

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 126/MP/2013

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri A.K.Singhal, Member**

Date of Order: 23.9.2015

In the Matter of

Petition under section 66 and 79 of the Electricity Act,2003 read with Regulations 3(4), 5, 6, 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for renewable energy generation) Regulations, 2010

And

In the Matter of

M/s Tata Motors Limited
Bombay House
24, HomiMody Street,
Fort, Mumbai-400001

.....**Petitioner**

Vs

1. National Load Despatch Centre
B-9, Qutab Institutional Area
KatwariaSarai
New Delhi-110016

2. Maharashtra Energy Development Agency
MHADA Commercial Complex, II Floor
Opp. Tridal Nagar, Yerwada, Pune-411006

.....**Respondents**

Parties Present:

For Petitioner

Shri M.G. Ramachandran, Advocate
Ms. Ranjitha Ramachandran, Advocate

For Respondents

Shri Arjun Krishnan, Advocate, NLDC
Ms. Joyti Prasad, NLDC

Ms. Minaxi Garg, NLDC
Shri Shailendra Verma, NLDC
Shri R.S. Kapur

ORDER

The petitioner, Tata Motors Limited, has filed the present petition challenging the letter dated 29.5.2013 issued by National Load Despatch Centre rejecting the applications of the petitioner made after 5.3.2013 for issue of Renewable Energy Certificates and seeking directions to the National Load Despatch Centre (NLDC) and Maharashtra Energy Development Agency (MEDA) to grant Renewable Energy Certificates (RECs) to the petitioner with effect from December 2012 onwards.

Facts of the Case

2. Accreditation and registration for and issuance of Renewable Energy Certificates (RECs) are governed by the provisions of Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificates) Regulations, 2010 as amended from time to time (hereinafter "REC Regulations"). NLDC has been designated as the Central Agency for registration for issuance of RECs and MEDA is the designated State Agency in the State of Maharashtra for accreditation of the renewable energy generators under the REC Regulations.

3. The petitioner is engaged in the business of manufacture and sale of automotive vehicles, components and parts and is having its manufacturing facility at Pimpri, Pune in the State of Maharashtra. The petitioner has established and is operating wind based generating units in the State of Maharashtra having an installed capacity of 21.95 MW. The petitioner vide its letter dated 15.6.2011 informed MEDA that its wind generation

projects were set up in pursuance of the wind power policies of the Government of Maharashtra dated 29.11.1996 and 12.3.1998 by Tata Finance Limited which merged in Tata Motors Limited on 1st April 2005 and with effect from that date, supply of electricity from the projects has been for captive use by Tata Motors Limited. The petitioner applied to MEDA vide its applications dated 27.11.2011 for accreditation of its wind generation projects and MEDA vide its letters dated 28.5.2012 issued accreditation in respect of the wind generation projects of the petitioner. The project details are as under:

Name of the project	Location	Capacity	Date of commissioning	Capacity accredited by MEDA
Tata Motors Ltd. Ph-I Developer No. 4028	Vil. Kusawade Dist. Satara	7.35 MW (21 units of 350 KW each)	14.3.2000	7.35 MW
Tata Motors Ltd. Ph-II Developer. No. 4057	Vil. Kusawade Dist. Satara	7.35 MW (21 units of 350 KW each)	30.9.2000(10 units) 4.11.2000(11 units)	7.35 MW
Tata Motors Ltd. Ph-III Developer No. 4067	Vil. Divsi Dist. Satara	5.25 MW (15 units of 350 KW each)	31.12.2000 (4 units) 25.3.2001 (11 units)	5.25 MW
Tata Motors Ltd. Ph-III Developer No. 1002	Vil. Kavadya Dongar Dist. Ahmednagar	1 MW	21.3.2001	1 MW
Tata Motors Ltd. Ph-III Developer No.1005	Vil. Kavadya Dongar Dist. Ahmednagar	1 MW	28.8.2001	1 MW
Total				21.95

