

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 84/MP/2013**

**Coram:**

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

**Date of Hearing: 01.04.2014**

**Date of Order: 13.03.2015**

**In the Matter of**

Petition for registration under REC mechanism and Section 86 (1) (e) of Electricity Act, 2003.

**And in the matter of**

Shree Renuka Sugars Ltd.  
B.C.No. 105, Havelock Road,  
Camp Belgaum-590 001

**....Petitioner**

**Vs.**

1. National Load Despatch Centre  
B-9, Qutab Institutional Area, Katwaria Sarai,  
New Delhi-110 016
2. Maharashtra Energy Development Agency  
Sr. No. 191, Phase-I, MHADA Commercial Complex,  
Second Floor, Opp. Tridal Nagar,  
Yerwada, Pune-411 006
3. Maharashtra State Load Despatch Centre  
State Load Despatch Centre,  
Thane-Belapur Road, P.O.Airoli,  
Navi Mumbai-400 708

**...Respondents**

**Parties present:**

Shri Abhishek Khane, Advocate  
Ms. Joyti Prasad, NLDC  
Shri Shailendra Verma, MSLDC



## **ORDER**

The petitioner, Shree Renuka Sugar Ltd, is aggrieved by the action of National Load Despatch Centre (NLDC), Respondent No 1 herein, for not registering the petitioner as an eligible entity for issuance of Renewable Energy Certificates (RECs) under the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (the REC Regulations).

### **Facts of the Case**

2. The petitioner, a company engaged in the manufacture of sugar, has set up a bagasse-based cogeneration power plant in the State of Maharashtra, with a total installed capacity of 30 MW, commissioned on 14.12.2009. The cogeneration plant is located in the premises of M/s Deshbhakta Ratnapanna Kumbhar Ponchagenya Sahkari Sakhar Karkhana Ltd., a sugar mill being operated under lease by the Petitioner. The petitioner is stated to be using 2.55 MW for self-use and for the remaining capacity of 27.45 MW, the petitioner has entered into Energy Purchase Agreement dated 7.6.2011 (EPA) with Maharashtra State Electricity Distribution Company Ltd (MSEDCL) for sale at preferential tariff of ₹4.79/unit.

3. The petitioner was granted accreditation by Maharashtra Energy Development Agency (MEDA) vide letter dated 3.10.2012 for 2.55 MW of power used for self-consumption by the petitioner. Thereafter, the petitioner under its letter dated 8.10.2012 applied for registration to NLDC which is discharging the responsibility of Central Agency under the REC Regulations. During the pendency of the application with NLDC,

the Commission issued order dated 18.10.2012 in Petition Nos. 34/MP/2012 and other related matters which clarified the eligibility of cogeneration plants for grant of RECs. In the light of the said order, NLDC vide its e-mail dated 12.11.2012 informed the petitioner that its application had been forwarded to MEDA for certification that the cogeneration plants have not availed the benefits which are admissible to Captive Generation Plants (CGPs) and the declaration that all procedures for accreditation according to the REC Regulations and Approved Procedures have been followed. The petitioner vide its letter dated 26.11.2012 informed and clarified to MEDA that its power plant did not use 51% power for self-consumption and should be treated like any other renewable energy generator and not as a CGP. The petitioner further informed MEDA that as per the State Government's Policy dated 14.10.2008, electricity duty was not applicable to electricity generated and used for captive purposes by the generator/project developer of bagasse-based cogeneration plants. MEDA vide letter dated 29.11.2012 asked the petitioner to submit valid proof to the effect that its plant was not availing any exemptions/benefits in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty. In response, the petitioner vide letters dated 6.12.2012 and 24.1.2013 clarified that as per the policy of the Government of Maharashtra dated 14.10.2008, electricity duty was not applicable on power generated and used for captive purposes by the generator/project developer of bagasse-based cogeneration plants and further offered to pay electricity duty as and when claimed. However, NLDC by its email dated 25.3.2013 rejected the petitioner's application for registration, informing the petitioner that NLDC had received a communication from MEDA suggesting that the petitioner was availing the benefit of

electricity duty waiver and as such, was not eligible for availing REC benefits. NLDC further informed the petitioner that MEDA had been advised to review the accreditation granted to the petitioner's project. The petitioner took up the matter with NLDC again under its letter dated 12.4.2013. However, the petitioner was not registered by NLDC under the REC Regulations.

