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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.925 to 928, 931, 16770, 6541, 2020, 6636,  
7956, 10374 of 2015 and 28331 of 2016

and

M.P.Nos.2 and 3 of 2015 (4 M.Ps), 4 and 5 of 2015,  
2 and 3 of 2015, 3 and 4 of 2015, 4 and 5 of 2015,  
4 and 5 of 2015, 1 of 2015, 2 and 3 of 2015 and  
W.M.P.Nos.24444 to 24446 of 2016

The South Indian Sugar Mills Association, Tamil Nadu  
Rep by its Secretary

"Karumuthu Centre"

2<sup>nd</sup> Floor, 634, Anna Salai

Chennai - 600 035.

...Petitioner in W.P.No.925 of 2015

E.I.D. Parry (I) Limited

Rep. by its Associate Vice President

Legal Dare House,

234 N.S.C. Bose Road, Chennai-1

...Petitioner in W.P.No.926 of 2015

Terra Energy Limited

Eldorado 5<sup>th</sup> Floor,

112 Nungambakkam High Road

Chennai-600 034.

Rep. By its Company Secretary.

...Petitioner in W.P.No.927 of 2015

Shree Ambika Sugars Limited

Eldorado 5<sup>th</sup> Floor,

112, Nungambakkam High Road,

Chennai-600 034.

Rep. By Its Executive Director.

...Petitioner in W.P.No.928 of 2015

Ponni Sugars (Erode) Ltd.,

Rep. by Asst. G.M. (Accounts)

H.O: Esvin House, Old Mahabalipuram Road,

Perungudi, Chennai-96.

Also Off: Odapalli, Cauvery R.S. (Post)

Erode-638 007.

...Petitioner in W.P.No.931 of 2015



IOT Mabagas Private Limited  
Formerly Known As IOT Mabagas Limited  
Rep. by its Chief Operating Officer,  
Govindampalayam, Puduchatram,  
Namakkal 637 014. ...Petitioner in W.P.No.16770 of 2015

M.R.Krishnamurthy Co-Op. Sugar Mills Limited  
Rep. by its Administrator  
Sethiyathope-608702,  
Chidambaram Taluk,  
Cuddalore District. ...Petitioner in W.P.No.6541 of 2015

JSW Steel Limited  
Rep. by its Vice President  
Finance And Accounts Department  
Salem Works, Pottaneri Village,  
Mettur Dam, Salem District-636 453  
...Petitioner in W.P.No.2020 of 2015

Cheyyar Co-Operative Sugar Mills Limited  
Rep. by its Managing Director  
Anakkavoor-Thenthandalam,  
Cheyyar-604401. ...Petitioner in W.P.No.6636 of 2015

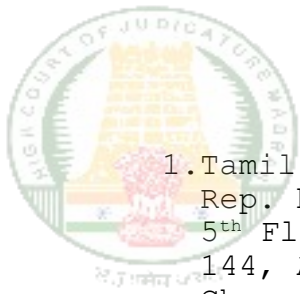
1.Indian Wind Power Association  
Rep. by its Secretary General  
Door No.E, 6<sup>th</sup> Floor,  
Shakti Towers-II,  
766, Anna Salai, Chennai-2.

2.Ramco Cements Limited  
Rep. by its DGM (Legal)  
Auras Corporate Centre, V Floor,  
98, Dr.Radhakrishnan Salai,  
Mylapore, Chennai-4. ...Petitioners in W.P.No.7956 of 2015

Swelect Energy Systems Limited  
Rep. by its Associate Vice President -  
Renewable Energy Projects,  
Numeric House, 3<sup>rd</sup> Floor,  
No.5 Sir P.S.Sivasamy Salai  
Mylapore, Chennai 4. ...Petitioner in W.P.No.10374 of 2015

M/S.Yajur Energy Solutions(P) Ltd.  
No.21, Ramanuja Nagar,  
Ayanavaram  
Chennai-600 023. ...Petitioner in W.P.No.28331 of 2016

Vs.