4. The petitioner vide its applications dated 1.6.2012 applied to NLDC for registration of its wind generation projects for issuance of RECs. NLDC in the light of the directions of the Commission in order dated 18.10.2012 in Petition No. 34/MP/2012 and related matters, vide its letter dated 14.11.2012 asked all State Agencies for

certification that the RE generators applying for RECs have not availed any benefits in the form of concessional/promotional transmission or wheeling charges, banking facility benefits and waiver of electricity duty admissible to CPPs/CGPs/Cogeneration plants. Consequently, MEDA vide its letter dated 14.12.2012 sought necessary certification from the petitioner. In response, the petitioner vide its letter dated 4.1.2013 informed MEDA that it was not availing any waiver of electricity duty, concession or benefits as stipulated in REC Regulations. The petitioner further informed that in terms of the Government of Maharashtra Notification dated 29.1.1996, no electricity duty would be charged to industries for captive use of energy generated from renewable energy sources. The petitioner also informed that the matter of payment of electricity duty by Tata Motors Limited for electricity generated by its windmills was sub-judice in the Court of Civil Judge, Senior Division, Pune for Developer No. 4057 and the court had stayed recovery action by Electrical Inspector till the case is decided.

5. Subsequent to the issue of the order dated 8.1.2013 in RP No.25/2012 by this Commission, NLDC wrote to all State Agencies to furnish the following details:

- (a) A list of projects that fall under the category of CPPs/CGPs/Cogeneration Plants.
- (b) A certification that all co-generation plants falling under the category of CPP have not availed any benefits which are admissible to the CPPs/CGPs/Cogeneration plants.

(c) A declaration that all procedure for accreditation according to CERC REC Regulations and approved REC Procedures have been followed for already accredited projects. Further for all new accreditations, the declaration should be submitted while recommending the projects for registration.

6. MEDA vide its letter dated 28.2.2013 furnished the necessary details to NLDC. According to MEDA, out of 303 accredited projects in Maharashtra, 109 cases belong to self-use/CPP category and these projects have submitted relevant proof/undertaking for not availing the benefits prescribed for CPP/CGP.

7. NLDC vide its e-mail dated 2.4.2013 informed the petitioner that since the petitioner's projects have been accredited for self-consumption and at the same time availing benefits of electricity duty waiver, MEDA has been asked to review the accreditation granted to the petitioner's projects in line with the eligibility conditions notified in REC Regulations. Subsequently, NLDC vide its letter dated 29.5.2013 informed the petitioner that MEDA in its letter dated 15.4.2012 submitted that Maharashtra Government vide Resolution dated 18.11.2010 has exempted captive users from paying electricity duty. NLDC further informed that since exemption from payment of electricity duty amounts to waiver of electricity duty under second proviso to Regulation 5 of REC Regulations, RECs for self-consumption cannot be issued and accordingly, rejected the applications of the petitioner for grant of RECs vide letters dated 29.5.2013. Aggrieved by the said decision of NLDC, the petitioner has filed the present petition seeking a declaration that exemption of electricity duty granted by State Government does not amount to waiver of electricity duty and directions to NLDC and

MEDA to process the applications of the petitioner since December 2012 and on regular basis.

Submission of the Petitioner

8. The petitioner has submitted that the projects of the petitioner were set up in pursuance of the wind power policies of Government of Maharashtra dated 29.1.1996 and 12.3.1998. The exemptions granted under these policies were available to all captive power producers who had set up their projects thereunder and not only to the petitioner. Therefore, the interpretation of NLDC that waiver of electricity duty as contemplated under REC Regulations is same as exemption granted by the State Government is incorrect. Secondly, the petitioner has submitted that the Commission's order dated 18.10.2012 in Petition No.45/MP/2012 and order dated 8.1.2013 in RP No.25/2012 clearly provide that if the electricity duty is not payable by an eligible entity on account of any exemption by the State Government, RECs should be processed. Thirdly, the petitioner has submitted that through the amendment dated 10.7.2013 to REC Regulations, the requirement of not availing electricity duty waiver in case of CPP as one of the eligibility criteria has been removed. The said amendment is clarificatory in nature and applies retrospectively to the period before the amendment. Fourthly, the petitioner has submitted that NLDC has misinterpreted and misapplied the provision in Regulation 5 of REC Regulations which states that "CPP has availed or proposes to avail any benefit....waiver of electricity duty". The availing or proposing to avail such waiver would arise if the petitioner voluntarily seeks a special exemption from payment of electricity duty which is otherwise payable. This cannot include a situation where the electricity duty is not leviable and not payable at all. Even if the petitioner desires to pay