4. Feeling aggrieved, the petitioner has filed the present petition alleging that NLDC has grossly erred in refusing to issue RECs to the petitioner. The petitioner has computed a total loss of ₹ 2,35,00,800/- for the period November 2012 to April 2013 on account of the alleged inability of the petitioner to participate in the REC trades. The petitioner has made the following prayers:

(a) to consider the application of the petitioner for grant of REC;

(b) to grant the benefits REC retrospectively to be effective from 25.10.2012;

(c) to direct MEDA not to revoke the accreditation granted to the petitioner;

(d) to direct the Respondents to jointly and severally pay the petitioner a sum of ₹2,35,00,800/- (₹ Two crore Thirty Five Lakhs Eight Hundred Only) along with interest at 12% p.a. from the date of application for registration, alongwith further interest till realization, for the losses caused to the Petitioner on account on wrongful denial of REC mechanism registration.

## **Submission of the Petitioner and Respondents**

5. The Petitioner has submitted that NLDC has relied upon the order of the Commission dated 18.10.2012 in Petition No. 34/MP/2012 and other related matters to deny registration to the petitioner for the purpose of issuance of RECs. The petitioner has submitted that though the Commission has held in the said order that the criteria for RE captive generators and other generators are different, the said reasoning has been negated in Para 25 of the order dated 25.10.2012 by applying the disqualifications specified in the second proviso meant for the captive generation plants to other RE generation plants. The petitioner by its letters dated 6.12.2012 and 24.1.2013 has informed NLDC that on account of captive consumption being less than 51 % total generation, its plant should not be treated as a CGP and it should only be treated as RE generator. The petitioner has further submitted that it has not availed nor proposes to avail any benefits in the form of concessional transmission charges, wheeling charges, banking facility and waiver of electricity duty benefit as applicable to CGP. The petitioner has stated that the notification issued by the Government of Maharashtra abolishing electricity duty is not applicable to power generated and used for captive purposes by the generator/project developer of bagasse based co-generation power plant. Moreover, the notification issued by Maharashtra Government abolishing electricity duty on RE generators is an omnibus abolition made pan-industry without having any special benefits or waiver for any particular Captive Generation Plant(s). Therefore, exemption of electricity duty as per the policy of the State Government cannot be equated with the benefits or waiver within the meaning of Regulation 5 of REC Regulations. The petitioner has submitted that it is ready to pay electricity duty on

the power generated for which RECs may be claimed. The petitioner has submitted that the order of the Commission dated 18.10.2012 has not laid down any finding on any point of law and as such there is no ratio desidendi which can be made applicable to cases with similar facts and points of law. The petitioner has also submitted that alternatively, it may be declared that the order of the Commission dated 18.10.2012 was passed in the context of Uttar Pradesh Electricity Duty Act was not applicable in case of the Petitioner who is governed by the Bombay Electricity Duty Act, 1948. Moreover, the Petitioner's plant having been accredited before the issue of the order of the Commission, NLDC cannot apply the said order retrospectively to revoke the accreditation of the plant of the petitioner. The petitioner has also highlighted that the Commission had proposed in the draft second amendment to the REC Regulations to abolish electricity duty as one of the disqualifying criteria for the grant of RECs. The Petitioner has stated to have suffered enormous difficulties including a loss of ₹2,35,00,800/- on account of denial of the REC registration under the REC Regulations.

6. 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, an RE generator whether qualifying as CGP or other RE generator, cannot obtain the benefit of RECs for self consumption so long as it takes the benefit of electricity duty waiver. According to NLDC, the decision of the Commission in the order dated 18.10.2012 is applicable in all cases having similar facts and 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 that the applicants have not availed the benefits of electricity duty. Accordingly, NLDC wrote to all State Agencies to furnish certificates that co-generation plants falling under category of CPP had not availed any promotional benefits. In response, MEDA vide its letter dated 28.2.2013 informed NLDC that 72 projects were accredited as CPPs for the self-consumption and were availing benefits of electricity duty waiver/exemption. MEDA further stated 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 14.10.2008. MEDA also submitted that some generators had voluntarily been paying electricity duty even though self-consumption was exempt from the electricity duty, though MEDA was not aware of the rates at which such duty was being paid.