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1. Tamil Nadu Generation & Distribution Corporation Limited  
Rep. by its Chairman & Managing Director  
5<sup>th</sup> Floor, NPKKR Maligai  
144, Anna Salai  
Chennai 600 002

2. State Load Dispatch Centre  
TANTRANSCO  
144, Anna Salai  
Chennai 600 002

3. Director (Finance)  
Tamil Nadu Generation & Distribution Corporation Limited  
144, Anna Salai  
Chennai 600 002

4. Tamilnadu Transmission Corporation Ltd.  
Represented by its Managing Director  
144, Anna Salai  
Chennai 600 002

5. Tamil Nadu Electricity Regulatory Commission  
No 19A, Rukmini Lakshmipathy Salai,  
Egmore,  
Chennai - 600 008.

...Respondents in W.P.No.925 to 928 & 7956 of 2015

1. Tamilnadu Generation & Distribution Corporation Limited  
Rep. by its Chairman & Managing Director, 5<sup>th</sup> Floor,  
NPKKR Maligai, 144 Anna Salai, Chennai-2.

2. State Load Dispatch Centre  
TANTRANSCO (Tamil Nadu Transmission Corporation Ltd.,)  
144, Anna Salai, Chennai-2

3. Director (Finance)  
Tamilnadu Generation & Distribution Corporation Ltd.,  
144, Anna Salai, Chennai-2

4. Tamilnadu Transmission Corporation Ltd.  
Rep. by its Managing Director  
144, Anna Salai, Chennai-2

5. Tamilnadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmipathy Salai,  
Egmore, Chennai-8

6. Superintending Engineer,  
Mettur Electricity Distribution Circle,  
Mettur Dam-636 401.



7.Accounts Officer

Mettur Electricity Distribution Circle,

Mettur Dam-636 401.

...Respondents in W.P.No.931 of 2015

## WEB COPY

1.Tamil Nadu Generation and Distribution Corporation Limited  
Rep. by its Chairman and Managing Director  
5<sup>th</sup> Floor, NPKKR Maligai,  
144, Anna Salai, Chennai-2.

2.State Load Dispatch Centre  
TANTRANSCO, 144, Anna Salai,  
Chennai-2

3.Tamil Nadu Generation and Distribution Corporation Limited  
Rep. by the Director (Finance),  
144, Anna Salai, Chennai-2.

4.Tamilnadu Transmission Corporation Ltd.  
Rep. by its Managing Director,  
144, Anna Salai, Chennai-2

5.Tamil Nadu Electricity Regulatory Commission  
No.19A Rukmini Lakshmipathy Salai,  
Egmore, Chennai-8.

6.Superintending Engineer,  
Namakkal Electricity Distribution Circle  
Namakkal.

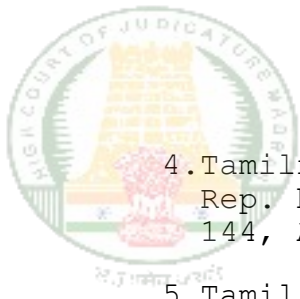
7.Deputy Financial Controller,  
Namakkal Electricity Distribution Circle  
Namakkal.

...Respondents in W.P.No.16770 of 2015

1.Tamil Nadu Generation & Distribution  
Corporation Limited,  
Rep. by its Chairman & Managing Director  
5<sup>th</sup> Floor, NPKKR Maligai,  
144, Anna Salai, Chennai-2.

2.State Load Dispatch Centre  
TANTRANSCO,  
144, Anna Salai, Chennai-2.

3.Director (Finance)  
Tamil Nadu Generation & Distribution  
Corporation Limited  
144, Anna Salai, Chennai-2.



4. Tamilnadu Transmission Corporation Ltd.  
Rep. by its Managing Director  
144, Anna Salai, Chennai-2.

5. Tamil Nadu Electricity Regulatory Commission,  
No.19A Rukmini Lakshmipathy Salai,  
Egmore, Chennai-8.

6. Superintending Engineer,  
Cuddalore Electricity Distribution Circle,  
Capper Hills, Cuddalore-607004.

...Respondents in W.P.No.6541 of 2015

1. Tamilnadu Generation & Distribution Corporation Ltd.,  
Rep. by its Chairman & Managing Director  
5<sup>th</sup> Floor, NPKKR Maligai,  
144, Anna Salai, Chennai-2.

