule 3 of the Electricity Rules 2005. For the purpose of convenience and immediate reference Section 2(1A) is extracted herein below;

*“2(1A) ‘Captive consumption’ means electricity consumed for own use to the extent of not less than fifty one per cent of the electricity generated by a Captive Generating Plant situated within the State of Karnataka determined on an annual basis.*

25. As per the above provisions and also joint certified reports, percentage of captive consumption and percentage of auxiliary consumption & percentage of units exported to the grid are calculated year wise is as under

(i)

<b>2011-2012</b>	
Total energy generation	78305000
Total energy exported to grid	44208000
Total captive consumption	22723290
Total auxiliary consumption	11373710
% of energy exported to grid	$\frac{44208000}{78305000} \times 100 = 56.46\%$

*S/S*

% of captive consumption	22723290 ----- x100= 29.02% 78305000
% of Auxiliary consumption	11373710 ----- x100= 14.52% 78305000

(ii)

<b>2012-2013</b>	
Total energy generation	162191000
Total energy exported to grid	103746000
Total captive consumption	38346980
Total auxiliary consumption	20098020
% of energy exported to grid	103746000 ----- x100= 63.96% 162191000
% of captive consumption	38346980 ----- x100= 23.64% 162191000
% of Auxiliary consumption	20098020 ----- x100= 12.40% 162191000

(iii)

<b>2013-2014</b>	
Total energy generation	169723500
Total energy exported to grid	84394000
Total captive consumption	65363120
Total auxiliary consumption	19966380
(%) of energy exported to grid	84394000 ----- x100= 49.72% 169723500
(%) of captive consumption	65363120 ----- x100= 38.52% 169723500
(%) of Auxiliary consumption	19966380 ----- x100= 11.76% 169723500



(iv)

<b>2014-2015</b>	
Total energy generation	229966000
Total energy exported to grid	103482000
Total captive consumption	99975400
Total auxiliary consumption	26508600
(%) of energy exported to grid	$\frac{103482000}{229966000} \times 100 = 44.99\%$
(%) of captive consumption	$\frac{99975400}{229966000} \times 100 = 43.47\%$
(%) of Auxiliary consumption	$\frac{26508600}{229966000} \times 100 = 11.54\%$

(v)

<b>2015-2016</b>	
Total energy generation	181145500
Total energy exported to grid	130766000
Total captive consumption	30044480
Total auxiliary consumption	20335020
(%) of energy exported to grid	$\frac{130766000}{181145500} \times 100 = 72.19\%$
(%) of captive consumption	$\frac{30044480}{181145500} \times 100 = 16.58\%$
(%) of Auxiliary consumption	$\frac{20335020}{181145500} \times 100 = 11.23\%$

The Appellant does not fulfil the requirement as per definition 2(1A) of the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959, and further as per the above calculations, it is crystal clear that the captive consumption by the Appellant is less than 51%. Hence, it

does not come under the category of captive generating plant.

26. Further, it is very clear that any captive generating plant to claim the captive status, it has to fulfil the requirements as stated in Rule 3 of the Electricity Rule, 2005.

Rule 3 of the Electricity Rules, 2005 reads as follows;

*3. Requirements of Captive Generating Plant:- (1) No power plant shall qualify as a 'Captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless-*

*(a) in case of a power plant-*

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

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

*Further Rule 3 (2) of the Electricity Rules 2005 states as hereunder;*

*SG*

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

From the above provisions also, it is very clear that any captive generating plant to claim the captive status, it has to fulfil the requirements as stated in Rule 3(1) of the Electricity Rules, 2005. The Appellant has not fulfilled the requirement of not consuming minimum percentage (51%). Accordingly, as per Rule 3(2) of the Electricity Rules, 2005 if the minimum percentage of captive use is not complied by the Appellant at any year, the entire electricity generated by the Appellant has be treated as if it is a supply of electricity by a generating company.

27. Further, since the Appellant does not fulfils the requirement as in definition 2(1A) of the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 and also Rule 3 of the Electricity Rules, 2005. Hence, the appellant falls under subsection 1 of Section 3 of the

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Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 for payment of Electricity Tax. Section 3 of the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 is extracted herein below;

*“3. Levy of tax on (electricity charges etc.) –(1)  
Subject to the provisions of this Act, there shall be levied and paid to the State Government Electricity Tax on advalorem basis at six per cent on the charges payable on electricity sold to or consumed by, any consumer (excluding arrears) when electricity is supplied by licensee or non- licensee through licensee or otherwise.*

*Provided that when the consumer consumes electricity at concessional rate or free of charge the consumer shall be liable to pay on the rate of charges of electricity levied by the licensees to other consumer.”*

Accordingly the appellant has to pay the applicable electricity tax as per subsection 1 of section 3 of the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959.

SP

28. It is also evident by the order passed by Hon'ble KERC in O.P. No. 15/2015, dated 19.11.2015, the operative portion of the order reads as follows;

*“Para 9) It is made clear that for claiming status the requirements state in Rule 3 of the Electricity Rules, 2005 shall be complied with.*

*Para 10) For the foregoing reasons, we pass the following:*

*“We answer the question raised above in the affirmative. The captive status can be claimed by the Petitioner upon fulfilment of the requirements stated in Rule 3 of the Electricity Rules, 2005”*

29. From the above order passed by the Hon'ble KERC it is also very clear that, the captive status can be claimed by the Appellant upon fulfilment of requirements stated in Rule 3 of Electricity Rules, 2005.