7. 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 a 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 has been issued by the Government of Maharashtra in exercise of power under Section 5A of the Bombay Act granting exemption to renewable energy captive power plants from the payment of electricity duty. NLDC has stated that it examined whether such an exemption amounted to waiver of electricity duty within second proviso to sub-clause (c) of clause

(1) of Regulation 5 of the REC Regulations and came to the conclusion that the exemption granted from payment of electricity duty to the generating units for self-consumption was indeed a benefit or concession and as such, electricity duty was deemed to have been waived by the Government of Maharashtra. In other words, though electricity duty is still leviable under Section 3 of the Bombay Act, the Government of Maharashtra has only waived the obligation to pay the same. NLDC has further submitted that while rejecting the applications made by the petitioner for issuance of RECs, it has correctly relied on the proviso to sub-clause (c) of clause (1) of Regulation 5 of the REC Regulations.

8. MEDA in its letter dated 28.2.2013 addressed to NLDC has recommended that the CPP/CGP/Co-generation projects exempted from payment of electricity duty by the State Government be permitted to participate under REC mechanism. MEDA has further recommended registration of the petitioner for its self-consumption capacity of 2.55 MW.

9. In order dated 2.12.2013, we had directed the petitioner to place on record certain documents and clarify some of the issues as under:

- (a) The date of commissioning of the 30 MW bagasse/biomass based co-generation power plant;
- (b) Copy of the PPA dated 7.6.2011 between the petitioner and MSEDCL;
- (c) Whether the load of 2.55 MW of power for self-use has been assessed or sanctioned by the concerned distribution licensee; and



- (d) Copy of the "New Policy for Power Generation from Non-conventional Source of Energy-2008" dated 14.10.2008 issued by Government of Maharashtra and notification issued by Government of Maharashtra exempting the co-generation plant from paying electricity duty on self consumption.

10. In compliance of our direction, the petitioner vide its affidavit dated 19.12.2013 has submitted the copy of the PPA dated 7.6.2011, the Tripartite Agreement signed with MSEDCL based on which the project was accredited, copy of the "New Policy for Power Generation from Non-conventional Source of Energy-2008" dated 14.10.2008 issued by Government of Maharashtra and the notification issued by Government of Maharashtra exempting the co-generation plant from paying electricity duty on self consumption. The petitioner has submitted that as per the PPA, the petitioner's captive/self-consumption at the co-generation plant is 5.63 MW against which only 2.55 MW was accredited by MEDA. The petitioner has further submitted that no specific certificate of load capacity sanction was obtained by the petitioner from MSEDCL as it is part of Tripartite Agreement signed with MSEDCL based on which the project was accredited.

### **Analysis and Decision**

11. We have heard the learned counsel for the parties and have perused the materials on record. We have given our consideration to the submissions of the parties. The petitioner has pleaded that the orders dated 18.10.2012 and 8.1.2013 were issued in the context of the UP Electricity Duty Act and should not be made applicable in case of the petitioners which is governed by the Bombay Act. Moreover, the petitioner has

argued that there is no levy of electricity duty on the renewable generators in the State of Maharashtra and therefore, such absence of levy of electricity duty should not be construed as a waiver to deny the benefits of REC to the petitioner. On the other hand, NLDC has submitted that there is waiver of electricity duty in the State of Maharashtra in so far as the renewable energy generators are concerned and therefore, the petitioner is not eligible for grant of RECs. The following issues arise for our consideration:

- (a) What is the scope of the Commission's orders dated 18.10.2012 and 8.1.2013?
- (b) Whether there is waiver of electricity duty in the State of Maharashtra in so far as renewable energy generators are concerned.
- (c) In the light of the decision on the above points, what relief should be granted to the Petitioner?

We have discussed the issues in the following paragraphs.

