IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 12.08.2021

PRONOUNCING ORDERS ON : 17.08.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.8634, 11288, 11294, 13735, 13736, 13737, 13739, 33795, 33802, 33813, 33818, 34444, 34445, 34447, 34900, 34903, 35201, 35204, 35208, 35312, 35382 of 2019 and 372, 410, 419, 423, 1244, 1253, 1618, 1621/2020 and 1703 of 2020
and
WMP.Nos.9155,11642,11643,11644,13813,13819,13810,13811,13812, 13814,13815,13820,34300,34309,35120,35122,35124,35671,35675, 35989,35991,35995,35981,35985,36118,36216/2019
and
421,469,475,482,477,1501,1515,1899,1896,1972,1974 /2020

W.P.No.8634/2019
M/s.Ammarun Foundaries,
Repd by its
Asst.General Manager C.Senthilkumar
HTSC No.174,
SF. No.80/6A, Rathinagiri Road,
Vilankuruchi (Po),
Coimbatore. ...Petitioner

WP No.11288 of 2019
1 M/S.BRIGHT FOUNDARIES COIMBATORE PVT.LTD. HTSC NO.381 NO.115 V.K. ROAD BR. PURAM PELLAMEDU COIMBATORE REP. BY ITS JOINT MANAGING DIRECTOR S.BALRAJ.
...PETITIONER

WP No.11294 of 2019
1 M/S.DINESH TEXTILES HTSC NO.250 NO.299 ONNIPALAYAM ROAD NO.5 BILLICHI SINNAMADDAM PALAYAM COIMBATORE REP. BY ITS AUTHORISED SIGNATORY S.RAGURAM.
...PETITIONER

WP No.13735 of 2019
1 M/S.MERIT INDUSTRIES LTD HTSC OLD NO.57 NEW NO.039094320057 SF NO. 426/2 THEKKALUR POST AVINASHI TALUK COIMBATORE-641 654
...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
COIMBATORE ELECTRICITY DISTRIBUTION CIRCLE/METRO,
TATABAD, COIMBATORE - 641 012. ...4th Respondent

WP No.13736 of 2019
1 M/S.SPB ALLOYS STEEL PVT LTD
HTSC OLD NO.498 NEW NO.039094300498 SF NO.
2/4 B3 TELUGUPALAYAM ROAD
COIMBATORE-641 697 ...PETITIONER

WP No.13737 of 2019
1 M/S.SRI RAMAKRISHNA ENGINEERING COLLEGE
HTSC OLD NO.359 NEW NO.
039094300359 SF NO.424 434 435 443/3B 442/3B
CV PATTI VILLAGE
COIMBATORE-641 022 ...PETITIONER

WP No.13739 of 2019
1 M/S.SRI RAMAKRISHNA INSTITUTE
OF TECHNOLOGH HTSC OLD NO.515 NEW NO.
039094300515 PACHAPALAYAM SF NO.288 289
PERUR CHETTIPALAYAM
COIMBATORE-641 010 ...PETITIONER

WP No.33795 of 2019
1 M/S. JAYAVISHNU TEX PROCESSORS
PVT LTD HTSC NO. 220 S.F.NO. 163 / 1
PATCHAKATTUPALAYAM KARAIPUDUR VILLAGE
ARULPURAM POST TIRUPUR REPD. BY ITS
DIRECTOR K.S.VISHNUPRABU
...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
TIRUPUR ELECTRICITY DISTRIBUTION CIRCLE,
TIRUPUR. ...4th Respondent

WP No.33802 of 2019
1 M/S. KASIPALAYAM CETP PVT LT
D HTSC NO. 203 S.F.NO. 250/1,250,249 CETP
GARDENS S. PERIYAPALAYAM POST TIRUPUR 641
606 REPRESENTED BY ITS MANAGING DIRECTOR N.
PARAMASIVAM ...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
TIRUPUR ELECTRICITY DISTRIBUTION CIRCLE,
TIRUPUR. ...4th Respondent

WP No.33813 of 2019
1 M/S. VEERAPANDY CETP PVT LTD
HTSC. NO.39 KARUPPA GOUNDAM PALAYAM COTTON MARKET POST TIRUPUR-641 604 REP BY ITS EXECUTIVE DIRECTOR P.S.S.S.KUMAR
...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
TIRUPUR ELECTRICITY DISTRIBUTION CIRCLE,
TIRUPUR. ...4th Respondent

WP No.33818 of 2019
1 M/S.EASTERN CETP COMPANY PV
T LTD HTSC NO. 202 S.F.NO. 3 / 1 4/2 NALLUR VILLAGE KASIPALAYAM VIJYAPURAM POST TIRUPUR-641 606 REP BY ITS MANAGING DIRECTOR M.MUTHUKUMARASAMY ...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
TIRUPUR ELECTRICITY DISTRIBUTION CIRCLE,
TIRUPUR. ...4th Respondent

WP No.34444 of 2019
1 SUPER TECH CASTINGS PVT. LTD.
HTSC NO. 143 S.F.NO. 119 3A6 MYLAMPATTY ROAD MYLAMPATTY POST COIMBATORE - 641014 REP. BY ITS AUTHORIZED SIGNATORY C.K.SATHISH KUMAR ...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
COIMBATORE ELECTRICITY DISTRIBUTION CIRCLE/METRO,
TATABAD, COIMBATORE - 641 012. ...4th Respondent

WP No.34445 of 2019
1 M/S. BRIGHT CASTINGS
HTSC NO. 238 NO. 115 V.K.ROAD THANNEERPANDAL COIMBATORE DISTRICT REP. BY ITS AUTHORIZED SIGNATORY S.BALRAJ
...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
COIMBATORE ELECTRICITY DISTRIBUTION CIRCLE/METRO,
TATABAD,
COIMBATORE - 641 012. ...4th Respondent

WP No.34447 of 2019
1 AMARAVATHY DYING (P) LTD.
HTSC NO. 90 NO. 15/ 256 AMARAVATHY NAGAR
POST UDUMALPET - 642102 REP. BY ITS
AUTHORIZED SIGNATORY N.NEELARAJ ...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
UDUMALPET ELECTRICITY DISTRIBUTION CIRCLE/METRO,
UDUMALPET ...4th Respondent

WP No.34900 of 2019
1 M/S KATHIRESAN MILLS HT SC N
O. 252 S.F. 76/3B KITTUSURAMPALAYAM
VILLAGE KURUMBAPALAYAM (PO) POLLACHI
COIMBATORE REPD BY ITS AUTHORIZED SIGNATORE
R.CHINNUSAMY ...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
UDUMALPET ELECTRICITY DISTRIBUTION CIRCLE/METRO,
UDUMALPET ...4th Respondent

WP No.34903 of 2019
1 M/S.JAYSHREE TEXTILES P.LTD.
HTSCNO. 181 S.F. 76/3B KITTASURAMPALAYAM
PANIKKAMPATTY (PO) POLLACHI 642 002 BY ITS
AUTHORIZED SIGNATORY R. CHINNUSAMY
...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
UDUMALPET ELECTRICITY DISTRIBUTION CIRCLE/METRO,
UDUMALPET ...4th Respondent

WP No.35201 of 2019

1 M/S. PKP PROCESSORS HTSC
NO. 116 SF.NO. 415/ 2 ANGERIPALAYAM
TIRUPUR - 641603 BY ITS AUTHORIZED
SIGNATORY P.MUTHUR KRISHNAN

...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
TIRUPUR ELECTRICITY DISTRIBUTION CIRCLE,
TIRUPUR. ...4th Respondent

WP No.35204 of 2019

1 M/S. PRESSANA FLOUR MILLS P LTD.
HTSC NO. 383 SF.NO. 455/ 1A1
DEVAMBADI VILLAGE RAMAPATTINAM POST
POLLACHI TALUK COIMBATORE BY ITS AUTHORIZED
SIGNATORY M.VINOD KUAMR ...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
UDUMALPET ELECTRICITY DISTRIBUTION CIRCLE
UDUMALPET ...4th Respondent

WP No.35208 of 2019

1 M/S. LAKSHMI NARAYAN GAURISH
ANKAR ENTERPRISES P LTD. P.B.NO. 2201
BALAJI GARDENS SUGARCANE BREEDING INSTITUTE
P.O. COIMBATORE - 641007 REP. BY ITS
AUTHORIZED SIGNATORY K.MANOHARAN

...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
PALLADAM ELECTRICITY DISTRIBUTION CIRCLE
PALLADAM ...4th Respondent