30. The Government of Karnataka vide Order dated 27.01.2012 and dated 16.09.2015 issued orders that, the Generators in the State of Karnataka shall operate and maintain their generating stations to maximum exportable Capacity and shall supply all exportable electricity

*Sp*

generated to the state grid for utilization within the state. The Government Order reads as hereunder.

*“ In the circumstances explained in the preamble and in Exercise of the power Conferred under Section-11 of electricity Act 2003, the State Government here by issues the following direction in the public interest with effect from 1<sup>st</sup> Feb 2012 and will be in force till 31<sup>st</sup> May 2012 or until further order whichever is earlier.*

*(a) All the Generators in the State of Karnataka shall operate and maintain their generating stations to maximum exportable Capacity and shall supply all exportable electricity generated to the state grid for utilization within the state subject to following Conditions”.*

31. Maximum Exportable capacity is not defined either in Electricity Act, 2003 and the Rules & Regulations made their under, However the Central Electricity Regulatory Commission vide L-1/229/2017-CERC dated 14.11.2017 has issued draft notification in which Exportable capacity is defined , which reads as follows:

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*“Exportable capacity means the generation capacity available with a captive generating plant for sale after accounting for the consumption by its captive use”.*

32. In view of the above said draft notification, an opinion was also sought by this Authority vide letter dated 19.06.2018 and letter dated 23.7.2018 by the Ministry of Power, Central Electricity Authority, with regard to Maximum Exportable Capacity, in response to the same the Legal Division of CEA Ministry of power vide File No.CEA-EC-14-12(12)/9/2018-Legal Division/870 received by this authority on dated 06.09.2018 clarifying “Exportable Capacity.” The above said Letter is extracted herein below;

- 1) *As per the said letter of the Government of Karnataka, during shortage of power, the Government of Karnataka, in exercise to its power under section 11 of the Electricity Act, 2003, issued order to all the generators in the state of Karnataka to run their plants to maximum exportable capacity.*
- 2) *The matter has been referred to CEA in respect of an appeal filed by M/s. Star Metallics & Power Pvt Ltd, Bellary before the Chief Electrical Inspector, Government of*

*JS*

*Karnataka for claim of the Electricity Tax exemption for the exported electricity to the grid.*

- 3) *The maximum exportable capacity is not defined in the Electricity Act, 2003 and Rules/Regulations made thereunder, however, the draft Central Electricity Regulatory Commission (Grant of Connectivity and General Network Access to the inter-state transmission system and other related matters) Regulations, 2017 has proposed the definition of Exportable Capacity which is as under:*

*“Exportable Capacity” means the generation capacity available with a captive generating plant for sale after accounting for the consumption by its captive user.*

*Keeping in view the proposed definition of the Exportable Capacity and the instant context it may be inferred that the maximum exportable capacity may be considered as any capacity that is available with a captive generating plant for sale after accounting for the consumption by its captive user.*

*bs*



From the above opinion it is also very much clear that after satisfying the conditions of Rule 3 of the Electricity Rules, 2005, i.e., after satisfying the usage of 51% of the electricity generated by the generating plant, the balance available electricity shall be exported to grid. In view of the above said reasons the Appellant has not satisfied the above conditions, accordingly the contention of the Appellant that generation made for the year 2011-12 and for the year 2015-16 is at the Appellant's maximum capacity and thus the Appellant is entitled to relief under section 11(2) of the Electricity Act, 2003 is not correct.

33. From the above said reasons it is clear that the Appellant has not utilised minimum 51% of the total generated units for its captive usage as per section 2(1A) of the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 and also not satisfied the requirements as stipulated in Rule 3 of the Electricity Rules 2005 and also not supplied electricity according to the definition of maximum exportable capacity as clarified by Central Electricity Authority. Hence the generating unit cannot be treated as "Captive Generating Plant". Further, as per the joint certified reports it is evident that the Appellant has suppressed the actual data, accordingly the Appellant is not only liable to pay tax for the year 2011-12 and 2015-16, but also liable to pay the applicable electricity tax for the years 2011-2012, 2012-2013, 2013-2014, 2014-2015

& 2015-2016, as the Appellant has not consumed minimum 51% of electricity generated for captive use.

For the reasons afore stated, I proceed to pass the following;

**ORDER**

In view of the above said reasons, the grounds urged by the Appellant is untenable, accordingly the appeal filed by the Appellant is rejected. The Appellant is liable to pay the applicable electricity tax for the years 2011-2012, 2012-2013, 2013-2014, 2014-2015 & 2015-2016 and the Respondent is directed to collect the applicable electricity tax as per law for the year 2011-2012 to 2015-2016 with applicable interest.

Date: 10.09.2018  
Bengaluru

  
(Sri. D H Basavaraju, CEIG)  
Chief Electrical Inspector to Govt.  
Electrical Inspectorate,  
Bangalore.