the electricity duty, it cannot pay because the collection of the amount by the authorities would be unconstitutional being in violation of Article 265 of the Constitution of India. Fifthly, the petitioner has submitted that MEDA is of the view that the petitioner is correctly accredited and should receive benefits of REC mechanism. Lastly, the petitioner has submitted that despite the exemption granted by the State Government, the Electrical Inspectors demanded payment of electricity duty from the captive power producers including the petitioner. The petitioner has filed the proceedings before Pune Court which was apprised to MEDA vide letter dated 4.1.2013.

Submissions of NLDC

9. NLDC in its reply dated 11.7.2013 has submitted that in terms of the Commission's order dated 18.10.2012 in Petition No. 36/MP/2013 and order dated 8.1.2013 in Review Petition No. 25/2013, a RE generator whether qualifying as CGP or any other generator, cannot obtain the benefit of RECs for self-consumption so long as it takes the benefit of electricity duty waiver. NLDC has submitted that the decision of the Commission in the order dated 18.10.2012 is applicable in all cases having similar facts and similar causes of actions. Moreover, NLDC was directed by the Commission to satisfy itself regarding eligibility of the applicants for grant of RECs which included satisfaction of NLDC to the effect that the applicants have not availed the benefits of electricity duty waiver. Accordingly, NLDC wrote to all State Agencies to furnish certificates that co-generation plants falling under category of CPP had not availed any benefits which are admissible to the CPPs/CGPs/Co-generation plants. In response, MEDA vide its letter dated 28.2.2013 informed NLDC that 72 projects were accredited as CPPs for the self-consumption in the State of Maharashtra and were availing

benefits of electricity duty waiver/exemption. MEDA had further informed NLDC that the Government of Maharashtra vide notification dated 18.11.2010 had exempted the captive consumption of energy generated through non-conventional energy projects from payment of electricity duty for the first 10 years from the date of implementation/commencement of the projects established on or after 4.10.2008. MEDA has also stated that some generators had voluntarily been paying electricity duty even though self-consumption was exempted from payment of electricity duty, though it was not clear at what rate the duty was being paid.

10. NLDC has submitted that while rejecting the applications of the generators including the petitioner for grant of RECs, NLDC considered the legal position regarding electricity duty prevailing in the State of Maharashtra and also sought legal opinion on the same, before coming to the conclusion that renewable energy generators are exempt from payment of electricity duty. NLDC has submitted that electricity duty can be waived by the State Government under Section 5A of the Bombay Electricity Duty Act, 1948 (Bombay Act) and the notification dated 18.11.2010 issued by the Government of Maharashtra has expressly invoked section 5A as the source of power exercised while granting exemption from payment of electricity duty. NLDC has further submitted that the petitioner in its letter dated 15.6.2011 written to MEDA has accepted the position that it is exempt from payment of electricity duty. NLDC has further submitted that the expression 'waiver of electricity duty' has to be read in the context in which it is used and in case of CPPs in Maharashtra, the exemption granted is indeed a benefit to renewable energy generators and would amount to waiver of electricity duty. NLDC has submitted that the petitioner's averment that it has neither applied nor sought

for waiver of electricity is of no avail as fourth proviso to Regulation 5 (1)(c) of REC Regulations makes it clear that the waiver of electricity duty is something that was to be granted or taken away by the State Government, and not any right that was to be voluntarily given up by the petitioner. NLDC has submitted that while rejecting the applications of the petitioner for issuance of RECs vide letter dated 29.5.2013, NLDC has correctly relied upon the fourth proviso to sub-clause (c) of clause (1) of Regulation 5 of REC Regulations.