WP No.35312 of 2019

1 M/S. PVS TEXTILES P. LTD. H
TSC NO. 16 PETHANAICKENPALAYAM PONGALUR
(PO) P.PULIAMPATTY (VIA) TIRUPPUR 635459
BY ITS GENERAL MANAGER K.MURUGASAMY

...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
TIRUPUR ELECTRICITY DISTRIBUTION CIRCLE,
TIRUPUR. ...4th Respondent

WP No.35382 of 2019

1 M/S.JAYAVENKATALAKSHMI TEXTI
LES(P) LTD HTSC NO.142 NO.406 3B GOBI ROAD
PAPPANKULAM CHEYUR AVINASIHI TALUK CHEYUR-
641 655 BY ITS DIRECTOR N.M.THANGAVEL

...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER,
TANGEDCO,
TIRUPUR ELECTRICITY DISTRIBUTION CIRCLE,
TIRUPUR. ...4th Respondent

WP No.372 of 2020

1 GBJ HOTELS PRIVATE LIMITED
REP BY ITS AUTHORIZED SIGNATORY S.PALANISAMY
HAVING ITS REGISTERED OFFICE AT 164/165
AVINASHI ROAD PEELAMEDU
COIMBATORE 641 018 ...PETITIONER

- VS -

1 TAMIL NADU GENERATION AND
DISTRIBUTION CORPORATION LTD REP BY ITS
CHAIRMAN ANNA SALAI
CHENNAI 2

2 THE SUPERINTENDING ENGINEER
TAMIL NADU GENERATION AND DISTRIBUTION
CORPORATION LTD COIMBATORE / ERODE
DISTRIBUTION CIRCLE COIMBATORE

3 THE ACCOUNTS OFFICER / REVEN
UE TAMIL NADU GENERATION AND DISTRIBUTION
CORPORATION LTD COIMBATORE / ERODE
DISTRIBUTION CIRCLE
COIMBATORE ...RESPONDENT in WP No.372 of 2020

WP No.410 of 2020

1 M/S.PADAYAPPA TEXTILES P LTD
HTSC NO.392 SF NO.18-B3 C5 V.N.PUDUR
UDUMALPET 642 112 TIRUPUR DISTRICT BY ITS
AUTHORIZED SIGNATORY T.N. RAMESAN

...PETITIONER

- VS -

1 THE CHAIRMAN
TAMIL NADU GENERATION AND DISTRIBUTION
CORPORATION LIMITED (TANGEDCO) 10TH FLOOR
144 ANNA SALAI CHENNAI 2

2 THE CHIEF ENGINEER - NCES
TANGEDCO 2ND FLOOR 144 ANNA SALAI CHENNAI 2

3 THE CHIEF FINANCIAL CONTROLLER/
REVENUE TANGEDCO 7TH FLOOR 144 ANNA
SALAI CHENNAI 2

4 THE SUPERINTENDING ENGINEER
TANGEDCO UDUMALPET ELECTRICITY
DISTRIBUTIOHN CIRCLE UDUMALPET

5 THE SUPERINTENDING ENGINEER
TANGEDCO TIRUNELVELI ELECTRICITY
DISTRIBUTION CIRCLE
TIRUNELVELI ...RESPONDENTS 4 & 5 in WP No.410 of 2020

WP No.419 of 2020
1 M/S.POYSHA POWER GENERATION
P LTD PLOT NO 37 RING ROAD LAJPATNAGAR-
IV NEW DELHI- 110 024 REP BY ITS AUTHORIZED
SINGATORY T.N.REMESAN. ...PETITIONER

- VS -

THE SUPERINTENDING ENGINNER
TANGEDCO UDUMALPET ELECTRICITY DISTRIBUTION
CIRCLE UDUMALPET. ...4th RESPONDENT

WP No.423 of 2020
1 M/S.POYSHA POWER GENERATION
P LTD PLOT NO 37 RING ROAD LAJPATNAGAR-
IV NEW DELHI- 110 024 REP BY ITS
AUTHORIZED SINGATORY
T.N.REMESAN. ...PETITIONER

- VS -

THE SUPERINTENDING ENGINNER
TANGEDCO UDUMALPET ELECTRICITY DISTRIBUTION
CIRCLE UDUMALPET. ...4th RESPONDENT

WP No.1244 of 2020
1 M/S. SRE VENKATACHALAPATHY T
EXTILES HTSC NO. 343 S.F.NO. 48/ 3 B1
SINGANALLUR VILLAGE CIVIL AERODROME ROAD
COIMBATORE 641005 REP. BY ITS MANAGER V.
RAJARAM 641005 ...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER
TANGEDCO COIMBATORE ELECTRICITY
DISTRIBUTION CIRCLE/ METRO
COIMBATORE ...4TH RESPONDENT

WP No.1253 of 2020
1 M/S.JAITHIRU RENEWABLE POWER
PVT LTD NO 1/1 GATES WEARS COMPOUND
KANGAYAM ROAD TIRUPUR- 641606 REP BY ITS
AUTHORIZED SINGANTORY K. NARESH KUMAR.
...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER
TANGEDCO PALLADAM ELECTRICITY
DISTRIBUTION CIRCLE
PALLADAM ...4th RESPONDENT

WP No.1618 of 2020
1 M/S. LOTUS CLEAN POWER VENTU
RE PVT LTD. NO. 484 KAMARAJ ROAD
UPPILIPALAYAM POST COIMBATORE 641 015 REPD
BY ITS SENIOR GENERAL MANAGER R. NANDAKUMAR
...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER
TANGEDCO UDUMALPET ELECTRICITY DISTRIBUTION
CIRCLE UDUMALPET ...4th RESPONDENT

WP No.1621 of 2020
1 M/S. MAPLE RENEWABLE POWER PVT. LTD.
NO. 484 KAMARAJ ROAD
UPPILIPALAYAM POST COIMBATORE 641 015 REPD
BY ITS SENIOR GENERAL MANAGER R. NANDAKUMAR
...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER
TANGEDCO UDUMALPET ELECTRICITY DISTRIBUTION
CIRCLE UDUMALPET ...4th RESPONDENT

WP No.1703 of 2020
1 M/S.SRI KALAIVANI SPINNERS
PRIVATE LIMITED REP BY ITS MANAGING DIRECTOR
MR. GOVINDAN RAMASAMY AGE 76 YEARS S/O.
GOVINDAN HAVING ITS REGISTERED OFFICE AT
MYVADI ROAD MYVADI P ...PETITIONER

- VS -

THE SUPERINTENDING ENGINEER
UDUMALPET EDC / TANGEDCO
UDUMALPET ...4th RESPONDENT

.Vs.

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor,144 Anna Salai,
Chennai 600 002.

2. The Chief Engineer -NCES
TANGEDCO, 2nd Floor,
144 Anna Salai, Chennai 600 002

3. The Chief Financial Controller/Revenue,
TANGEDCO 7th Floor,
144 Anna Salai, Chennai 600 002.

4. The Superintending Engineer
TANGEDCO, Coimbatore Electricity
Distribution Circle/North,
Tatabad,
Coimbatore-641 012. 4th Respondent in WP.No.11288,
11294,13736,13737,13739/2019

5. The Superintending Engineer
TANGEDCO, Tirupur Electricity
Distribution Circle,
Tirupur. ...Respondents 1 to 3 in all WP's

PRAYER in W.P.No.8634 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the 4th respondents Impugned Letter bearing Lr.No.SE/CEDC/N/CBE/DFC/AO/REV/AAO/HT/ F.HTSC174/D.137/19 dated 14.03.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO.

WP No.11288 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th respondents impugned Letter bearing Lr.No.SE/CEDC / N/CBE/ DFC /AO/ REV /AAO /HT /A2 / F.HTSC 381/D.177 /19 dated 27/03/2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19/07/2016 issued by the 2nd respondent under the order of the 1st respondent / Chairman, TANGEDCO.

WP No.11294 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th respondents impugned Letter bearing Lr.No.SE/CEDC / N/CBE/ DFC /AO/ REV /AAO /HT /A2 / F.HTSC 250/D.169 /19 dated 27/03/2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 25/06/2015 and 19/07/2016 issued by the 2nd respondent under the order of the 1st respondent / Chairman, TANGEDCO.

WP No.13735 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the 4th Respondents Impugned Letter bearing Lr.No.SE/CEDC/S/DFC/AO/R/AAO/HT/F.AS221/D /2019 dated 31.01.2019 and quash the same as illegal arbitrary without authority of law against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent /Chaiman TANGEDCO.