### **Issue 1: Scope of the orders dated 18.10.2012 and 8.1.2013**

12. In Petition No. 34/MP/2012, an issue arose as to whether the co-generation plants not meeting the conditions of the captive power plants were eligible for grant of RECs on the electricity generated for their self-consumption. The Commission after examining the provisions of the Electricity Rules, 2005 and REC Regulations came to the conclusion that self-consumption by a co-generation plant which does not meet the requirement of CGP as defined in the Electricity Rules, 2005 is deemed to be supply of

electricity by a generating company and therefore, its captive consumption could be counted towards issuance of RECs, subject to fulfilment of the conditions laid down in Regulation 5 of the REC Regulations. It was, however, observed that in case any co-generation plant was availing any concessional benefits or banking facility or waiver of electricity duty etc, it would be required to forgo these benefits before availing the RECs for the entire generation from the plant including self-consumption. Relevant portions of the said order are extracted as under:

"23. It is however observed that the CGP status of a generating plant is not static in accordance with the Electricity Rules, 2005 and it may vary from year to year depending on the amount of captive consumption. Rule 3 (2) of the Electricity Rules 2005 in this connection is extracted overleaf. "(2) It shall be the obligation of the captive users to ensure that the consumption by the captive users at the percentages mentioned in subclauses (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." It is evident from the above that where the minimum percentage of captive use is not complied with in any year, the entire electricity generated by such plant shall be deemed to be supply of electricity by the generating company. In other words, a captive generating plant will be treated on the same pedestal as any other generator if it fails to achieve minimum of 51% of consumption for self use and consequently will be deprived of all benefits admissible to a captive generating plant under the Act. Moreover, the entire electricity generated by it shall be treated as if it is a supply of electricity by a generating company. Section 10(2) of the Act provides that a generating company may supply electricity to any licensee in accordance with the Act and the rules and regulations made thereunder and supply electricity to any consumer subject to regulations made under sub-section (2) of section 42. Thus a CGP which fails to achieve 51% of captive consumption in a year, its entire generation of electricity including captive consumption shall be deemed to have been supplied to the licensees or open access consumers. In that case such a plant will have to fulfil the conditions laid down in Regulation 5(1)(a) to(c) to avail the benefits of RECs and will not be subject to the conditions required to be fulfilled by a CGP or CPP as required under the last two provisos.

24. There is not much difference between a co-generation plant having captive consumption of less than 50% of its generation of electricity and a CGP which has failed to use 51% of its generation for captive use. A cogeneration plant with more than 51% of its generation for captive use will be classified as a CGP under the Act and with less than 51% will be treated as any other generating station. It therefore follows that where a cogeneration plant has used less than 51% of its generation for captive consumption, its entire generation will be deemed to be treated as supply of electricity by a generating company. In other words, the captive consumption by a cogeneration plant shall be treated as supply of electricity by a generating station by

operation of law and shall be eligible for RECs subject to fulfilment of the conditions specified in Regulation 5(1)(a) to (c) of the REC Regulations. Such a plant will not be subject to the conditions under last two provisos under Regulation 5(1) which are applicable to CGP/ CPP only. The clarification of the Commission in the letter dated 21.6.2011 needs to be considered in the light of the foregoing discussion. The purpose of the letter was not to issue an amendment to the REC Regulation as contended by UP SLDC but only to amplify the scope of the regulations in its proper perspective.

25. In the light of the above discussion, we are of the view that the self consumption of electricity by co-generation plants not meeting the requirement of a CGP under the Electricity Rules, 2005, shall be deemed to be supply of electricity by a generating company which can either be to a licensee or to an open access consumer. Once, a co-generation plant is considered as any other RE Generator and its captive consumption is deemed to be supply of electricity by a generating company, it follows that its captive consumption can be counted towards issuance of REC subject to fulfilment of the conditions laid down in Regulations 5 (1) (a) to (c) of the REC Regulations. Such a plant not being a CPP will not be entitled to any of the benefits available to the CPP and in case, any co-generation plant is availing any concessional benefits or banking facility or waiver of electricity duty etc, it shall be required to forgo these benefits before availing the RECs for the entire generation from the plant including self consumption.” As per the above findings, a co-generation plant which does not qualify to be a CGP, its entire generation including self-consumption shall be deemed to be generation of electricity by a generating company and accordingly, such a plant shall be entitled for grant of REC. However, such a plant not being a CGP shall not be entitled for any of the benefits available to CGP and if any co-generation plant is availing any of the concessional benefits admissible to CGP, it shall be required to forgo the same before availing REC for its entire generation including self-consumption.”