2. State Load Dispatch Centre  
TANTRANSCO (Tamil Nadu Transmission Corporation Ltd.,)  
144, Anna Salai, Chennai-2.

3. Director (Finance)  
Tamilnadu Generation & Distribution Corporation Ltd.,  
144, Anna Salai, Chennai-2.

4. Tamilnadu Transmission Corporation Ltd.,  
Rep. by its Managing Director,  
144, Anna Salai, Chennai-2.

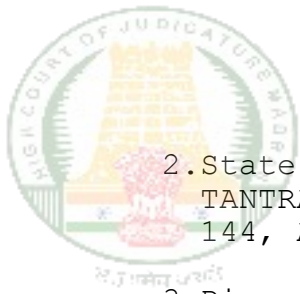
5. Tamilnadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmipathy Salai,  
Egmore, Chennai-8.

6. Superintending Engineer  
Mettur Electricity Distribution Circle  
Mettur Dam-636 401.

7. Accounts Officer  
Mettur Electricity Distribution Circle  
Mettur Dam-636 401.

...Respondents in W.P.No.2020 of 2015

1. Tamil Nadu Generation & Distribution  
Corporation limited  
Rep. by its Chairman & Managing Director  
5<sup>th</sup> Floor, NPKKR Maligai,  
144, Anna Salai, Chennai-2.



2.State Load Dispatch Centre  
TANTRANSCO,  
144, Anna Salai, Chennai-2.

3.Director (Finance)  
Tamil Nadu Generation & Distribution Corporation Limited  
144, Anna Salai, Chennai-2.

4.Tamilnadu Transmission Corporation Ltd.,  
Rep. by its Managing Director  
144, Anna Salai, Chennai-2.

5.Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmipathy Salai,  
Egmore, Chennai-8.

6.Superintending Engineer  
Thiruvannamalai Electricity Distribution Circle  
Thiruvannamalai-606604.

7.Accounts Officer  
Thiruvannamalai Electricity Distribution Circle  
Thiruvannamalai-606604.

...Respondents in W.P.No.6636 of 2015

1.Tamil Nadu Generation and Distribution Corporation Limited  
Rep. by its Chairman & Managing Director  
5<sup>th</sup> Floor, NPKKR Maligai,  
144, Anna Salai, Chennai-2.

2.State Load Dispatch Centre  
TANTRANSCO, 144, Anna Salai,  
Chennai-2

3.Tamil Nadu Generation and Distribution Corporation Limited  
Rep. by the Director (Finance)  
144, Anna Salai, Chennai-2.

4.Tamil Nadu Transmission Corporation Ltd.,  
Rep. by its Managing Director,  
144 Anna Salai, Chennai-2

5.Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmipathy Salai,  
Egmore, Chennai-8

6.Superintending Engineer  
Karur Electricity Distribution Circle  
Karur.



7.Accounts Officer  
Karur Electricity Distribution Circle  
Karur.

...Respondents in W.P.No.10374 of 2015

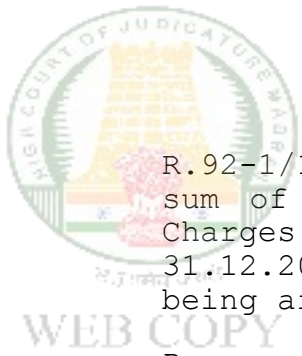
## WEB COPY

- 1.Tamil Nadu Generation & Distribution Corporation Ltd.,  
Rep. by its Chairman & Managing Director  
5<sup>th</sup> Floor, NPKKR Maligai,  
144, Anna Salai, Chennai-600 002.
- 2.State Load Dispatch Centre  
TANTRANSCO, 144, Anna Salai,  
Chennai-600 002.
- 3.Tamil Nadu Generation & Distribution Corporation Ltd.,  
Rep. by the Director (Finance)  
144, Anna Salai,  
Chennai-600 002.
- 4.Tamilnadu Transmission Corporation Ltd.,  
Rep. by its Managing Director  
144, Anna Salai,  
Chennai-600 002.
- 5.Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmipathy Salai,  
Egmore, Chennai-600 008.
- 6.Superintending Engineer  
Karur Electricity Distribution Circle,  
Karur.
- 7.Accounts Officer,  
Karur Electricity Distribution Circle,  
Karur.