WP No.13736 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the 4th Respondents Impugned Letter bearing Lr.No.SE/CEDC/N/CBE/DFC/AO/REV/AAO/HT/F.HTSC498 /D.171/19 dated 28.03.2019 and quash the same as illegal arbitrary without authority of law against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent /Chaiman TANGEDCO.

WP No.13737 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the 4th Respondents Impugned Letter bearing Lr.No.SE/CEDC/N/CBE/DFC/AO/REV/AAO/HT/F.HTSC359 /D.209/19 dated 30.03.2019 and quash the same as illegal arbitrary without authority of law against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent /Chaiman TANGEDCO.

WP No.13739 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the 4th Respondents Impugned Letter bearing Lr.No.SE/CEDC/N/CBE/DFC/AO/REV/AAO/HT/F.HTSC515 /D.170/19 dated 28.03.2019 and quash the same as illegal arbitrary without authority of law against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent /Chaiman TANGEDCO.

WP No.33795 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE / TEDC / TPR / DFC / AO / REV / AAO / HT / F.220 / D. 19, DT 07.2019 dated 30.08.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent / Chairman, TANGEDCO.

WP No.33802 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of CertiorariCalling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE / TEDC / TPR / DFC / AO / REV / AAO / HT / F.203 / D. 19, DT 07.2019 and quash the smae as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent / Chairman, TANGEDCO.

WP No.33813 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE / TEDC / TPR / DFC / AO / REV / AAO / HT / F.39 / D.3225. 19, DT 07.2019 dated 30.08.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent / Chairman, TANGEDCO.

WP No.33818 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE / TEDC / TPR / DFC / AO / REV / AAO / HT / F.202 / D3228. 19, DT 07.2019 quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent / Chairman, TANGEDCO.

WP No.34444 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE/ CEDC/ M/ DFC/ AO/ R/ AAO/ HT/ AS.3/ F.Audit/ 19 D.No. 580 dated 30.10.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/ Chairman, TANGEDCO.

WP No.34445 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of CertiorariCalling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE/ CEDC/ M/ DFC/ AO/ R/ AAO/ HT/ AS.3/ F.Audit/ 19 D.No. 581 dated 29.10.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/ Chairman, TANGEDCO.

WP No.34447 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE/ UEDC/ UDT/ DFC/ AO/ R/ AAO/ HT/ AS/ F.BOAB AUDIT/ D 279 dated 18.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/ Chairman, TANGEDCO.

WP No.34900 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of CertiorariCalling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE / UEDC / UDT / DFC / AO / R / AAO / HT / AS / F. BOAB AUDIT / D 278 dated 18.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent / Chairman, TANGEDCO.

WP No.34903 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE / UEDC / UDT / DFC / AO / R / AAO / HT / AS / F. BOAB AUDIT / D 281 / 19 dated 18.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent / Chairman, TANGEDCO.

WP No.35201 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE/ TEDC/ TPR/ DFC/ AO/ REV/ AAO/ HT/ F. 116/ D.3229/ 19 dated 07.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/ Chairman, TANGEDCO.

WP No.35204 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE/ UEDC/ UDT/ DFC/ AO/ R/ AAO/ HT/ AS/ F. BOABAudit/ D 280/ 19 dated 18.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/ Chairman, TANGEDCO.

WP No.35208 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of CertiorariCalling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE/ PALLADAMEDC/ F.AUDIT/ ALLOTMENT OF BANKED ENERGY/ D. 531/ 19 dated 25.09.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/ Chairman, TANGEDCO.

WP No.35312 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE/ TEDC/ TPR/ DFC/ AO/ AAO/ HT/ F. Audit/ D.1141/ 19 dated 21.03.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/ Chairman, TANGEDCO.

WP No.35382 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of CertiorariCalling for the records of the 4th respondents impugned Letter bearing Lr.No.SE/ TEDC / TPR / DFC/ AO/ REV/ AAO/ HT/F. 142/D 323/19 dated 07.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19/07/2016 issued by the 2nd respondent under the order of the 1st respondent / Chairman, TANGEDCO.

WP No.372 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records relating to the impugned order vide Lr. No. SE / CEDC / M / DFC / AO / R / AAO / HT / AS.II / F.Audit / 19 D. No.604 dated 17/18.12.2019 issued by the 2nd respondent herein, quash the same as unlawful, illegal and unconstitutional.

WP No.410 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the 4th respondents Impugned Letter bearing Lr. No. SE / UEDC / UDT / DFC / AO / R / AAO / HT / AS / F. BOABAUDIT / D282 / 19 dated 18.11.2019 and quash the same as illegal, arbitrary, without authority of Law, against the Circular Memo dated 19.7.2016 issued by the 2nd respondent under the order of the 1st respondent / Chairman, TANGEDCO.

WP No.419 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondent impugned letter bearing LR.NO SE/ UEDC/ UDT/ DFC/AO/ WIND/F.BOAB Audit/ D.NO 362/ 2019 dated 21.11.2019 and quash the same as illegal, arbitrary, without authrity of law, against the circular Memo dated 19.7.16 issued by the 2nd Respondent under the order of the 1st Respondent/ Chariman,TANGEDCO.

WP No.423 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondent impugned letter bearing LR.NO SE/ UEDC/ UDT/ DFC/AO/ WIND/F.BOAB Audit/ D.NO 363/ 2019 dated 21.11.2019 and quash the same as illegal, arbitrary, without authrity of law, against the circular Memo dated 19.7.16 issued by the 2nd Respondent under the order of the 1st Respondent/ Chariman,TANGEDCO.

WP No.1244 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE/ CEDC/ M/ DFC/ AO/ R/ AAO/ HT/ ASII/ HT/ F.BOAB(343 16 17)/ D.No. 603/ 2019 dated 12.12.2019 and quash the same as illegal, arbitrary, without authority of law, against the provisions of the Electricity Act, 2003.

WP No.1253 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE/ Palladam/ EDC/ DFC/ AO/ WIND/ AS/F.532 Audit/ Allotment of Banked energy/ D/ 19 dated 25.9.2019 and quash the same as illegal, arbitrary, without authority of law, against the provisions of the Electricity Act, 2003.

WP No.1618 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE / UEDC / UDT / DFC / AO / Wind / F.BOAB Audit / D.No. 365 / 2019 dated 21.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent / Chairman, TANGEDCO.

WP No.1621 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Calling for the records of the 4th Respondents Impugned Letter bearing Lr.No. SE / UEDC / UDT / DFC / AO / Wind / F.BOAB Audit / D.No. 364 / 2019 dated 21.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent / Chairman, TANGEDCO.

WP No.1703 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari Call for the records, relating to the records, relating to the 4th Respondents impugned demand cum show cause notice bearing Lr.No SE / UEDC / UDT / DFC / AO / R / AAO / HT / AS / F.AUDIT / D.156 / 19 dated 23.07.2019 (received on 25.07.2019) and quash the same as illegal, defective and arbitrary and direct the 4th Respondent to forthwith restore the power connection of the Petitioner.

For Petitioner : Mr.Rahul Balaji
Mr.R.S.Pandiyaraj
Mr.S.Satish

For Respondents : Mr.M.Abdul Kalam
Standing Counsel

COMMON ORDER

The common issue that has been raised in these batch of writ petitions is that all the petitioners are under a group captive scheme, by investing in the captive generating plants, such as wind energy generators, as shareholders and based on the facilities provided under the Electricity Act, 2003 and rules there under. The petitioners are wheeling the open access power to their High tension service connection (HTSC) generated by such captive generating plants, under the scheme of open access by paying the applicable wheeling charges as fixed by the state commission from time to time. Almost all these petitioners were governed by the Circular Memo, dated 19.07.2016 issued by the Chief Engineer-NCES, TANGEDCO, under the orders of the first respondent viz., the Chairman, TANGEDCO, when they entered into the existing Energy Wheeling Agreement. The grievance of the petitioners is that the first and second respondents came up with a modified circular memo dated 31.03.2017, which was made applicable with effect from 01-04-2017, but however based on Audit slip No.90, dated 23-07-2018, the current consumption bills for the respective HTSC was revised for the period from 2015 to 31-03-2017 (within this timespan the period differs for each petitioner) and demand was made by the fourth respondent for the payment of the differential liability and the same has been put to challenge in all these writ petitions.

2.In order to understand the background about Captive generating plants, open access system, group captive scheme, energy wheeling agreement, wind tariff orders and wheeling charges fixed by TNERC, banking account for unutilised energy, redrawing of banked energy from the banking account during lean seasons etc., it is absolutely necessary to take note of the various developments that took place after the coming into force of the Electricity Act, 2003 (herein after referred as "The Act').