13. M/s Dhampur Sugar Mills Limited, the petitioner in Petition No 36/MP/2012 filed Review Petition (No. 25/2012) seeking review of the order dated 18.10.2012 to the extent it envisages the ability of the RE generator to forgo the benefits of abolition of electricity duty on consumption of electricity from one’s source of generation. Two other RE generators filed IAs in Petition No. 45/MP/2012 and Petition No.46/MP/2012 for clarifications that foregoing of waiver of electricity duty cannot be a condition precedent for participating in REC scheme. The Review Petition and IAs were disposed of by a common order dated 8.1.2013. The Commission dealt with the scope of its observation in para 25 of the order dated 18.10.2012 as quoted above in the following terms:

“9. It is apparent from para 25 of the impugned order that supply of electricity by the co-generation plants which do not fulfil the conditions of the CGPs as prescribed in the Electricity Rules, 2005 has been treated as supply of electricity by a generating company which entitles them for issue of RECs. Once the co-generation plants are treated as generating company for the purpose of REC, it follows that these plants are liable to pay all charges which are leviable on a generating company and cannot avail any of the benefits which are admissible to CGPs. Otherwise, these plants will enjoy the facility of RECs with the deemed status of a generating company and benefits of CGPs. If the CGPs are required to forgo the benefits in order to avail RECs, there is no justification as to why the co-generation plants which do not fulfill the conditions of CGP should be allowed the benefits while availing the RECs. The observation in paragraph 25 of the impugned order has to be understood in the context that a cogeneration plant in order to be treated as a generating station of a generating company as distinguished from a CGP has to shed off all the characteristics of a CGP including any benefit availed as a CGP. This has been further clarified in para 33 of the order where it has been observed that once the captive cogeneration is deemed to be supply of electricity by a generating company for the purpose of REC by operation of law, the petitioner and other cogeneration plants cannot avail the waiver of electricity duty or any other benefits admissible to CGP for captive consumption while availing benefits of REC.  
.....”

14. As per the above orders of the Commission, it was decided that a co-generation plant which does not qualify to be a CGP, its entire generation including self-consumption shall be deemed to be generation of electricity by a generating company and accordingly, such a plant shall be entitled for grant of REC. However, such a plant not being a CGP shall not be entitled for any of the benefits available to CGP and if any co-generation plant is availing any of the concessional benefits admissible to CGP, it shall be required to forgo the same before availing REC for its entire generation including self-consumption. Thus, the intention was to ensure that the co-generation plants not fulfilling the conditions of CGP do not avail the benefits available to the CGP and these plants are not saddled with the disqualification attached to the CGP as per proviso to Regulation 5(1) (c) to the REC Regulations which is extracted as under:

“Provided also that if such a CPP forgoes on its own, the benefits of concessional 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.”

in accordance with the above proviso, if a CGP foregoes these benefits, then it will be disqualified for a period of 3 years for the purpose of availing RECs. However, if a RE generator which does not fulfil the requirement of CGP but is availing any of the benefits akin to the CGP, then it will be required to forego the benefits only and not to wait for three years to be eligible for RECs as the above proviso is not applicable to such RE generator. This interpretation is applicable to all RE generators irrespective of the States in which they are located. Accordingly, we reject the contention of the petitioner that the order dated 18.10.2012 has not laid down any finding on any point of law and as such there is no ratio decidendi which can be made applicable to cases with similar facts and points of law.

#### **Issue No.2: Whether there is waiver of electricity in the State of Maharashtra for RE Generators**

15. The petitioner has stated that the notification issued by Maharashtra Government abolishing electricity duty on RE generators is an omnibus abolition made pan-industry without having any special benefits or waiver for any particular captive generation plant(s). Therefore, exemption of electricity duty as per the policy of the State Government cannot be equated with the benefits or waiver within the meaning of Regulation 5 of REC Regulations. NLDC has stated that though electricity duty is still leviable under Section 3 of the Bombay Act, the Government of Maharashtra has only waived the obligation to pay the same. Therefore, the co-generation plants in Maharashtra are availing waiver of electricity duty which makes them ineligible for grant of RECs.

