

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 126/MP/2013
With I.A.No. 14/2013**

Subject : Petition under sections 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.

Date of hearing : 16.7.2013

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

Petitioner : Tata Motors Limited, Mumbai

Respondents : Power System Operation Limited/National Load Dispatch Center,
New Delhi
Maharashtra Energy Development Agency, Pune

Parties present : Shri M.G. Ramachandran, Advocate for petitioner
Shri Ranjitha Ramachandran, Advocate for petitioner
Shri Arjun Krishnan, Advocate, NLDC
Ms. Joyti Prasad, NLDC

Record of Proceedings

Learned counsel for the petitioner submitted that the petitioner, Tata Motors Limited has been accredited under the REC framework for 21.95 MW capacity. On 1.6.2012, the petitioner applied to NLDC for registration of said 21.95 MW wind generation project. NLDC vide its letter dated 29.5.2013 rejected the application of the petitioner for issuance of RECs.

2. Learned counsel for the petitioner submitted that the NLDC has misinterpreted Regulation 5 of REC Regulations on the aspect that "CPP has not availed or does not propose to avail waiver of Electricity Duty". The availing or proposing to avail such waiver would arise if the petitioner voluntarily seek a special exemption from payment of electricity duty which has otherwise been levied and is payable. Even if the petitioner decides to pay the electricity duty, the levy of the amount paid by the authorities under the Electricity Duty Act, 1952 will be unconstitutional and ultra vires being in violation of Article 265 of the Constitution of India which provides that no tax shall be levied or collected except by authority of law. The Govt. of Maharashtra has issued policy in the year 1996 whereby no electricity duty can be charged an industry for captive use of

power generated. The petitioner is not liable at all to pay electricity duty under the Maharashtra Wind Policies. Therefore, there is no waiver availed or proposed to be availed by the petitioner.

3. Learned counsel for the NLDC submitted as under:

(a) Pursuant to the Commission`s directions in orders dated 18.10.2012 and 8.1.2013 regarding waiver of electricity duty in the State of Uttar Pradesh, NLDC as Central Agency had written letters to all the State Agencies to furnish a certification to the effect that all co-generation plants falling under category of CPP have not availed any benefit admissible to CPPs/CGPs/co-generation plants.

(b) MEDA vide its letter dated 28.2.2013 has informed that in Maharashtra 72 projects have been accredited as CPP for RECs for self-consumption. However, at the same time these projects are availing benefits of electricity duty waiver/exemption.

(c) MEDA in its letter dated 28.2.2013 has stated that Maharashtra Government vide notification dated 18.11.2010 has exempted the captive consumption of energy generated through non-conventional energy projects on or after 14.10.2010.

(d) MEDA in its said letter dated 28.2.2013 has stated that some generators have voluntarily begun paying electricity duty, even though self-consumption is exempt from electricity duty.

(e) NLDC considered the legal provisions regarding electricity duty prevailing in the State of Maharashtra and also sought legal advice on the same before coming to the conclusion that RE generators are exempt from electricity duty.

(f) Section 3 of the Bombay Electricity Duty Act, 1958 provides for levy and electricity duty on consumption. In exercise of powers under Section 5A of the said Act, Govt. of Maharashtra has exempted captive consumption of energy generated and distributed in the State through all non-conventional energy projects. Such exemption is a waiver and whoever avails the exemption is not entitled for REC. If any one pays the electricity duty on its own volition, it will have to wait for three years to become entitled for RECs.

4. Learned counsel for the petitioner requested for one week time to file written submission.

5. The Commission directed the petitioner and the respondent to file their written submissions by 26.7.2018 with copy to each other.

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

By order of the Commission,

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