Submission of MEDA

11. MEDA in its reply dated 4.7.2013 has submitted that MEDA accredited 5 wind power generating stations of Tata Motors Limited for its self-use under REC Regulations. MEDA has submitted that it had already informed NLDC vide its letters dated 28.2.2013 and 15.4.2013 about waiver from payment of electricity duty for self-consumption of energy generated and distributed in the State of Maharashtra vide General Resolution dated 18.11.2010 and thereby to consider such projects eligible under REC mechanism without applicability of CPP/CGP/Co-generation benefits such as electricity duty payment. MEDA has expressed its view that the applications of the petitioner for RECs may be processed by NLDC for its respective self-use capacities under REC Regulations.

12. The petitioner has filed IA No.14/2013 seeking an ad interim direction for stay of the operation and implementation of the letter dated 29.5.2013.

13. The Commission vide interim order dated 2.12.2013 directed the petitioner to place on record certain documents and clarify some issues as under:

(a) Government of Maharashtra notification dated 29.1.1996 provides that no electricity duty will be charged to individuals for captive use of power generations from renewable energy sources. Since duty exemption can be issued only through a notification by the Government of Maharashtra under Section 5A of Mumbai Electricity Duty Act, 1956, the petitioner is directed to place on record the copies of the notification issued by Government of Maharashtra regarding electricity duty exemption from 1996 till date. Order in

(b) Quantum of energy generated by the wind power projects of the petitioner and the quantum of energy consumed by the captive user, namely, Tata Motors Ltd. during the year 2011-12 and 2012-13.

(c) Policy Notifications dated 29.1.1996 and 12.3.1998 of Govt. of Maharashtra provide for other promotional benefits in the form of banking, concessional transmission charges and losses. The petitioner shall confirm whether its wind based generating plant has availed these facilities and if so, the details of such promotional benefits availed till date.

14. The petitioner vide its affidavit dated 19.12.2013 has clarified the above queries as under:

(a) Though the Government of Maharashtra had not issued a formal Notification under section 5A of the Bombay Electricity Duty Act, 1956, there was a clear and categorical policy decision taken as far back as the year 1996 whereby the Government of Maharashtra had represented that the electricity duty is not

payable for electricity that is generated from the renewable energy sources and generated electricity is consumed for captive purposes. The Government authorities acted on the above and did not levy the electricity duty on the electricity generated by Tata Motors from the renewable energy (wind power) during the period from 2000 till July 2007 when the issue was raised in the year 2007 on the liability to pay the electricity duty. After Tata Motors represented to the authorities on the above subject, no action was taken till 2011. When the matter was again raised in 2011, Tata Motors filed a suit (Special Civil Suit No.2377/2011) in the Court of Civil Judge Senior Division, Pune to restrain the Government authorities from recovering the electricity duty. The Civil Court has stayed the recovery and in the circumstances, electricity duty is not payable by Tata Motors. The petitioner has submitted that non-issue of Notification under section 5 of the Bombay Electricity Duty Act, 1956 cannot defeat the representation made through the Policy Decision of Government of Maharashtra which was acted upon by the petitioner. In this connection, the petitioner has relied upon the judgements of Hon'ble Supreme Court in State of Bihar Vs, Suprabhat Steel Ltd. {(1999) 1 SCC 31}, State of Punjab Vs. Nestle India Ltd. {(2004) 6 SCC 465} and State of Bihar Vs. Kayanpur Cement Ltd. { (2010) 3 SCC 274} in support of its contention that even if the formal notification is not

issued, there being a clear representation and Tata Motors having acted on them, the position remains that the electricity duty is exempted for units of electricity generated from renewable sources for captive generation.

(b) As regards the quantum of energy generated by the wind power projects of the petitioner and the quantum of energy consumed by the captive user, namely, Tata Motors, the petitioner has shown the data in Annexure 1 to the affidavit for the years 2011-12 and 2012-13. The petitioner has submitted that during the year 2011-12 and 2012-13, the entire wind energy generated by the petitioner was self-consumed.