...Respondents in W.P.No.28331 of 2016

Prayer in W.P.No.925 to 928 & 7956 of 2015 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 3<sup>rd</sup> respondent herein in Lr.No.CFC/FC/REV/DFC/AAO. HT/AS-3/D.NO.166/14 dated 25.11.2014 and consequential demands for payment of Scheduling and System Operation charges and quash the same as being arbitrary, illegal and without authority of law.

Prayer in W.P.No.931 of 2015 : Calling for the records of the 3<sup>rd</sup> respondent herein in Lr.No.CFC/FC/REV/DFC/AAO. HT/AS-3/D.No.166/14 dated 25.11.2014 and consequential demands for payment of Scheduling and System Operation Charges including the impugned Letter No.SE/MEDC/DFC/AOR/HT/AS/A.2/F.Ponni Sugar/



R.92-1/14 dated 26.12.2014 issued by the 6<sup>th</sup> respondent and the sum of Rs.17,94,000/- towards Scheduling and System Operation Charges covered in Serial No.19 of the impugned CC Bill dated 31.12.2014 issued by the 7<sup>th</sup> respondent and quash the same as being arbitrary, illegal and without authority of law.

Prayer in W.P.No.16770 of 2015 : Calling for the records of the 3<sup>rd</sup> respondent herein Circular Memo in Lr.No.CFC/FC/REV/DFC/AAO.HT/AS-3/D.NO.166/14 dt 25.11.2014 and quash the same as being arbitrary, illegal and without authority of law and consequently direct the respondents to refund the sums collected towards Scheduling and System Operation Charges from the petitioner together with interest at the same rate charged by the respondents towards Belated Payment Surcharge.

Prayer in W.P.No.6541 of 2015 : Calling for the records of the third respondent herein in Circular Memo No.CFC/FC/REV/DFC/AAO.HT/AS-3/D.No.166/14 dated 25.11.2014 and all consequential demands for payment of Scheduling and System Operation Charges including the impugned Letter Lr.No.SE/CEDC/CUD/DFC/AO/RCS/AS/A4/E.HT.CO.GEN/2014 dated 12.12.2014 issued by the 6<sup>th</sup> respondent and quash the same as being arbitrary, illegal and without authority of law.

Prayer in W.P.No.2020 of 2015 : Calling for the records of the 3<sup>rd</sup> respondent herein in Circular Memo No.CFC/FC/REV/DFC/AAO. HT/AS-3/D.No.166/14 dated 25.11.2014 and consequential demands for payment of Scheduling and System Operation Charges including the impugned Letter No.SE/MEDC/DFC/AAO.HT/AS/A.2/F.SC 143/R.91/14 dated 8<sup>th</sup> December 2014 issued by the 6<sup>th</sup> respondent and the CC Bill dated 02.01.2015 issued by the 7<sup>th</sup> respondent in so far as the demand of the sum of Rs.39,61,000/- towards Scheduling and System Operation Charges is concerned which has been paid under protest and quash the same as being arbitrary, illegal and without authority of law and consequently direct refund of the sums collected towards Scheduling and System operation charges from the petitioner together with interest at the same rate charged by the respondents towards Belated Payment Surcharge.

