

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 122/MP/2013

Sub : Petition under section 79 (1) (k) of the Electricity Act, 2003 read with Regulations 3 (4),14 and 15 of the CERC (Terms and Conditions for recognition and issuance of renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

Petition No. 123/MP/2013

Sub: Petition under section 79 (1) (k) of the Electricity Act, 2003 read with Regulations 3 (4),14 and 15 of the CERC (Terms and Conditions for recognition and issuance of renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

Petition No. 129/MP/2013

Sub: Petition under sections 142, 146 and 149 of the Electricity Act, 2003 read with Regulations 3(4), 14 of the CERC (Terms and Conditions for recognition and issuance of renewable Energy certificate for Renewable Energy Generation) Regulations, 2010

Date of hearing : 16.7.2013

Coram : Shri V.S.Verma, Member
Shri M. Deena Dayalan, Member

Petitioners : Dalmia Bharat Sugar and Industries Limited (DBSIL)
DCM Shriram Consolidated Limited (DSCL)
Dhampur Sugar Mills Limited (DSML)

Respondents : National Load Despatch Centre, New Delhi
Uttar Pradesh New and Renewable Energy Development Agency,
UP.
Uttar Pradesh State Load Despatch Center, UP

Parties present : Shri M.G Ramachandran, Advocate for DBSIL and DSCL
Shri Ranjitha Ramachandran, Advocate for DBSIL and DSCL
Shri Rajiv Yadav, Advocate, DSML
Shri Pankaj Rastogi, DBSIL
Shri Arjun Krishnan, Advocate, NLDC

Ms Minaxi Garg, NLDC
Ms. Joyti Prasad, NLDC

Record of Proceedings

At the outset, learned counsel for DBSIL and DSCL submitted that Government of Uttar Pradesh vide its notification dated 7.12.2012 (Annexure A-9 of the petition) has abolished the electricity duty fixed @ 3 paise per unit on the electricity consumed for industrial and other purposes from its electricity generating source by any other person. Learned counsel submitted that UPNEDA in its letter dated 23.3.2013 has confirmed that electricity duty in self-consumption is not leviable in the State of UP based on a clarification dated 12.3.2013 from the Govt. of UP. Learned counsel submitted that the Govt. of UP has clarified that electricity duty on self consumption was abolished under notification dated 6.2.1998. The subsequent notification dated 13.9.2012 has not reintroduced the provisions related to electricity duty on the electricity consumed for industrial and other purposes from its electricity generating source by any other person and the policy of such abolition is continue to be effective. Learned counsel submitted that NLDC, based on the report of the State Agency should have issued the RECs instead of sitting on judgment over the report of the State Agency.

2. Learned counsel for NLDC submitted as under:

(a) CERC in its order dated 8.1.2013 has clearly clarified that in the context of cogeneration plants which do not fulfill the condition of CGP has to shed off all the characteristics of CGP including any benefit availed as a CGP.

(b) The issue of whether electricity duty had been abolished under the UP Act was not finally decided by CERC in its order dated 8.1.2013. However, it was left to NLDC to satisfy itself whether electricity duty was abolished and process the case for registration of RECs accordingly.

(c) Accordingly, NLDC called for a report from the State Agency i.e UPNEDA. UPNEDA in its letters dated 23.3.2013 and 1.5.2013 clarified that electricity duty in the State of UP is not leviable. On an examination of the relevant legal provisions, NLDC came to a conclusion that electricity duty had, in the eyes of law, been exempted and not abolished, whatever the nomenclature used in the subsequent notifications issued subsequently by the State Government. As a matter of law, electricity duty has only been exempted as far as self-consumption is concerned in the State of Uttar Pradesh.

(d) Under Section 3 of the Electricity Duty Act, 1952, only method available removing the levy of electricity duty that was otherwise was leviable under section 3 (1) (c) was by means of an exemption under section 3 (4) of the said Act. Therefore, the notification dated 6.2.1998 can only amount to an exemption of electricity duty. Since the parent Act specifically provides for the levy of the duty on self consumption, it would not be possible by way of a notification to do away with the levy itself.

(e) The exemption granted to self consumption of electricity vide notification dated 6.2.1998 is indeed benefit or concession provided to persons engaged in the generation of electricity for self consumption. Hence, NLDC has come to the conclusion that electricity duty has been waived by the Govt. of Uttar Pradesh and not abolished as contended by the petitioner

(f) The fourth proviso to Regulation 5 of the REC Regulations provides that condition stipulated 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 and waiver of electricity duty are withdrawn by SERC and/or the State Government. NLDC while rejecting the applications for issuance of RECs of the petitioners vide letter dated 29.5.2013 has correctly relied on the fourth proviso to the Regulations 5 of the RECs Regulations.

3. Learned counsel for the petitioners submitted that as per the second proviso to Regulation 5 (1) of the REC Regulations, a CPP should not have “availed or proposes to avail” any benefit in the form of waiver of electricity duty. The restrictive proviso becomes operative only when such generators “avails” the benefit by choice. In the concerned matter, the non levy of electricity duty on all forms of self consumption was introduced by the State Government as a matter of policy, therefore, there was no choice to such generators to avail it or to forgo it. Such policy measures are introduced by State and can only be taken away by the State. The generators are not at freedom to “avail” or “forgo” it. Besides, there is no such forum where generators can deposit such duty. Under Article 265 of the Constitution of India, no tax can be levied without authority of law. Therefore, the RE generator cannot deposit the electricity duty even if they want to, in the absence of any notification to that effect by the State Government.

4. Learned counsel for the petitioner, Dhampur Sugar Mills Limited adopted the argument advanced by learned counsel of DBSIL and DSCL.

5. Learned counsel for the petitioners requested for one week time to file written submissions.

6. The Commission directed the petitioners and respondents to file their written submission by 26.7.2018 with copy to each other.

7. Subject to above, the Commission reserved order in the petitions.

By order of the Commission,

**Sd/-
(T. Rout)
Joint Chief (Law)**