(c) As regards the query as to whether the petitioner has availed banking facility, concessional transmission charges and losses as allowed under the Notifications dated 29.1.1996 and 12.3.1998 issued by Government of Maharashtra, the petitioner has submitted that since the establishment of the projects in 5 phases in 2000 and 2001 till their merger with Tata Motors Limited in 2005, the electricity generated had been sold to erstwhile MSEB/third party/self-consumed and banking facility has never been availed by the petitioner. As regards the concessional transmission charges and losses, the petitioner has submitted that as per the Government of Maharashtra's Policy dated 12.3.1998, the transmission charges were 0% for the first three years and 1% from the 4th year onwards. The petitioner has submitted that MSEB deducted transmission losses of 0% when electricity was sold to MSEB, but for the third party sale and self-consumption, the transmission losses deducted were 5% as per MERC order

dated 24.11.2003. The petitioner has submitted that this concession was valid for 8 years from the date of commissioning and after 8 years, the transmission charges and losses are as per MERC orders. The petitioner has submitted that after completion of 8 years in 2008-09, the petitioner has been paying transmission charges and losses as per the orders of MERC and no concession in this regard has been availed by the petitioner.

Analysis and Decision:

15. We have heard the learned counsel for the petitioner and the respondent NLDC and have perused the materials on record. The following issues arise for our consideration:

- (a) What are the requirements under the REC Regulations for grant of RECs to a Captive Power Plant?
- (b) Whether the petitioner fulfils the requirements of REC Regulations for grant of RECs?
- (c) Relief to be granted to the petitioner.

Issue No 1: What are the requirements under the REC Regulations for grant of RECs to a Captive Power Plant?

16. Section 2(8) of the Electricity Act, 2003 (the Act) defines the Captive Generating Plant as under:

“(8) Captive generating plant means a power plant set up by any person to generate electricity primarily for its own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association.”

Rule 3 of the Electricity Rules, 2005 notified by the Central Government in exercise of the powers under section 176 of the Act, lays down the requirements of Captive Generating Plant as under:

“3. Requirements of Captive Generating Plant

(1) No power plant shall qualify as a ‘captive generating plant’ under section 9 read with clause (8) of section 2 of the Act unless

(a) in case of a power plant

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

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

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

(b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy (s) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including-

Explanation:

(1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and

(2) the equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six per cent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

Illustration: In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen percent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users.

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

Explanation. - (1) For the purpose of this rule.

- a. "Annual Basis" shall be determined based on a financial year;
- b. "Captive User" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "Captive Use" shall be construed accordingly;
- c. "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;
- d. "Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity."

17. Thus the primary requirements of a power plant to qualify as Captive Generating Plant are as under:

- (a) The power plant must have been set up by a person (including co-operative society or association of persons) to generate electricity primarily for its own use;
- (b) The person (the captive user) must hold not less than 26% of ownership of such plant and must have consumed for captive use not less than 51% of the power generated by such plant determined on annual basis corresponding to financial year.
- (c) Captive user means end user of electricity and therefore, captive use means end use of electricity.

18. The five RE generation projects of the petitioner were developed by Tata Finance Limited in the years 2000 and 2001. Tata Finance Limited merged with Tata Motors Ltd on 1.4.2005. As per the affidavit dated 19.12.2013, electricity generated from all projects (except TML Phase II Developer No.4057) is supplied to Tata Motors Limited for self use with effect from April 2005 and to TML Phase II with effect from June 2007. Prior to these dates, electricity from these projects were supplied to MSEB and third parties. The petitioner has further submitted the data of electricity generated and self consumed from these wind projects for the years 2011-12 and 2012-13. As per the data, entire energy generated is consumed by Tata Motors Limited. Therefore, the petitioner, Tata Motors Limited, having 100% ownership and having consumed the entire generation from these wind power projects is a captive user of the electricity and the wind power projects fulfil the conditions of Captive Generating Plants as per the provisions of the Act and Electricity Rules, 2005.

19. Next we are considering the provisions of REC Regulations with regard to the eligibility of Captive Generating Plants for issue of RECs. Regulation 5 of the REC Regulations as it existed on the date of filing the application in June 2013 are as under:

“5. Eligibility and Registration for Certificates

(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfils the following conditions:

(a) it has obtained accreditation from the State Agency;

(b) it does not have any power purchase agreement for the capacity related to such generation to sell electricity, at a preferential tariff determined under by the Appropriate Commission:

(c) it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at price not exceeding the pooled cost of power

purchase of such distribution licensee or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

Explanation.- for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.