Prayer in W.P.No.6636 of 2015 : Calling for the records of the third respondent herein in Lr.No.CFC/FC/REV/DFC/AAO.HT/AS-3/D.No.166/14 dated 25.11.2014 and all consequential demands for payment of Scheduling and System Operation Charges including the impugned Letter Lr.No.SE/TEDC/AO/Rev/RCS/A.1/F.Sys.Op./D.393/2014 dated 11.12.2014 issued by the 6<sup>th</sup> respondent and impugned CC Bill dated 28.01.2015 issued by the 7<sup>th</sup> respondent in so far as the sum of Rs.42,000/- towards Scheduling and System Operation Charges and covered in Serial No.19 of the impugned CC Bill is concerned and quash the same as being arbitrary, illegal and without authority of law and consequently direct refund of the sums collected towards Scheduling and System operation



charges from the petitioner together with interest at the same rate charged by the respondents towards Belated Payment Surcharge.

Prayer in W.P.No.10374 of 2015 : Calling for the records of the 3rd respondent herein in Lr.No.CFC/FC/REV/DFC/AAO.HT/AS-3/D.NO.166/14 dt 25.11.2014 and all consequential demands for payment of Scheduling and System Operation Charges including the impugned demand issued by the 6<sup>th</sup> respondent herein in Lr.No.SE/KEDC/KRR/DFC/AS/HT/F.SPG005/D43/2015 dt 03.01.2015 and quash the same as being arbitrary, illegal and without authority of law and consequently direct refund of the sums collected towards Scheduling and System Operation Charges from the petitioner together with interest at the same rate charged by the respondents towards Belated Payment Surcharge

Prayer in W.P.No.28331 of 2016 : Calling for the records of the third respondent herein in Lr.No.CFC/FC/REV/DFC/AAO.HT/AS-3/D.No.166/14 dated 25.11.2014 and all consequential demands for payment of scheduling and system operation charges including the impugned demand issued by the 6<sup>th</sup> respondent herein in Lr.No.SE/KEDC/KRR/DFC/AS/HT/F.SPG009/D49/2015 dated 3.1.2015 and Lr.No.SE/KEDC/KRR/DFC/AS/HT/F.009/D.319/2016 dated 25.07.2016, and quash the same as being arbitrary, illegal and without authority of law and consequently direct refund of the sums collected towards scheduling and system operation charges from the petitioner together with interest at the same rate charged by the respondents towards belated payment surcharge

For Petitioners : Mr.Rahul Balaji  
(in all W.Ps)

For Respondents : Mr.L.Jai Venkatesh  
Standing Counsel  
[For TNEB/TANGEDCO]  
(in all W.Ps)

#### COMMON ORDER

The issue relates to the Scheduling and System Operation charges to be collected from the generators who are in 'Sale to Board' categories.

2. The learned counsel for the petitioner brought to the notice of this Court that for Bagasse based co-generation plants, the Hon'ble Appellate Tribunal for Electricity [APTEL] in its order RP.No.13 of 2013 dated 30.06.2014 in Appeal No.199 of 2012 & batch, held that the Scheduling and System operation charges are not applicable to sugar mills selling their entire powers to the distribution license.



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3. In this context, the learned counsel for the petitioner relied on the order dated 24.05.2013 passed by the APTEL and the relevant paragraphs are extracted:

"77. There are two types of Wind energy Generators. The first type of wind energy generators are those who supply their entire energy to the distribution licensees. The second type of wind energy generators are those who supply their energy mainly for captive use or to third parties by availing open access and also bank their energy with distribution licensee for reuse during the specified banking period. However, the payment for unutilized wind energy at the end of the specified banking period is made by the distribution licensee at the rates determined by the State Commission. For the first type of wind energy generators, the wheeling charges, line losses, banking charges, applicable demand charges and energy charges for captive use etc., are not relevant as these wind energy generators supply their entire energy at the delivery point directly to the distribution licensees. The charges as indicated in Regulation 8 are relevant to the second category of wind energy generators.

78. The reading of both the Regulations and the provisions of the wheeling agreement would make it evident that the tariff of the wind energy generators who have signed PPA for supply of their energy output to the distribution licensee would not be re-opened with subsequent revision of wind energy tariff. However, wheeling charges, line losses, transmission charges etc., for wind energy generators who supply their energy mainly for their captive consumption or for third party sale through open access has to be decided by the State Commission from time to time. The Wheeling charges, transmission losses, transmission charges, banking charges etc., are decided in the tariff order for the control period and during that control period the same charges would prevail. With subsequent revision in the open access charges by tariff order, new charges would become applicable to such wind energy generators who are supplying power through open access."