16. We have gone through the provisions of Bombay Act. 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."

16. 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)

17. The Government of Maharashtra issued Government Resolution No. APAU (NCE)-2007/CR-693/Urja-7 dated 14.10.2008 extending certain benefits and facilities to the renewable energy based generators including the projects based on Bagasse. Para 4.2 of the Policy Resolution provides as under:



**“4.2 Electricity Duty:-** In the event of the developers using the Electricity Generated from the Projects commissioned under this new policy for their own captive purpose, Electricity Duty will not be levied for the first 10 years from the date of commissioning. This benefit will also be applicable for third party sale.”

18. The Government of Maharashtra vide Notification dated 18.11.2010 has exempted captive consumption of energy generated through non-conventional energy projects from payment of electricity duty for a period of 10 years with effect from 14.10.2008. The said notification dated 18.11.2010 is extracted as under:

“No. ELD.2010/CR-256/NRG-1. Whereas, in pursuance of the Non-Conventional Energy Generation Policy, 2008, declared by the Government of Maharashtra, vide Government Resolution, Industries, Energy and Labour Department No. APU.2007/CR-693/NRG-7, dated 14th October 2008, it is expedient in the public interest to exempt non-conventional energy generated by projects covered under the said Government Resolution and issued for their own captive consumption, from payment of electricity duty, in pursuance of the Government’s policy of promoting generation of power from non-conventional sources.

Now, therefore, in exercise of the power conferred by Section 5A of the Bombay Electricity Duty Act, 1956 (Bom. L of 1958), the Government of Maharashtra exempts the captive consumption of energy generated and distributed in the State through all non-conventional energy projects under the said policy from payment of the electricity duty payable under clause (b) of Part G of the Schedule to the said Act, for a period of first ten years from the date of commencement/implementation of non-conventional energy projects which have been established on or after 14th October. 2008.”

19. Perusal of the above notification will reveal the following:

(a) Non-conventional Energy generated projects developed under the Government of Maharashtra Resolution dated 14.10.2008 which generate and distribute electricity within the State are covered under the notification.

(b) Captive consumption of energy such non-conventional energy projects are eligible for exemption from payment of electricity duty payable under Part G of the Schedule to Bombay Act.



(c) Such exemption is applicable for a period of first ten years from the date of commencement/implementation of non-conventional energy projects which have been established on or after 14.10.2008.

20. A combined reading of the provisions of the Bombay Act, Government of Maharashtra Resolution dated 18.10.2008 and the Government of Maharashtra Notification dated 18.11.2010 would reveal that the electricity duty is leviable under para 2 of Part G of Schedule to Bombay Act on “every person other than a licensee who generates energy for consumption of energy by him”. The Government Notification exempting the RE generators from payment of electricity duty are applicable only to those generators who are covered under the Policy of 18.10.2008. Moreover, the exemption is for a period of 10 years from the date of commencement/implementation of the projects which have been established on or after 18.10.2008. In other words, the non-conventional projects commissioned before 18.10.2008 and the projects which are not covered under the Non-Conventional Energy Generation Policy, 2008 of Government of Maharashtra are still liable to pay the electricity duty for self-consumption. There is only exemption from payment of electricity duty to a specified category of RE generators in the State of Maharashtra. Therefore, it cannot be said that the exemption from payment of electricity duty for self-consumption in terms of Government of Maharashtra Notification dated 18.11.2010 is applicable pan-industry and amounts to abolition of electricity duty. It may be noted that unlike the case of Maharashtra, there is abolition of electricity duty in Uttar Pradesh which has been dealt with by the Commission in its order dated 14.11.2013 in Petition No.122/MP/2013 and therefore, the present case is distinguishable from the case of Uttar Pradesh.