Provided that such a generating company having entered into a power purchase agreement for sale of electricity at a preferential tariff shall not, in case of pre-mature termination of the agreement, be eligible for participating in the Renewable Energy Certificate (REC) scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement whichever is earlier, if any order or ruling is found to have been passed by an Appropriate Commission or a competent court against the generating company for material breach of the terms and conditions of the said power purchase agreement.

Provided further that a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self consumption for participating in the REC scheme subject to the condition that such CPP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty.

Provided also that if such a CPP forgoes on its own, the benefits of concession or transmission or wheeling charges, banking facility benefit and waiver of electricity duty, it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits.

Provided also that the abovementioned condition for CPPs for participating in the REC scheme shall not apply if the benefits given to such CPPs in the form of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty are withdrawn by the State Electricity Regulatory Commission and/or the State Government.

The dispute, if any, on the question as to whether such concessional/promotional benefits were availed by a CPP or not shall be referred to the Appropriate Commission."

Explanation: For the purpose of this Regulation, the expression 'banking facility benefit' shall mean only such banking facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off peak hours.

(2) The generating company after fulfilling the eligibility criteria as provided in clause (1) of this regulation may apply for registration with the Central Agency in such manner as may be provided in the detailed procedure:

(3) The Central Agency shall accord registration to such applicant within fifteen days from the date of application for such registration.

Provided that an applicant shall be given a reasonable opportunity of being heard before his application is rejected with reasons to be recorded in writing.

(4) A person being aggrieved by an order of the Central Agency under proviso to clause (3) of this regulation may appeal before the Commission within 15 days from the date of such order and the Commission may pass such order as deemed appropriate on such appeal.”

20. As per the above regulation, a Captive Generating Plant has to fulfil the following conditions for issue of RECs:

- (a) It has obtained accreditation from the State Agency;
- (b) It does not have any Power Purchase Agreement for the capacity related to such generation to sell electricity at preferential tariff;
- (c) The Captive Generating Plant (referred to as “Captive Power Producer” in the REC Regulations) is eligible for RECs for its entire generation including self consumption;
- (d) The CGP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty;
- (e) If the CGP foregoes these benefits, it will be eligible for issue of RECs after a period of three years from the date of foregoing the benefits.

(f) The condition of three years will not apply if the benefits are withdrawn by the State Government or State Commission.

Issue No.2: Whether the petitioner fulfils the requirements of REC Regulations for grant of RECs?

21. In case of the petitioner, it has obtained accreditation from MEDA. Electricity from the generation projects are being supplied to the petitioner only for captive use and the petitioner does not have any PPA with any outside agency for sale at preferential tariff. The concessional and promotional benefits to the RE generators are guided by the Government of Maharashtra Resolution No.PSP 1095/CR 2799/NRG-2 dated 29.1.1996 and Government of Maharashtra Resolution No. NCP 1097/CR-57/NRG-7 dated 12.3.1998. As regards the concessional/promotional wheeling charges, it is noticed that as per 1998 policy, transmission losses for the wind energy transmission was to be borne by MSEB for first three years and thereafter it is 1%. As regards the wheeling charges, 1996 Resolution says that the rates will be decided by MSEB from time to time. As per the affidavit of the petitioner, after completion of 8 years from the date of commissioning i.e. 2008-09, the petitioner's projects have been paying transmission charges and losses as per MERC orders and there is no concession availed by the petitioner. Though the Resolutions of 1996 and 1998 provide for banking facility with MSEB, the petitioner has submitted on affidavit that since the power generated from these projects is a fraction of the requirement of the petitioner, the question of banking does not arise. Thus the petitioner has not availed any promotional/concessional transmission or wheeling charges or banking facility benefits.