4. In yet another order and judgment of the Hon'ble APTEL in the South Indian Sugar Mills Association and others Vs. TNERC and others in RP No.13 of 2013 in Appeal Nos.199 of 2012 & batch dated 30.06.2014, the APTEL held as follows:



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"32. As pointed out by the Review Petitioners in respect of the Appellants sugar mills selling their energy to the distribution licensee in the impugned tariff order in respect of matters enumerated in para 8.2 would not be applicable.

33. In view of the above, it would be appropriate to hold that the provisions of the impugned tariff order enumerated in para 8.2 being matters enumerated in the Regulation 8 should not be made applicable to the sugar mills who sell their energy to the distribution licensee. Thus, the finding given in respect of this issue is modified to the said effect. Accordingly ordered."

5. However, it is informed that the said judgments are taken by way of an Appeal before the Hon'ble Supreme Court of India by the respondent/Electricity Board and there is no interim order in force.

6. Admittedly, the Appeals are pending. This being the factum the order passed by the APTEL dated 24.05.2013 in Appeal No.197 of 2012 & batch and order and judgment of APTEL dated 30.06.2014 in RP No.13 of 2013 in Appeal Nos.199 of 2012 & batch stands extended in favour of the petitioner, however, subject to the final orders to be passed by the Hon'ble Supreme Court of India in the pending Appeals already filed by the respondent Electricity Board.

7. With these observations, these Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS-III)

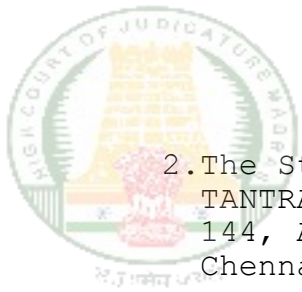
// True Copy //

Sub Assistant Registrar

Jeni/Cse

To

1.The Chairman & Managing Director,  
Tamil Nadu Generation & Distribution Corporation Limited,  
5<sup>th</sup> Floor, NPKKR Maligai,  
144, Anna Salai,  
Chennai 600 002.



2.The State Load Dispatch Centre,  
TANTRANSCO,  
144, Anna Salai,  
Chennai 600 002.

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3.The Director (Finance),  
Tamil Nadu Generation & Distribution Corporation Limited,  
144, Anna Salai,  
Chennai 600 002.

4.The Managing Director,  
Tamilnadu Transmission Corporation Ltd.,  
144, Anna Salai,  
Chennai 600 002.

5.The Tamil Nadu Electricity Regulatory Commission,  
No 19A, Rukmini Lakshmipathy Salai,  
Egmore,  
Chennai - 600 008.

6.Superintending Engineer,  
Mettur Electricity Distribution Circle,  
Mettur Dam - 636401

7.Accounts Officer,  
Mettur Electricity Distribution Circle,  
Mettur Dam - 636 401

8.Superintending Engineer,  
Namakkal Electricity Distribution Circle,  
Namakkal.

9.Deputy Financial Controller,  
Namakkal Electricity Distribution Circle,  
Namakkal.

10.Superintending Engineer,  
Cuddalore Electricity Distribution Circle,  
Capper Hills, Cuddalore - 607 004.

11.Superintending Engineer,  
Thiruvannamalai Electricity Distribution Circle,  
Thiruvannamalai - 606604

12.Accounts Officer,  
Thiruvannamalai Electricity Distribution Circle,  
Thiruvannamalai - 606604

13.Superintending Engineer,  
Karur Electricity Distribution Circle,  
Karur.



14.Accounts Officer,  
Karur Electricity Distribution Circle,  
Karur.

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+12ccs to M/s.R.Parthasarathy, Advocate Sr.Nos.63696, 69697,  
63698, 63699, 63700, 63701, 63702, 63703, 63704, 63705,  
63709, 63710,

W.P.Nos.925 of 2015 & etc.,

SR-II (CO)  
RVM(04/01/2022)