3.The Act encouraged private participation in the field of generation of electricity and accordingly it provided for setting up Captive generation plants (CGP) considering the huge gap existing between the demand and supply. Many private players started setting up such CGP and started distributing electricity to the constituent consumers by utilising the infrastructure available with the respondents and by paying appropriate wheeling/transmission charges as fixed by TNERC from time to time. A huge opportunity was created for private players to enter into the field of generation, transmission, distribution and sale of electricity. This was further widened with the introduction of open access system. In addition to the power supplied by TANGEDCO, it is also open to a consumer to get into a group captive scheme by investing in the captive generation plants, such as wind energy generators, as share holders and based on the same, a person or entity can wheel the open access power to their respective HTSC connection from the power generated by CGP by paying the applicable wheeling charges.

4.Insofar as wind energy generators are concerned, there is a facility provided for banking the energy into an account. If the wind energy is not utilised fully during a month, the balance of it, can be transferred to a banking account on payment of charges. During the lean seasons(when there is no sufficient wind to generate energy), such banked energy is allowed to be redrawn from the account for adjustment of the petitioners consumption. Further the un utilised banked wind energy at the end of the financial year i.e. 31st March, is entitled for encashment at the rate of 75% of the relevant feed-in tariff rate as sale to the TANGEDCO.

5.The wind Tariff Order No.1 of 2009, dated 20.03.2009 issued by TNERC, at Para 8.2.3 of the order provides for banking of wind energy. The banking period shall be for a period of twelve months commencing from the 1st of April and ending on 31st March of the following year. The energy generated during April shall be adjusted against consumption in April and the balance surplus energy 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. If wind energy is not utilized fully during a month, the balance of it, will be transferred to a banking account on payment of banking charges by units and accordingly, during the lean seasons of wind energy, such banked energy is allowed to be redrawn from the banking account for adjustment for the Petitioner’s consumption. Further the unutilized banked wind energy at the end of the financial year i.e. 31st March, is entitled for encashment at the rate of 75% of the relevant feed-in tariff rate as sale to the Respondents. In the matter of Group Captive Generators where the generators are supplying power to Group Captive Users, such banking arrangement is regulated by way of common banking account and the allotment from the common banking account will be done by the Generator based on the availability and demand among the captive users.

6.TNERC was dealing with a case where the Captive Generator terminated the existing agreement and executed a fresh supplemental agreement for wheeling the power to the new service connection. The TNERC by order dated 26.08.2009 made in D.R.P.No.8 of 2009, held that unutilized banked energy of a captive generator/consumer, on termination of the agreement, can be transferred and adjusted in the fresh High tension service connection with which the fresh agreement is executed.

7.The chief financial controller (CFC)/Revenue based on the above order passed by TNERC, issued a circular memo dated 03-01-2013 and l directed as follows:-

> "2. In this Connection it is stated that, the Hon'ble TNERC on 26.08.2009 in DRP NO.8 of 2008 filed by M/s.Mirra and Mirra Industries, ordered to transfer the balance unutilized units available in one HT service to other HT service on account of change of utilization point by entering a new agreement on termination of existing agreement.
>
> 3. In the light of the above, it is informed that, the unutilized banking units remaining in the HT Sc No.1 of Tirunelveli EDC may be transferred and adjusted in Ht SC No.1 of Mettu EDC, HT Sc No.42 of Perambalur EDS and HT Sc No.1854 of Chennai North EDC as per the revised agreement executed by the HT Consumers".

8.A fresh Circular memo was issued by the CFC Revenue dated 21-05-2018 referring to the earlier circular memo dated 03.01.2013 stating that the circular memo dated 03.01.2013 is withdrawn and informed as follows:-

> "(i)Whenever fresh EWA/Revised EWA is executed to include additional HT service(s) for wheeling/adjustment of energy by the WEGs, the generation on and from the date of execution of the such agreement is only eligible for wheeling and adjustment, as the contract commences from the date of its execution.
> (ii)The unutilized energy prior to the revised EWA will be continued to get adjusted against that service as per the original agreement standing prior to revised EWA or sold to TANGEDCO at the purchase rate as per the terms and conditions of the agreement"

9.Thereafter the Chief Engineer, the second respondent, issued a Circular memo dated 25-06-2015 and directed as follows:-

> "...
> 9. In order to avoid such difficulties and to follow uniform procedure in banking account, the following procedure/instruction is hereby issued:-
> i.Banking account to be maintained slot wise at wind generating end EDC
>
> ...

vi. If a captive consumer go out of wheeling agreement in a middle of year due to name transfer/change in utility, the unadjusted banked units if available at his credit is to be returned to generating end EDC and added to the existing banking account.

vii.As like current month generation, the banked units are also to be allocated to the consumer according to the request of the generator.
Hence all the Supreintending Engineer/Generating End EDC and Wheeling End EDC are requested to adhere the above procedure strictly, for maintaining banking account"

10.Wind Tariff Order No.3 of 2016 dated 31-03-2016 was issued by TNERC. and Para 10.11.6 of the Tariff order provides that the banking period shall be for a period of twelve months commencing from the 1st of April and ending on 31st March of the following year. The energy generated during April shall be adjusted against consumption in April and the balance surplus energy 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. Further the unutilized banked wind energy at the end of the financial year i.e. 31st March, is entitled for encashment at the rate of 75% of the relevant feed-in tariff rate as sale to the Respondents. In the matter of Group Captive Generators where the generators are supplying power to Group Captive Users, such banking arrangement is regulated by way of common banking account and the allotment from the common banking account will be done by the Generator based on the availability and demand among the captive users.

11.The most important and crucial Circular Memo came to be issued on 19-07-2016 by the second respondent after getting the approval from CMD TANGEDCO. As far as the adjustment with respect to banking of wind energy, maintenance of banking account and adjustment of banked wind energy for captive use, this Memo was brought into force with an intention to address all the difficulties faced in maintaining the banking account for adjustment of wind energy for captive use and to adopt a uniform and comprehensive procedure, in maintaining the banking account in the entire State of Tamil Nadu. Part I of the instruction dated 19.07.2016 specifically deals with the procedure to be adopted in maintaining the banking account and adjustment of the energy generated by the WEGs for Group Captive Consumers. Importantly, these instructions are ordered to come into effect from 01.04.2016 and all the Superintending Engineers, coming under the TANGEDCO and NCES, are directed to adhere to the procedures strictly for maintaining the banking account and for adjustment of banked energy for captive use by such group captive consumers. The relevant portion of the Circular Memo dated 19.07.2016 of the NCES is reproduced below:-

> "....
> 3.The instruction already issued to maintenance of the banking account at wheeling end by the Accounts Branch (Revenue) vide reference (2&4) is hereby cancelled.
>
> 4.In order to address all the difficulties faces in maintaining the banking account for adjustment of wind energy for captive use and to adopt a uniform procedure in maintaining the banking account, the following instruction is hereby issued:
> I. Procedure for WEGs with Group captive Consumers and adjustment category:
> …..
> xi. In the case of change in utility, (a) if a new captive consumer(s) is not added as against the terminated consumer(s), the existing banked units in the common banking account, can be allotted and adjusted to the existing captive consumers. (b) if a new captive consumer(s) is added as against the terminated consumer(s) is from the current month generation only. From 2nd month onwards the banked energy can be allotted from the common banking account and adjusted.
> ....
> Vi. The instructions come into effect from 01.04.2016, hence the bills have to be revised accordingly

Hence all the Superintending Engineers/Generation End EDC and Wheeling End EDC are requested to adhere that above procedure strictly, for maintaining banking account and for adjustment of banked energy for captive use (BY ORDER OF THE CMD/TANGEDCO)"

12.From the contents of the above Circular Memo dated 19.07.2016 issued by the NCES, under the order of the Chairman, TANGEDCO,it is clear that with effect from 01.04.2016 onwards, in cases of change of utility when new captive consumer(s) is/are added against the terminated consumer(s), the allotment and adjustment will be from current month generation for the first month and from the second month onwards, the banked energy can also be allotted from the common banking account and allowed for adjustment.This Memo dated 19.07.2016 issued by the NCES, was in force from 01.04.2016 to 31.03.2017 and a categoric stand was taken to the effect that it was strictly adhered by all SEs coming under the 1st and 2nd Respondents. While issuing this Circular memo, the earlier circular dated 25-06-2015(wrongly mentioned as 2016) issued by the second respondent has been specifically referred.

13.It is an admitted case in almost all these writ petitions that the petitioners had entered into energy wheeling agreements during various periods between 19-07-2016 to 31-03-2017 and the Circular memo dated 19-07-2016 was uniformly applied to them.