22. Next we consider whether the petitioner is availing benefits of waiver of electricity duty. The petitioner's projects are located in Maharashtra and therefore, they are governed by the Bombay Electricity Duty Act, 1956 (Bombay Act) in so far as electricity

duty is concerned. Section 3 of the Bombay Act is the charging section. In accordance with sub-section (1) of Section 3, electricity duty is levied and payable to the State Government on consumption of electricity at the rates specified in Schedule I or Schedule II to the Act, depending upon the category of consumers. Section 5A of the Bombay Act empowers the State Government to grant exemption from payment of electricity duty to any class or category of consumers in public interest and subject to such conditions as the State Government may impose. Section 5A of Bombay Act is extracted hereunder:

"5A. Power to Exempt: Subject to such conditions as it may impose, the State Government may, if it considers it necessary in the public interest so to do, by notification in the official gazette, exempt (Whether prospectively or retrospectively,) the consumption of energy in the whole or any part of the State in respect of any class or premises or purposes or in respect of energy consumed up to a specified limit, from payment of the whole or any part of the electricity duty payable under Part A [Part B or [Part F or Part G] of the schedule of this Act."

Part G of the Schedule to Bombay Act provides as under:

*PART G		
In respect of.-		
(a)	Every person not being a licensee who generates energy and supplies the same to any other person free of charge for consumption of energy by that other person; and	At such rate or rates not exceeding 40 paise per unit as the State Government may, either prospectively or retrospectively, by notification in the Official Gazette specify
(b)	Every person other than a licensee who generates energy for consumption of energy by him	

Part G added by Mah. Act 9 of 1997 Sec.5(C)

23. It is evident from the above provision that electricity duty is leviable on self-consumption. Para 4(v) of the 1996 Resolution provides as under with regard to electricity duty:

“(v) No electricity duty shall be charged to industries for captive use of powers generated from renewable energy sources.”

The petitioner in its affidavit dated 19.12.2013 has submitted that though Government of Maharashtra had not issued a formal notification under section 5A of the Bombay Act, there was a clear and categorical policy decision taken as far back as the year 1996 whereby Government of Maharashtra had represented that the electricity duty is not payable for electricity generated from renewable sources and consumed for captive purposes. The Government authorities acted on the above and did not levy the electricity duty on the electricity generated by the petitioner during the period from 2000 till July, 2007 when the issue was raised in the year 2007 on the liability to pay the electricity duty. The petitioner has submitted that though the petitioner represented to Government authorities on this aspect, no action was taken till 2011. The petitioner thereafter filed Special Civil Suit No.2377/2011 before the Court of Civil Judge Senior Division, Pune and the order has been stayed.

24. In our view, electricity duty on self-consumption is leviable under Part G of the Bombay Act. Any exemption from the levy of electricity duty as prescribed in Part G will amount to waiver of electricity duty. Accordingly, non-levy of electricity duty in terms of para 4(v) of 1996 Resolution will amount to waiver. However, there is a pending demand from Government authorities for payment of electricity duty by the petitioner which has been stayed by the Special Civil Court. If the Special Civil Court holds the petitioner liable to pay electricity duty, then there will be no waiver and the petitioner will be eligible for issue of RECs.

25. Considering the above, we are inclined to declare that the petitioner is eligible for issue of RECs for the period from December 2012 (as per the prayer of the petitioner)

onwards till 10.7.2013, if the case pending in the Special Civil Court is decided against the petitioner. In that event, the petitioner may approach NLDC for grant of RECs and NLDC shall within one week thereafter issue of RECs to the petitioner.

26. It is however noted that Second Amendment to the REC Regulations were notified on 11th July 2013 whereunder the requirement of waiver of electricity duty has been dispensed with. The relevant provision is extracted as under:

“Provided further that a Captive Generating Plant (CGP) based on renewable energy sources shall be eligible for the entire energy generated from such plant for self consumption for participating in the REC scheme subject to the condition that such CGP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges and/or banking facility benefit.”

As per the above provision, the petitioner shall be eligible for grant of RECs from 11.7.2013 irrespective of whether it is liable to pay the electricity duty or not. We have already held in para 21 that the petitioner has not availed any promotional/concessional transmission or wheeling charges or banking facility benefits. Therefore, the petitioner is eligible for grant of RECs from its wind generating stations with effect from 11.7.2013. NLDC is directed to grant RECs with effect from 11.7.2013 within one week of the Petitioner submitting the required energy injection certificates.

27. The petition is disposed of in terms of the above.

Sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson