

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.64/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Date of Order: 29.5.2015

In the Matter of

Petition under Regulations 3 (4) and 14 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for renewable energy generation) Regulations, 2010 for directions and orders as considered appropriate to National Load Despatch Centre, on the issue of Renewable Energy Certificates

And

In the Matter of

M/s Shreekanth Mhaskoba Sakhar Karkhana Ltd.
Shreenathnagar Patethan,
Post-Rahu, Tal- Daund
Pune

.....**Petitioner**

Vs.

National Load Despatch Centre
B-9, Qutab Institutional Area
Katwaria Sarai
New Delhi-110016

.....**Respondent**

Parties Present:

Shri Rajiv Yadav, Advocate for the petitioner
Ms. Jyoti Prasad, NLDC
Shri Shailendra Verma, NLDC



ORDER

The petitioner, Shreekanth Mhaskoba Sakhar Karkhana Limited, the owner of a bagasse based co-generation plant in the State of Maharashtra has filed this petition seeking a direction to National Load Despatch Centre (NLDC) to issue Renewable Energy Certificates (RECs) for the period from November, 2012 to March, 2013 under the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (REC Regulations).

2. The petitioner is a company engaged in manufacture of sugar and has set up a bagasse based cogeneration power plant with total installed capacity of 9.250 MW in Baramati Taluka of Pune District in the State of Maharashtra. The co-generation plant was commissioned on 20.1.2012. The petitioner entered into an Energy Purchase Agreement (EPA) dated 24.1.2011 with Maharashtra State Electricity Distribution Company Ltd (MSEDCL) for sale of surplus power over and above its requirement of self-consumption.

3. The petitioner was granted accreditation by Maharashtra Energy Development Agency (MEDA) vide letter dated 28.8.2012 for 4.545 MW of power used for self-consumption by the petitioner. The petitioner was registered under REC mechanism by NLDC on 26.10.2012. Thereafter, the petitioner applied for issuance of RECs to NLDC for its self-consumption during the period from October, 2012 to March, 2013. However, RECs for the month of October, 2012 was only



issued and RECs for the months of November, 2012 to March, 2013 were denied by NLDC. The petitioner has submitted that NLDC vide letter dated 29.5.2013 informed the petitioner that since self-consumption has been exempted from payment of electricity duty, such exemption amounts to 'waiver of electricity duty' under the second proviso to Regulation 5 of the REC Regulations and accordingly, RECs for self-consumption cannot be issued.

4. The petitioner has submitted that since the said letter of NLDC has been set aside by the Commission vide order dated 14.11.2013 in Petition No. 122/MP/2013 and other related matters, NLDC ought to have issued RECs to all the eligible entities for their self-consumption. The petitioner has submitted that the Commission in the said order dated 14.11.2013 observed that abolition of electricity duty on consumption from own sources of generation cannot be treated as 'waiver of electricity duty' for the purpose of REC Regulations and such directions are equally applicable to other co-generation plants located in other States. The petitioner has submitted that Section (4) of the Bombay Electricity Duty Act, 1958 provides for self-consumption of power from one's own source of generation and the said provision can be relaxed by the State Government by invoking Section 5A. Therefore, Government of Maharashtra is empowered to exempt any category of generators from electricity duty. The petitioner has submitted that the Government of Maharashtra vide Notification dated 18.11.2010 exempted RE generators from payment of electricity duty on self-consumption of renewable power for a period of ten years from the date of commencement/ implementation of non- conventional

energy projects which have been established on or after 14.10.2008. Therefore, the petitioner has been exempted from payment of electricity duty in respect of consumption of renewable power generated by its bagasse based co-generation unit. The petitioner has submitted that the requirement of giving up exemption of electricity duty is not possible to be performed by the petitioner, unless the State Government withdraws the said exemption. The petitioner has submitted that despite direction of the Commission in order dated 14.11.2013 setting aside the NLDC's letter dated 29.9.2013, NLDC has not issued RECs in respect of self-consumption of renewable energy during the period from November 2012 to March 2013.

5. NLDC in its reply dated 1.7.2014 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 other RE 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 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 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 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 MEDA was not aware of the rates at which such duty was being paid.

6. 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. NLDC has submitted that NLDC`s letter dated 29.5.2013 regarding non-issuance of RECs, was challenged by the different co-generating plants of UP and two RE generators from Maharashtra. Subsequently, the Commission vide order dated 14.11.2013 directed NLDC to process the case of UP`s co-generation plants for issuance RECs for the period from November 2011 till July 2013. However, the order with regard to Maharashtra was reserved. NLDC has submitted that since the present petition is also similar with the petitions filed by co-generation plants of Maharashtra, the RECs of the petitioner for the period from November, 2012 to March 2013 could not be issued by it. NLDC has further submitted that in the case of Maharashtra, exemption from levy of electricity duty is only for a period of 10 years and cannot be stated to have been abolished. Therefore, this exemption by the Govt. of Maharashtra amounts to a waiver. At the end of 10 years` time period, these generators shall be entitled to avail RECs in terms of the provisions of REC Regulations.

Analysis and Decision:

7. We have heard the learned counsel for the petitioner and the representative of the respondent and perused the documents on record. The petitioner has relied upon the decision of the Commission in order dated 14.11.2013 in Petition No. 122/MP/2013 and other related matters in support of its claim that there is no waiver of electricity in the State of Maharashtra in case of self-consumption and



therefore the petitioner is entitled to issue of RECs. 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.

8. The following issues arise for our consideration:
- (a) Whether the case of the petitioner is covered under Commission`s direction dated 14.11.2013 in Petition No. 122/MP/2013 and other related matters?
 - (b) Whether there is waiver of electricity duty in the State of Maharashtra in so far as renewable energy generators are concerned.

Issue No. 1: Whether the case of the petitioner is covered under Commission`s direction dated 14.11.2013 in Petition No. 122/MP/2013 and other related matters?

9. Before we go into the question whether the case of the petitioner is covered under order dated 14.11.2013 in Petition No. 122/MP/2013, the historical facts leading to the issue of the said order needs to be briefly discussed. In Petition No. 34/MP/2012 and other related petitions, 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 in the order dated 18.10.2012 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. 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 Commission in a combined order dated 8.1.2013 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 forego the same before availing REC for its entire generation including self-consumption. This interpretation is applicable to all RE generators irrespective of the States in which they are located.

10. In Petition No.122/MP/2013, an issue arose as to whether the co-generation plants in Uttar Pradesh were availing waiver of electricity duty. The Commission



after examining the provisions of UP Electricity Duty Act 1952, the Notifications dated 3.1.1997, 6.2.1998, 13.9.2012 and 12.12.2012 issued by the Government of Uttar Pradesh came to the conclusion that the electricity duty on consumption of electricity from own sources of generation has been abolished by the Government of Uttar Pradesh in exercise of its power under section 3 of the Uttar Pradesh Electricity (Duty) Act, 1952 vide Notification dated 6.2.1998 and there is no change in the policy of the Government of Uttar Pradesh. The other question that was considered was whether such abolition of electricity duty amounted to waiver of electricity duty for the purpose of grant of RECs. The Commission after examining the provisions of REC Regulations and UP Electricity Duty Act, 1952 and the notifications issued thereunder, came to conclusion that 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.

11. The petitioner has submitted that since the said order dated 14.11.2013 has attained finality, it should be applicable to all REC generators in the country. It is clarified that said order was passed in case of the cogeneration plants in the State of UP in the light of the provisions of UP Electricity Duty Act, 1952 and the various notifications issued by the Government of UP under the said Act. The provisions of Electricity Duty Act differ from State to State and their actual operation also differs from State to State depending upon the policy decision of the concerned State Government. Therefore, the decision in the order dated 14.11.2013 cannot be



automatically extended in case of the petitioner which is a co-generation plant operating in the State of Maharashtra. The order dated 14.11.2013 has attained finality in so far as the cogeneration plants in the State of UP are concerned and the said order does not address the issue of cogeneration plants of other States. Therefore, the case of the petitioner has to be considered on its own merit in the light of the Maharashtra Electricity Duty Act and the notifications issued by the Government of Maharashtra with regard to the electricity duty.

Issue No. 2: Whether the petitioner fulfills the conditions of REC Regulations for grant of RECs?

12. As already mentioned, the principle for deciding the eligibility of RE generators not fulfilling the requirement of CGP for grant of RECs has been laid down in the Commission's order dated 18.10.2012 and 8.1.2013 abid. As per the principle, 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. The petitioner is a co-generation plant having an installed capacity of 9.250 MW. It is accredited and registered for 4.545 MW for grant of RECs on account of

self-consumption which works out to less than 51%. Therefore, the petitioner cannot be classified as a CGP. As per the principle laid down for grant of RECs, if the petitioner is availing any benefits admissible to CGPs, then it would be required to forego the same for the purpose of availing RECs. 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.”

Therefore, it has to be considered whether the petitioner is availing any of the benefits in the form of concessional/promotional transmission or wheeling charges, banking facility benefits or waiver of electricity duty and if so, then the petitioner would be required to forego the same for the purpose of availing RECs. The petitioner’s co-generation plant is located in Maharashtra and it was commissioned on 20.1.2012. Government of Maharashtra issued a Policy Resolution dated 14.10.2010 extending certain benefits and facilities to the renewable energy based generators including the projects based on Bagasse. As per Para 4.2 of the Policy Resolution, developers using electricity generated from the projects commissioned under the Policy for their captive consumption shall not be levied electricity duty for the first 10 years from the date of commissioning. Since the petitioner’s plant is availing the benefits of non-levy of electricity duty on self-consumption as per the policy of State Government, it will not be eligible for grant of RECs unless it



foregoes the same. The petitioner claims that its case stands on a similar footing as the cases decided in order dated 14.11.2013 in Petition No.126/MP/2013. The issue whether electricity duty has been abolished or waived in Maharashtra has been considered in detail by the Commission in order dated 13.3.2015 in Petition No. 84/MP/2015. The relevant portion of the order is extracted as under:

“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. ”.

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” relinquishment of some known right or privilege. The term has been defined in Black's Law Dictionary as under:

“**Waiver:** the voluntarily relinquish 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.”

14. The above decision distinguishes the case of RE generators in the State of UP from the RE generators in the State of Maharashtra in so far as electricity duty is concerned. Further, it has been conclusively established that there is waiver of electricity in the State of Maharashtra. Since there is waiver of electricity duty in Maharashtra, the petitioner shall be considered as eligible for grant of RECs if it foregoes the benefits of waiver of electricity for the relevant period i.e. from November, 2012 to March, 2013.

15. In view of the above, the petition is allowed with the direction that NLDC shall consider the petitioner for grant of RECs for the period from November 2012 to March, 2013 for 4.545 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.

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

Sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