14.Again under the order of the 1st Respondent/Chairman, TANGEDCO, the 2nd Respondent issued a modified Circular Memo dated 31.03.2017, where the earlier Circular dated 19.07.2016 was referred as Ref. No.5 and consequently revised/modified it to bring the effects of modification with effect from 01.04.2017 onwards. The 2nd Respondent's modified Circular Memo dated 31.03.2017, states that certain clarifications are being sought for from various EDCs regarding the instruction issued for maintenance of banking account in the Circular Memo dated 19.07.2016. Part I of the instruction dated 31.03.2017 specifically deals with the procedure to be adopted in maintaining the banking account and its adjustment of the WEGs with Group Captive Consumers such as of the Petitioner. Importantly, these instructions are ordered to come into effect from 01.04.2017 onwards and all the Superintending Engineers coming under the 1st and 2ndRespondents were directed to adhere to the procedure strictly for maintaining the banking account and for adjustment of banked energy for captive use. The relevant portion of the Circular Memo dated 30/31.03.2017 is reproduced below:-

"Ref: 5. Circular Memo No.CE/NCES/SE/EE/WPP/
AEE2.F. Banking instruction/D.1342/16 dated 19.07.2016.
In the reference cited, instructions have been issued for the maintenance of banking account. Certain clarifications are being sought for from various EDCs regarding the procedure for captive consumption and adjustment category. The following instruction is hereby issued:

> I.Procedure for WEGs with Group captive Consumers and adjustment category:
>
> ...
>
> xi.In the case of change in utility, (a) if a new captive consumer(s) is not added as against the terminated consumer(s), the EWA-wise existing banked units can be allotted and adjusted to the existing

captive consumers. (b) if a new captive consumer(s) is included under the EWA, only the generation on and from the date of execution of such revised EW is eligible for wheeling and adjustment to the consumers under the EWA. The banked energy prior to commencement of this new EWA shall not be allotted to the new captive consumers.

....

Vi.The instructions shall come into effect from 01.04.2017. Hence all the Superintending Engineer/Generation End EDC and Wheeling End EDC are requested to adhere the above procedure strictly, for maintaining banking account and for adjustment of banked energy for captive use.

Chairman cum Managing Director
TANGEDCO"

From the above Circular Memo dated 31.03.2017 issued by the 2nd Respondent under the order of the 1stRespondent/Chairman, TANGEDCO, it is made clear that in cases of change of utility when new captive consumer(s) is/are added against the terminated consumer(s), only the generation on and from the date of the execution of the EWA is eligible for wheeling and adjustment and the banked energy available prior to commencement of new EWA, shall not be allotted to the new captive consumers.

15.This modified circular became a subject matter of challenge in W.P.(MD).No.9320 of 2017. A specific stand was taken by the petitioner therein to the effect that the second respondent ought to have approached TNERC before issuing the modified circular memo and sought for concurrence as per the Electricity Rules 2005. During the course of hearing, the respondents took a specific stand that they are willing to approach TNERC and get the approval to implement the modified/revised circular memo. This court on recording the submissions of the learned AAG, disposed of the writ petition by an order dated 25-05-2017 by directing the first and second respondents to process the matter before TNERC and get the new accounting procedure approved. This court further directed the Circular memo dated 31-03-2017 to be kept in abeyance till final orders are passed by TNERC. It is brought to the notice of this court that the matter is pending before TNERC in M.P.No.20 of 2019 and no final orders have been passed.

16.An Audit slip dated 23-07-2018 seems to have been issued by BOAB Audit to the fourth respondent and has sought to revise the current consumption bills. This audit slip refers to a clarification issued by CFC dated 01-06-2016 and the modified circular dated 31-03-2017 relating to adjustments of banking units and finds that the banking energy has been incorrectly adjusted for the billing period from 1/2017 to 3/17. Hence the

4th respondent was called upon to analyse the short collection due to incorrect adjustment of banked energy and collect the same from the consumers.

17.The above mentioned audit slip has triggered the issuance of show cause notices to the petitioners informing them regarding the incorrect adjustment of banked energy and short collection of current consumption charges. The petitioners gave their reply questioning the tenablity of such a claim made merely based on audit slip. However the explanation given by the petitioners was not accepted and the fourth respondent proceeded to issue the impugned demand by revising the Petitioner’s CC Bills for various periods falling between 2015 to March 2017 on the alleged incorrect adjustment of banked wind energy and consequently directed the petitioners to pay the differential amount. Aggrieved by the same, these batch of Writ petitions have been filed before this court.

17.1.The particulars of the petitioners and the relief sought for by them is tabulated hereunder:

TABULATED STATEMENT

Sr.No	W.P.No.	Name	Demand notice/Audit slip no and period	Prayer

1.	8634 of 2019	Ammarun Foundries	12/2016 to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/CEDC/N/CBE/ DFC/AO/REV/AAO/HT/F.HT SC174/D.137/19 dated 14.03.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman,TA NGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

2	11288 0f 2019	Bright Foundaries Coimbatore P Ltd	12/2016 to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/CEDC/N/CBE/ DFC/AO/REV/AAO/HT/A2// F.HTSC381/D.177/19 dated 27.03.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

3	11294/ 2019	Dinesh Textiles P Ltd	02 /2016 & 03/2016	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/CEDC/N/CBE/ DFC/AO/REV/AAO/HT/F.HT SC250/D.169/19 dated 27.03.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 25.06.2015 and 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman,TA NGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

4	33795 of 2019	Jayavishnu Tex Processors PVt LTd	1/2017 to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/TEDC/TPR/ DFC/AO/REV/AAO/HT/F.220/D 19 DT 07.2019 dated 30.08.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman,TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case

5	33802 OF 2019	Kasipalayam CETP Pvt Ltd	02/2017 TO 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No. SE/TEDC/TPR/DFC/AO/REV/AAO/HT/F.203/D. 19, DT 07.2019 dated 07.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE.

6	33813 OF 2019	Veerapandy CETP Pvt Ltd	02/2017to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No. SE/TEDC/TPR/DFC/AO/REV /AAO/HT/F.39/D. 19, DT 07.2019 dated 07.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

7.	33818 of 2019	Eastern CETP Company Pvt Ltd	12/2016 to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No. SE/TEDC/TPR/DFC/AO/REV /AAO/HT/F.202/D. 19, DT 07.2019 dated 07.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

8	34444/ 2019	Super tech Castings Pvt Ltd	11/2015 &12/2015	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent’s Impugned Letter bearing Lr.No. SE/CEDC/M/DFC/AO/R/AAO /HT/AS.3/F.Audit/19 D No. 580 dated 30.10.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon’ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

9	34445 0f 2015	Bright Castings	01/2017 to 02/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No. Lr.No.SE/CEDC/M/DFC/AO/R/AAO/HT/AS.3/F.Audit/19 D No. 581 dated 29.10.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

10	34447 of 2019	Amaravathy Dying (P) Ltd	03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No. SE/UEDC/UDT/DFC/AO/R/A AO/HT/AS/F.BOAB AUDIT /D 279 dated 18/11/2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

11	34900 Of 2019	Kathiresan Mills	12/2016 to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No. SE/UEDC/UDT/DFC/AO/R/A AO/HT/AS/F.BOAB AUDIT /D 278 dated 18/11/2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

12	34903 of 2019	Jayshree Textiles P Ltd	12/2016 to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/UEDC/UDT/DFC/ AO/R/AAO/HT/AS/F.BOABA udit/D 281/19 dated 18.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

13	35201 of 2019	PKP Processors	02/2017to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/TEDC/TPR/DFC/AO/REV/AAO/HT/F.116/D. 3229/19 dated 07.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

14	35204 of 2019	Pressana Flour Mills P Ltd	03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/UEDC/UDT/DFC/ AO/R/AAO/HT/AS/F.BOABA udit/D 280/19 dated 18.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE.

15	35208 of 2019	Lakshmi Narayan Gaurishanker Enterprises	01/2017 to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/PALLADAMEDC/F.AUDIT/ALLOTMENT OF BANKED ENERGY/D.531/19 dated 25.09.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

16	35312 of 2019	PVS Textiles P Ltd	01/2017 to 3/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/TEDC/TPR/DFC/ AO/REV/AAO/HT/F.Audit. /D.1141/19 dated 21.03.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

17	35382 of 2019	Jeyavenkatalakshmi Textiles (P) Ltd	01/2017 to 3/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No. SE/TEDC/TPR/DFC/AO/REV /AAO/HT/F. 142/D 323/19 dated 07.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

18	410 of 2020	Padayappa Textiles P Ltd	11/2016 to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/UEDC/UDT/DFC/AO/R/AAO/HT/AS/F.BOABAUDIT/D282/19 dated 18.11.2019 and quash the same as illegal, arbitrary, without authority of law, against theCircular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

19	419 of 2020	Poysha Power Generation P Ltd	01/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/UEDC/UDT/DFC/AO/Wind/F.BOAB Audit/D.No.363/2019 dated 21.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

20	423of 2020	Poysha Power Generation P Ltd	01/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/UEDC/UDT/DFC/ AO/Wind/F.BOAB Audit/D.No.362/2019 dated 20.04.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE.

21	1244 of 2020	Sre Venkatachalapathy Textiles	06/2016 to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/CEDC/M/DFC/AO/R/ AAO/HT/ASII/HT/F.BOAB (343 16 17)/ D.No.603/2019 dated 12.12.2019 and quash the same as illegal, arbitrary, without authority of law, against the provisions of the Electricity Act, 2003 and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE.

22	1253 of 2020	Jaithiru Renewable Power (P) Ltd	02/2017 to 03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/Palladam EDC/DFC/AO/WIND/AS/F.532Audit/Allotment of banked energy/D./19 dated 25.09.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

23	1618 Of 2020	Lotus Clean Power Venture P Ltd	03/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4^{th}Respondent's Impugned Letter bearing Lr.No.SE/UEDC/UDT/DFC/AO /Wind/F.BOAB Audit/D.No.365/2019 dated 21.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2^{nd} Respondent under the order of the 1^{st} Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE.

24	1621 of 2021	Maple Renewable Power P Ltd	01/2017	WRIT OF CERTIORARI or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 4th Respondent's Impugned Letter bearing Lr.No.SE/UEDC/UDT/DFC/ AO/Wind/F.BOAB Audit/D.No.364/2019 dated 21.11.2019 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit and proper under in the circumstances of the case and thus render JUSTICE

25	1703of 2020	SRI KALAIVANI SPINNERS	04/2016 to 03/2017	WRIT OF Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of writ to call for the records, relating to the 4th Respondent's impugned demand cum show cause notice bearing Lr. No. SE/UEDC/UDT/DFC/AO/R/ AAO/HT/AS/F.AUDIT/D 156 /19 dated 23.07.2019 (received on 25.07.2019) and quash the same as illegal, defective and arbitrary and direct the 4th Respondent to forthwith restore the power connection of the Petitioner and pass such necessary and suitable orders and thus render justice

26	13735/ 2019	Merit Industries Limited	10/2016 to 03/2017	Writ of Certiorari or any other appropriate writ, order or direction in the nature of a writ calling for the records of the 4th Respondent's impugned letter bearing Lr.No. SE/CEDC/S/DFC/AO/R/AAO /HT/A5/F.AS221/D/2019 dated 31.01.2019 and quash the same as illegal, arbitrary without authority of law against circular memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent Chairman TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case and thus render justice.

27	13736/ 2019	SPB Alloys Steel Pvt Ltd	10/2016 to 03/2017	Writ of Certiorari or any other appropriate writ, order or direction in the nature of a writ calling for the records of the 4th Respondent's impugned letter bearing Lr.No. SE/CEDC/N/CBE/DFC/AO/REV/AAO/HT/A4/F.HTSC 498/D.171/19 dated 28.03.2019 and quash the same as illegal, arbitrary without authority of law against circular memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent Chairman TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case and thus render justice.

28	13737/ 2019	Sri Ramakrishna Engineering College	10/2016 to 03/2017	Writ of Certiorari or any other appropriate writ, order or direction in the nature of a writ calling for the records of the 4th Respondent's impugned letter bearing Lr.No. SE/CEDC/N/CBE/DFC/AO/REV/AAO/HT/A4/F.HTSC 359/D.209/19 dated 30.03.2019 and quash the same as illegal, arbitrary without authority of law against circular memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent Chairman TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case and thus render justice.

29	13739/ 2019	Sri Ramakrishna Institute of Engineering	10/2016 to 03/2017	Writ of Certiorari or any other appropriate writ, order or direction in the nature of a writ calling for the records of the 4th Respondent's impugned letter bearing Lr.No. SE/CEDC/N/CBE/DFC/AO/REV/AAO/HT/A5/F.HTSC 515/D.170/19 dated 28.03.2019 and quash the same as illegal, arbitrary without authority of law against circular memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent Chairman TANGEDCO and pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case and thus render justice.

18.The respondents have filed a counter affidavit and the relevant portions in the counter affidavit are extracted here under :-

> "6.I respectfully submit that it is the admitted case of the Petitioner that its Captive Generator M/s.CWRE Wind Power Private Ltd., had inducted the Petitioner as a Share Holder (Co-owner)/Captive User and consequently entered a revised Wheeling Agreement on 05.12.2016. In other words, the Petitioner was admittedly not a Co-owner/Captive User of M/s.CWRE Wind Power Private Ltd., prior to 5-12-2016. The Petitioner has not arrayed its Captive Generator, as such the Writ Petition is hit by non-joinder of necessary party.

7.I respectfully submit that a conjoint reading of the Statutory Provisions contained in Rule 3 of the Electricity Rules 2005 and the factual aspect as to the Ownership stated in Para 6.0 above, would reveal that the Petitioner cannot claim any benefit that may have accrued prior to 05.12.2016, i.e. prior to the execution of revised Energy Wheeling Agreement. While the Petitioner's ineligibility is at the threshold itself, the Petitioner cannot claim for adjustment of energy generated prior to 05-12-2016, as the petitioner was not one of the Co-owner/Captive User as mandated in Electricity Rule, 2005, prior to 05.12.2016. In Other word, the Petitioner as per the provisions of law cannot claim adjustment as a matter of right, as it is not entitled to any benefit based on any of the respondent's Circular of whatsoever nature or circumstances.

8.I respectfully submit that the aforesaid ineligibility has been the stand of the TANGEDCO ever since, as could be seen from its letter No. CFC/FC/DFC/AAO.HT/AS.3/REV/D.No.100/13 dated 21-05-2013 (Pages 1 to 2 of the Petitioner's Typeset). So also the same was clarified in Memo.No.CFC/REV/FC/REV/AS.3/D.No.277/16 dated: 1-6-2016 (Pages 3 to 7 of the Petitioner's typeset at Para 2/page 5) ; reiterated in Circular, memo. No. CE/ NCES/ SE/ EE/ WPP/ AEE2/F. Banking instruction/D.903/17 dated 30/31.03.2017 (Pages 50 to 53 of the Petitioner;s typeset at Para I (xi)/ page52); further working instructions issued in Circular.Memo.No.CFC/REV/DFC/REV/AS.3/D.No.384/17, dated 3.10.2017 (Pages 59 to 72 of the Petitioner's Typeset at Para 4.3/page 69); and submitted before this Hon'ble Court in W.P.(MD).No.6221 & 6222 of 2018 which came to be disposed accordingly on 28-03-2018 (Pages 73 to 77 of the Petitioner's Typeset at Para 4/page 75-76). Therefore, the Statutory Provisions contained in Section 2(8) of the Electricity Act 2003 read with Section 9(2) and Rule 3 of the Electricity Rules 2005 and the Circulars/instructions/clarifications issued aforesaid within the four corners of the aforesaid statutory provisions will alone prevail. As the Petitioner's claim falls outside the four corners of law as aforesaid, the Writ Petition which is contrary to the Statutory Provisions, should necessarily fail. It is also not the case of the Petitioner that its claim has the backing of the

Statutory Provisions. Consequently, the Petitioner is not entitled to Certiorari in the absence of establishing before this Hon'ble Court that it has the backing of the Statute and that the respondent had in fact acted contrary to any such Statutory Provisions.

9.I respectfully submit that, without there being any Statutory backing under the Electricity Laws in force, the Petitioner is intending to create a non existing right in law from the Circular Memo No.CE/NCES/SE/EE/WPP/AEE2.F.Banking Instruction/D.1342/16 dated 19-07-2016 (Pages 8 to 12 of the Petitioner's Typed set as Para I(ix)/ page10).

10.I respectfully submit that it is the regular practice of the TANGEDCO to issue working instructions from the Head Quarters office concerned whenever any Tariff Orders are issued by the Tamil Nadu Electricity Regulatory Commission to notify to the Circle/Offices concerned of the TANGEDCO about the issuance of such Tariff Orders and the further course of action to be taken there for to implement. In such circumstances, pursuant to the Wind Tariff Order of the TNERC issued in Order No.3 dt: 31-3-2016, the 2nd Respondent has generally issued the working instructions as has been the practice hitherto followed as aforesaid.