21. The next question is whether exemption of electricity duty to RE generators in the State of Maharashtra who are covered under the Non-Conventional Energy Generation Policy, 2008 amounts to waiver of electricity duty in accordance with the provisions of REC Regulations. The issue of waiver of electricity duty has been dealt with in our order dated 14.11.2013 in Petition No.122/MP/2013 in the context of abolition of electricity duty. The relevant portion of the order is extracted as under:

“14. The next question that arises for our consideration is whether such abolition of electricity duty on consumption from generation from own sources amounts to waiver of electricity duty so as to disentitle the petitioner from grant of REC. NLDC has submitted that it considered the notification dated 6.2.1998 as exemption and further considered whether such an exemption amounted to waiver of electricity duty in the context of the fourth proviso to Regulation 5(1)(c) and came to the conclusion that the exemption granted to self-consumption vide notification dated 6.2.1998 is a benefit or concession provided to persons engaged in generation of electricity for self-consumption, which category would include CPPs as contrasted with other categories of generators of electricity who would have to pay electricity duty. Hence, electricity duty has been waived by the Government of Uttar Pradesh with respect to the petitioner and other co-generation plants. First of all, it needs to be clarified that the Commission in its order dated 18.10.2012 has held the petitioner as a generating company and not a Captive Generating Plant as its captive user does not consume 51% of the power produced. Secondly, since classification of a plant as a CGP or a generating station is dependent on the quantum of consumption by the captive user, the Commission as a matter of caution directed that it should be ensured that a co-generation plant is not availing any benefit which is admissible to a CGP. The benefits admissible to a CGP are enumerated in fourth proviso to Regulation 5(1)(c) of REC Regulation which is extracted as under:

“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.”

The words used in fourth proviso are “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”. In other words, the proviso proceeds on the premise of exercise of free will by a CGP either to „avail“ or „not to avail“ the promotional benefits including the waiver of electricity. The notification of the Government of UP dated 6.2.1998 does not give such option to any generator in so far as consumption of electricity from own sources of generation is concerned. It is a notification with universal application to all consumers who consume electricity from

their own sources of generation. It is not a case where the petitioner has applied to the State Government under section 3(4) of the UP Electricity Duty Act, 1952 and has been granted exemption from payment of electricity duty on self-consumption which is otherwise payable. In the present case, electricity duty on self-consumption is not payable at all and therefore, availing the benefit of waiver of electricity duty does not arise. The term „waiver“ means the voluntary relinquishment of some known right or privilege. The term has been defined in Black's Law Dictionary as under:

“Waiver: the voluntary relinquishment or abandonment- express or implied- of a legal right or advantage. The part alleged to have waived a right must have had both knowledge of existing right and the intention of foregoing it.”

For the “waiver of electricity duty” to operate, there should be some law which permits a person to voluntarily relinquish or abandon the payment of electricity duty. In this case, there is no option or ability for a CGP or co-generation plant to voluntarily relinquish or abandon the payment of electricity duty on self-consumption as levy of electricity duty on self-consumption has been abolished in the State of UP. Therefore, it cannot be insisted that the petitioner must pay the electricity duty on self-consumption before being considered eligible for grant of REC. Such an insistence would be unreasonable, as the benefit of electricity duty abolition has been conferred by the State Government in exercise of its statutory powers, and cannot be voluntarily abandoned by the petitioner. In other words, the requirement of giving up electricity duty exemption cannot possibly be fulfilled by the petitioner, unless the State Government chooses to withdraw the said exemption/abolition. We also agree with the petitioner that even though it intends to pay the electricity duty on self-consumption, it cannot do so as there is no authority of law to collect such duty at present. In our view, the abolition of electricity duty on consumption from own sources of generation prevalent in the State of Uttar Pradesh cannot be treated as waiver of electricity duty under fourth proviso to Regulation 5(1)(c) of REC Regulations.”

22. In the light of the order quoted above, the test for deciding whether the exemption is waiver or not is to consider whether there is any law which permits a person to voluntarily relinquish or abandon the payment of electricity duty on self-consumption. For this purpose, certain provisions of the Non-Conventional Energy Generation Policy, 2008 need to be considered. The Policy vests a right on the Government of Maharashtra to approve the Infrastructure Clearance letter needed to become eligible for availing all allowable benefits under the Policy. Para 2.0 of the Policy dated 18.10.2008 is extracted as under:

“2.0 Under this policy, Government of Maharashtra has the rights to approve Infrastructure Clearance letter needed to become eligible for availing all allowable benefits for all types and capacities of renewable energy projects. For this purpose,

Promoters/Developers/Investors will have to submit a project proposal to MEDA. MEDA will examine the proposal and then submit it to Government alongwith its recommendations. Infrastructure Clearance letter will be issued after approval from the Government.”

Further, Government of Maharashtra issued amendment to the Resolution dated 14.10.2008 vide Resolution dated 3.8.2009 for removing ambiguity regarding expenditure of Evacuation arrangement, electricity generation project and capital grant. The following paragraph in the Resolution which is considered relevant is extracted as under:

“All promoters/developers/investors who do not wish to obtain facilities-concession under this policy, and then in that case, they need not to take infrastructural clearance from the Government.”

The above provisions in the Non-Conventional Energy Generation Policy, 2008 and the subsequent amendment thereto make it clear that Government may reject a RE generator from being eligible for benefits/concession under the Policy. A RE generator may opt not to avail the benefits/concession under the Policy. The RE generators who are not covered under the Non-Conventional Energy Generation Policy, 2008 are liable to pay electricity duty. It is pertinent to mention that the Notification dated 18.11.2010 has been issued to give effect to the Non-Conventional Energy Generation Policy, 2008. Clause (b) of Part G of Schedule to Bombay Act is still on the statute and governs the payment of electricity duty for self-consumption. Those RE generators who do not avail the benefits of Non-Conventional Energy Generation Policy, 2008 have the obligation to make payment of electricity duty as per clause (b) of Part G of Schedule to the Bombay Act. In our view, there is waiver of electricity duty on self-consumption in the State of Maharashtra.

### **Relief to the Petitioner, if any**

23. As per the Tri-partite Agreement dated 7.6.2011 between the Petitioner, Host Sugar Factory and MSEDCL, co-generation power plant's auxiliary consumption is 2.55 MW both during season and off-season. Accordingly the petitioner has been accredited for 2.55 MW. The Petitioner has applied for registration for REC for the said capacity vide its letter dated 8.10.2012 and is seeking registration with effect from 25.10.2012. It is pertinent to note that the Second Amendment to the REC Regulations was notified on 11.7.2013 which dispensed with the requirement of 'availing of waiver of electricity duty' as a disqualification for registration to participate in REC scheme. The representative of the NLDC categorically stated during the hearing that the petitioner was being considered for registration in accordance with the amended REC Regulations. Therefore, the dispute is confined to the period from 25.10.2012 to 10.7.2013.

24. We have decided in para 14 of this order that co-generation plants not fulfilling the conditions of CGP can avail RECs for self-consumption after foregoing the benefits of concessional benefits including waiver of electricity duty and the bar of three years applicable for CGP would not operate in their case. Therefore, the petitioner may be considered for registration for RECs if it foregoes the benefits of waiver of electricity duty for the relevant period. The petitioner in para 23 of its petition has also stated that "the Petitioner is willing to pay the electricity duty on the power generated for which RECs may be claimed".

25. In view of the above, the petition is allowed with the direction that NLDC shall consider the petitioner for grant of RECs with effect from 25.10.2012 till 10.7.2013 for a

capacity of 2.55 MW if the petitioner produces the documentary evidence that it has foregone the benefits of electricity duty by making payment for the same. NLDC is directed to issue RECs for the said period within 15 days of the petitioner satisfying NLDC regarding payment of electricity duty on the power generated and consumed for captive use. As 'waiver of electricity duty' is no more a disqualification for grant of RECs after 10.7.2013, NLDC may deal with the case of the petitioner in accordance with the applicable REC Regulations for the period after 10.7.2013.

26. The petitioner has prayed that the Respondent No.2 be directed not to revoke its accreditation. In view of our decision in para 25 above and also the fact that even otherwise, the petitioner is eligible for registration with effect from 11.7.2013, there may not be any necessity for revocation of accreditation. The petitioner has further prayed for direction to NLDC and MEDA to pay the compensation for a sum of ₹2, 35, 00,800 with an interest of 12% per annum from the date of application till the date of realization for denial of registration for REC mechanism. In our view, NLDC had acted in *bona fide* manner based on its understanding of the provisions of REC Regulations. The petitioner has not been able to establish any *mala fide* on the part of NLDC. Therefore, this prayer is rejected.

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

**Sd/-**  
**(A. K. Singhal)**  
**Member**

**sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**