19.Heard Mr.Rahul Balaji, Mr.R.S.Pandiyaraj, and Mr.S.Satish learned counsel for petitioners and Mr.Abdulkalam, learned Standing Counsel appearing on behalf of the respondents.

20.This court has carefully considered the submissions made on either side and the materials available on record.

21.This is a classic case of how two wings of TANGEDCO viz., the Chief Engineer-NCES and Chief Financial Controller/Revenue are dealing with the same issue in two diametrically opposite directions. The concept of transfer of un utilised wind energy to a banking account and redrawing it during lean season and encashment of the un utilised banked wind energy at the end of the financial year, are in the nature of deeming fiction. This court is reminded of the popular observation made by Lord Asquith in East End Dwellings Co. Ltd Vs Finsbury Borough Council reported in (1951) 2 All E R 587 and the same is extracted here under:

> "when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it - one must not permit his 'imagination to boggle' when it comes to the inevitable corollaries of that state of affairs".

22. The 2nd respondent seems to be understanding the issue in the manner observed by Lord Asquith but however the 3rd respondent seems to be looking at the issue purely from an accounting perspective and as a result he is "permitting his imagination to boggle". That is the reason why right from the start, both these authorities are taking divergent views on the issue.

23.The short issue that arises for consideration is as to whether the revised demand made by the fourth respondent towards the differential amount due to the alleged incorrect adjustment of banked wind energy is legally sustainable.

24.A careful reading of the impugned proceedings of the fourth respondent and the counter affidavit of the third respondent, justify the revised demand made against the petitioners on the following grounds:

> (a) The requirements of captive generating plant as provided under Rule 3 of the Electricity Rules, 2005 is not satisfied for the period before the agreement was terminated by the captive user who came into the picture only from the date of execution of fresh energy wheeling agreement and became entitled from that date for allotment of energy generated from the captive generator with whom the fresh energy wheeling agreement was entered into.

> (b)The instructions dated 21-05-2013, 01.06.2016 and Circular Memo dated 31-03-2017, based on the Electricity Rules, 2005, makes it very clear that the banked energy prior to fresh energy wheeling agreement cannot be allotted to the new captive users and at the best the unutilised banked energy generated during the terminated agreement period at the end of the financial year, if any, after allotment to the new captive user, can be encashed at the rate of 75% of the relevant purchase tariff.

(c) The Circular Memo dated 19-07-2016, did not supersede the letter dated 21-05-2013 and Memo dated 01-06-2016 and that apart after the issuance of Circular Memo dated 31-03-2017, the earlier Memo dated 19-07-2016, stood modified.

(d) The order passed in W.P(MD).No.9320 of 2017, dated 25-05-2017, pertained to only the new energy accounting procedure which was directed to be kept in abeyance till the issue is decided by TNERC. Therefore, till it is decided by TNERC, the procedure prescribed in letter dated 21-05-2013 and Memo dated 01-06-2016, will be applicable. and;

(e) The order passed in W.P(MD).Nos.6221 and 6222 of 2018, has recognised this stand taken by TANGEDCO and the respondents were directed to adjust banked energy to the existing captive users prior to the agreement by encashing it at the rate of 75% of the relevant purchase tariff.

25.This Court will now proceed to answer all the above issues and determine whether the same justifies the revised demand made against the petitioners. Before undertaking this exercise, it must be borne in mind that the trigger for the revised demand was the Audit Slip No.90, dated 23-07-2018. Insofar as the scope of judicial scrutiny into an audit slip/report is concerned, this Court had an occasion to deal with it in Godrej Properties Limited vs. Accountant General (A &E), Tamil Nadu and Others in W.P.No.29304 etc., of 2019 and by order dated 08-12-2020, it was held as follows:-

> "21.As rightly contended by the learned Additional Solicitor General of India appearing on behalf of the 1st respondent, the Audit Inspection Report is always issued to the concerned Department and not to any individual or third party. No individual or third party will have any say on the Audit Report or Audit Objections. Ultimately, when it is sought to be accepted and implemented by the concerned Department, the action of the Department can become a subject matter of challenge. Incidentally, during those proceedings, the findings made in the Audit Inspection Report and which has been adopted by the Department, can be subjected to judicial scrutiny. To put is simply, if the Audit Objections remains as it is without being implemented or acted upon, no one can be allowed to challenge the same by way of

filing a Writ Petition under Article 226 of the Constitution of India. This will typically happen in a case where the Department justifies its action and contest the findings in the Audit Report. However, when the Department decides to accept and act upon the Audit Objection and take action against the concerned person, the Audit Observations / Objections, will be treated as if it is forming part of the action initiated by the concerned Department and therefore will be subject to judicial scrutiny. Even in such a case, the Audit Report cannot be challenged and only the consequential action initiated based on the Audit Objection can be put to challenge".

26.In the present case, the audit slip has been acted upon by the 4th respondent and hence, this Court can always have a look at the audit slip in order to ascertain the basis on which it was issued. The audit party had placed reliance upon the 3rd respondent's letter dated 01-06-2016, revised Circular Memo dated 31-03-2017 and further Circular Memo issued by 3rd respondent dated 03-10-2017 and had come to a conclusion that the banked energy prior to commencement of the new wheeling agreement should not be allotted to the new captive consumer. Hence, the incorrect adjustment of banked energy and short collection of current consumption charges was directed to be recovered. It is quite surprising that the audit party, for reasons best known decided to place reliance upon letters and memos which supported its view and completely neglected the Circular Memo dated 19-07-2016, which was in force during the relevant point of time for the period 01-04-2016 to 31-03-2017. Once the audit slip was received, the 4th respondent ought to have brought to the notice of the audit party the relevant Circular Memo dated 19-07-2016 and instead the 4th respondent decided to act upon the audit slip which ultimately trigerred the issuance of the revised current consumption bills to the petitioners.

27.This Court will now proceed to consider grounds a, b and c and make an analysis to find out if they justify the action taken by the respondents. The 3rd respondent viz., the CFO/revenue, who was looking at the issue only from an accounting perspective, was never comfortable in giving the benefit of an accrued benefit to the new captive user who comes into the scene during the interregnum period after the execution of the fresh wheeling agreement. For proper appreciation of the stand taken by the 3rd respondent, it will be beneficial to extract the relevant portions from letter dated 21-05-2013, hereunder:

2.The instructions issued inadvertently vide Lr.CFC/REV/FC/DFC/AAO/HT/D.No.12/12-13, dated 03.01.2013, is hereby withdrawn and in this regard, it is informed as follows:

(i) Whenever fresh EWA/Revised EWA is executed to include additional HT Service(s) for wheeling/adjustment of energy by the WEGs, the generation on and from the date of execution of the such agreement is only eligible for wheeling and adjustment, as the contract commences from the date of its execution.

(ii) The unutilized energy prior to the revised EWA will be continued to get adjusted against that service as per the original agreement standing prior to revised EWA or sold to TANGEDCO at the purchase rate as per the terms and conditions of the Agreement.

3.In view of the above, the unutilized banked units remaining in HT.SC.No.1, M/s.India Cements Ltd., as on 17.11.2012 could not be transferred and adjusted in HT.SC.No.13 of Mettur EDC, HT.SC.No.42 of Perambalur EDC and HT.SC.No.1854 of Chennai North EDC as per the revised agreement.

4.Therefore, the Superintending Engineer/Tirunelveli is hereby requested to withdraw the already allotted unutilized banked units which was remaining in HT.SC.No.1 of Tirunelveli EDC as on 17.11.2012, from the aforesaid HT Services [3 Nos]. Pursuant to the above, the Superintending Engineer/Mettur, Perambalur and Chennai North EDCs are also requested to revise the respective C.C.Bills, if so, the short levy amount shall be included in the ensuing respective C.C.bills without fail. In this regard, necessary compliance report shall be furnished to this office immediately.

28.The 3rd respondent once again relied upon letter dated 21-05-2013 and issued a clarification dated 01-06-2016, reiterating the same stand and gave the following direction:

3.Under the said circumstances, the benefit of 23,09,015 units of unutilized banked energy in existence prior to the execution of the Second Energy Wheeling Agreement cannot be adjusted against the consumption of HT units. However, as per clause 6(2) of the terminated Agreement, the unutilized energy of M/s.S.G.Wind Farm (P) Ltd., which has already been injected into TANGEDCO's grid as on the date of termination of agreement, may be eligible for encashment at the rate of 75% of relevant purchase tariff.

29.The 3rd respondent obviously took note of Rule 3 of the Electricity Rules, 2005 and gave it an interpretation as is reflected in the above two letters. The interpretation given by the 3rd respondent pales into insignificance after the coming into force of the Circular Memo dated 19-07-2016, issued by the 2nd respondent on the approval and orders of the 1st respondent. Once this Circular Memo came into force, the two earlier letters issued by the 3rd respondents gets superceded and thereafter reliance can never be placed upon those two letters. If those two letters are given effect even thereafter, it will result in the 3rd respondent over powering the 1st respondent and it will result in chaotic state of affairs in administering TANGEDCO.

30.The Circular Memo dated 19-07-2016, came into effect from 01-04-2016 and obviously this was issued after taking into consideration the rule position. On the coming into force of this Circular Memo, all the Superintending Engineers were directed to adhere to the procedure prescribed under the memo for maintaining banking account and for adjustment of banked energy for captive use. This was acted upon and the current consumption bills were raised accordingly for the period 01-04-2016 to 31-03-2017.

31.Insofar placing reliance on Circular Memo dated 31-03-2017 is concerned, it came into effect only from 01-04-2017 and therefore, it cannot be applied retrospectively for any period prior to 01-04-2017. It is therefore clear that none of the letters issued by the 3rd respondent and the modified Circular Memo dated 31-03-2017, will have any bearing during the relevant period between 01-04-2016 to 31-03-2017 and consequently, there was no justification for the 4th respondent to place reliance upon these proceedings. Grounds a, b and c are answered accordingly.

32.Insofar as ground 'd' is concerned, even if the justification given by the 3rd and 4th respondents are accepted for the sake of argument, even then the modified Circular Memo dated 31-03-2017, cannot be given a retrospective effect to the period prior to 01-04-2017. This position was made clear even while discussing grounds a, b and c and rendering a finding. Hence, ground 'd' is answered accordingly.

33.Before proceeding further to deal with the next ground, this Court must also deal with yet another Circular Memo dated 03-10-2017, which has been relied upon by the 4th respondent along with modified Circular Memo dated 31-03-2017. The Circular Memo dated 03-10-2017, was again issued by the 3rd respondent and it pertains to implementation of the order issued by TNERC in R.A.No.6 of 2013, dated 31-03-2016. Instructions were issued for current consumption bills in respect of wind energy captive users from 01-08-2012 to 31-03-2016. This Circular Memo will not apply to the case on hand since it pertained to the period from 01-04-2016 to 31-03-2017, when Circular Memo dated 19-07-2016 was in force. In view of the same, the Circular Memo dated 03-10-2017, can have no applicability and the 4th respondent went wrong in placing reliance upon the same.

34.Now, this Court will proceed to deal with the last ground 'e' which pertains to the Order passed by this Court in W.P (MD).Nos.6221 and 6222 of 2018. A careful reading of the facts in this case shows that the petitioner therein had sought for adjustment of banked energy prior to the revised energy wheeling agreement dated 26-09-2017 and this is after the issuance of the modified Circular Memo dated 31-03-2017, by the 2nd respondent. This Court took into consideration the modified memo and held as follows:

> 4.The respondents have also filed counter affidavit, wherein it is stated as follows:
>
> "Based on the above instructions, the banked energy prior to revised energy wheeling agreement dated 26.09.2017 has not been allotted to the new captive user, M/s.Shree Renga Polymers, HT.SC.No.121, however, the said banked energy is being allotted to existing captive user i.e.,M/s.Obli Granites, HT.SC.No.127 of Salem EDC, who is the captive user in the old agreement as well as newly executed energy wheeling agreement upto end of the financial year. Further, in this connection, it is most relevant to mention that the energy generated from the date of executive of revised energy wheeling agreement dated 26.09.2017 is being allotted to the new captive user M/s.Shree Renga Polymers, HT.SC.No.121 upto end of the financial year. The unutilized energy at the end of the financial year may be enxahsed at the rate of 75% of the relevant purchase tariff. The payment fill be released after verification of captive generating plant status as per Rule 3 of Electricity Rules, 2005".

> 5.In view of the said stand taken by the respondents, the respondents are directed to adjust banked energy to the existing captive users prior to the agreement or the respondents shall pay 75% of the cost of the energy to the petitioners in respect of new captive users as per the agreement. The release of the amount will be made after verification of the captive generation plant as per Rule 5 of the Electricity Rules, 2005.

35.The above order has absolutely no relevance to the facts of the present batch of cases since almost all the cases pertains to the energy wheeling agreements entered into during the period 01-04-2016 to 31-03-2017 and the adjustment has been done as per the Circular Memo dated 19-07-2016, which was in force during the relevant point of time. Ground 'e' is answered accordingly.

36.The facts of the present case will also attract the principles of promissory estoppal. The 2nd respondent who issued the Circular Memo on the approval and order of the 1st respondent, had given an assurance to all group captive consumers, who entered into an energy wheeling agreement during the period from 01-04-2016 to 31-03-2017, the manner in which the banking of wind energy, maintenance of banking account and adjustment of banked wind energy for captive use will be dealt with. This was acted upon by TANGEDCO and the captive users and bills were raised accordingly and payments were also made. The captive users had also arranged their affairs in line with the Circular Memo in force. The captive users cannot at a later point of time be informed that their current consumption bills are revised by relying upon a subsequent Circular Memo and superceded letters of the 3rd respondent and such an action on the part of the 4th respondent is certainly vitiated by the principles of promissory estoppal.

37.It is also noticed that in some of the writ petitions viz., W.P.Nos.11294 and 34444 of 2019, it pertains to the period prior to 01-04-2016, wherein, the bills are sought to be revised through the impugned proceedings bills issued by the 4th respondent. In all these cases, the 2nd respondent's Circular Memo dated 25-06-2015, was in force and it was implemented by the4th respondent in letter and spirit and adjustments were permitted accordingly. None of the reasons cited by the 4th respondent in the impugned proceedings through which the bills are sought to be revised, will justify the demand. Therefore, the demand made by the 4th respondent whereby, a concluded payment is sought to be revived, cannot be sustained.

38.In the light of the above discussion, this Court is of the considered view that the demand made by the 4th respondent from the petitioners, by virtue of the respective impugned letter is held to be unsustainable in law and accordingly, all the impugned letters are quashed.

39.In the result, all the writ petitions are allowed and if any payments have been made by any of the petitioner on the basis of the impugned letter issued by the 4th respondent, the same is liable to be reimbursed or in the alternative adjusted in the future bills. Any consequential benefits to which the petitioners are entitled to, if any, will enure in their favour by virtue of quashing the impugned letters issued by the 4th respondent.

40.All the writ petitions are allowed with the above directions. No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor,144 Anna Salai,
Chennai 600 002.

2. The Chief Engineer -NCES
TANGEDCO, 2nd Floor,
144 Anna Salai,
Chennai 600 002

3. The Chief Financial Controller/Revenue,
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4. The Superintending Engineer
TANGEDCO, Coimbatore Electricity
Distribution Circle/North,
Tatabad,
Coimbatore-641 012.

5. The Superintending Engineer,
TANGEDCO,
Coimbatore Electricity Distribution Circle/South,
Tatabad,
Coimbatore - 641 012.

6. The Superintending Engineer,
TANGEDCO,
Tirupur Electricity Distribution Circle,
Tirupur.

7. The Superintending Engineer,
TANGEDCO,
Udumalpet Electricity Distribution Circle/metro,
Udumalpet.

8. The Superintending Engineer,
Tangedco,
Palladam Electricity Distribution Circle
Palladam.

9. The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd,
Coimbatore/Erode Distribution circle,
Coimbatore.

10. The Accounts Officer/Revenue,
Tamil Nadu Generation and Distribution
Corporation Ltd,
Coimbatore/Erode Distribution circle,
Coimbatore.

11. The Superintending Engineer,
Tangedco,
Tirunelveli Electricity Distribution Circle
Tirunelveli.

12. The Superintending Engineer,
Tangedco,
Coimbatore Electricity Distribution Circle/metro
Coimbatore.

+24ccs to M/s.R.S.Pandiyaraj, Advocate, S.R.No.41046
+2ccs to M/s.M.A.Kalam,Standing Counsel(TNEB), S.R.No.41127

W.P.Nos.8634, 11288, 11294, 13735,13736,
13737, 13739, 33795, 33802, 33813,33818,
34444,34445, 34447, 34900, 34903,35201,
35204,35208, 35312, 35382 of 2019 and
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1621/2020 and 1703 of 2020

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NSK 08/10/2021