

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

**Dr. Pramod Deo, Chairperson**

**Shri S. Jayaraman, Member**

**Shri V.S. Verma, Member**

**Shri M. Deena Dayalan, Member**

**Date of Hearing: 20.11.2012**

**Date of Order: 08.01.2013**

**Review Petition No. 25/2012**

**in**

**Petition No. 36/MP/2012**

**In the matter of:**

Application under Section 94 (1) (f) the Electricity Act, 2003, seeking review of the order dated 18.10.2012 in Petition No.36/MP/2012

**And In the matter of:**

M/s Dhampur Sugar Mills Limited

**.....Petitioner**

**Vs**

National Load Despatch Centre, New Delhi

Uttar Pradesh State Load Despatch Centre, Lucknow

Uttar Pradesh New and Renewable Energy Development Agency, Lucknow

**.....Respondents**

**I.A. No. 55/2012**

**in**

**Petition No. 45/MP/2012**

**In the matter of:**

Application seeking clarification of order dated 18.10.2012 passed in Petition No. 45/MP/2012 in the matter of issuance of RECs under CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

**And In the matter of:**

Dalmia Bharat Sugar and Industries Ltd, New Delhi

.....**Petitioner**

Vs.

National Load Despatch Center, New Delhi  
Uttar Pradesh State Load Despatch Centre, Lucknow

.....**Respondent**

**I.A. No. 56/2012  
In  
Petition No. 46/MP/2012**

**In the matter of:**

Application seeking clarification of order dated 18.10.2012 in Petition No. 46/MP/2012 in the matter of issuance of RECs under CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

**And In the matter of:**

DCM Shriram Consolidated Limited, New Delhi

.....**Petitioner**

Vs.

National Load Despatch Center, New Delhi  
Uttar Pradesh State Load Despatch Centre, Lucknow

..... **Respondents**

**The following were present:**

1. Shri Sanjay Sen, DSML
2. Shri Rajiv Yadav, DSML
3. Ms. Minaxi Garg, NLDC

**ORDER**

The petitioner, Dhampur Sugar Mills Ltd has filed the review petition seeking the review of the order dated 18.10.2010 which was passed in Petition No 36/MP/2012 and other related petitions. The petitioner has made the following prayers:

- (a) Review the order dated 18.10.2012, passed in Petition No. 3 of 2012, to the extent it envisages in paragraph-25, the Petitioner's ability to forgo the benefit of abolition of electricity duty on consumption of electricity from one's own source of generation.
  
- (b) Review the order dated 18.10.2012, passed in Petition no. 36 of 2012, to the extent of removing the requirement of the Petitioner to forego the concessional benefits, specified in the second proviso to Regulation 5 (1) of REC Regulations, as a condition precedent to participation in the REC Scheme.
  
- (c) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. The petitioner has submitted that the Commission's observation in para 25 of the order dated 18.10.2010 is de hors the REC Regulations notified by the Commission and the dispensation of the Government of Uttar Pradesh in respect of the electricity duty apart from being inconsistent with the directions and reasoning contained in the preceding paragraphs of the order under review.

3. The petitioner has submitted that the Commission in the impugned order has repeatedly stated that the eligibility criteria for RE captive generators and other RE generators are different, however, the said reasoning has been negated in para 25 of

the order by applying the disqualifications specified in the second proviso meant for the Captive Generation Plant (CGP) in respect of other RE generators. The petitioner has submitted that the disqualifications and restrictions specified in the first proviso to Regulation 5 (1) is applicable to all RE generators regardless to their CGP status. However, the disqualifications specified in the subsequent provisos are applicable to CGPs only and should not be made applicable to other RE generators.

4. The petitioner has further submitted that the order under review has been passed without examining the provisions of Uttar Pradesh Electricity (Duty) Act, 1952 and the underlying statutory scheme. It has been submitted that Section 3 (1) (c) of the Uttar Pradesh Electricity (Duty) Act 1952 is the charging section for levy of duty on energy consumed by any other person from his own sources of generation at such rate specified by the State Government by notification in the Gazette. Section 3 (4) of the said Act empowers the State Government to grant exemption from Electricity Duty. In exercise of the powers under Section 3 (4) of the Uttar Pradesh Electricity (Duty) Act, 1952, the Government of Uttar Pradesh vide notification dated 3.1.1997 which was published in the Gazette on 6.2.1998 has abolished the Electricity Duty of 3 paise/unit on the power consumed by a person from his own sources of generation. Subsequently, the said notification has been replaced by the Government of Uttar Pradesh by a fresh letter dated 13.9.2012 whereby new rates of electricity duties on various categories of consumption have been notified. In the said notification, consumption from own source of generation has not been included in the schedule of electricity duty rates. The petitioner has submitted that by virtue of the letters dated

6.2.1998 and 13.9.2012, electricity duty on self-consumption has been abolished in the State of Uttar Pradesh.

5. The petitioner has submitted that by requiring sugar cogeneration plants in the State of Uttar Pradesh to forego electricity duty exemption, the Commission has imposed a condition which is incapable/impossible to implement as the co-generation plants are not availing such facility. Moreover, the waiver of electricity duty by its very nature ought to be intentional and voluntary and therefore, the benefit accruing by virtue of law to all entities consuming power from their own source of generation cannot operate as a disqualification within the meaning and purport of the second proviso to Regulation 5(1). The petitioner has submitted that the impugned order presumes the petitioner's ability to forego the electricity duty exemption when no such ability exists and therefore, the impugned order suffers from an error apparent on the face of the record.

6. The Learned Counsel for the petitioner during the hearing of the petition drew the attention of the Commission to the Government of Uttar Pradesh's letters dated 6.2.1998 and 13.9.2012 and submitted that since the electricity duty for self-consumption has been abolished by the Government of Uttar Pradesh, there can be no waiver of electricity duty and the petitioner cannot be expected to forego the waiver of electricity duty which it has never availed. The Learned Counsel sought review of the impugned order in order to bring about clarity with regard to the eligibility of the petitioner and other cogeneration plants for grant of RECs.

7. We have considered the submissions of the petitioner. The petitioner has sought review broadly on two grounds. Firstly, while CGPs have been distinguished from other RE generators in the impugned order, the disqualifications applicable for CGP have been extended in case of other RE generators for the purpose of availing the RECs. Secondly, the Commission has not taken into account the fact that the electricity duty has been abolished for self-consumption in the State of Uttar Pradesh and such abolition cannot be considered as waiver of electricity duty.

8. Para 25 of the impugned order about which the petitioner is aggrieved is extracted as under:-

"25. 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 fulfillment of the conditions laid down in Regulation 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 forego these benefits before availing the RECs for the entire generation from the plant including self consumption."

9. It is apparent from para 25 of the impugned order that supply of electricity by the co-generation plants which do not fulfill 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. The other ground is that the Commission has not considered the provisions of the notifications under UP Electricity (Duty) Act, 1952 while issuing the impugned order. It is to be noted that In the impugned order, the Commission has nowhere come to the conclusion that the petitioner and other co-generation plants in UP are availing waiver of electricity and would be required to refund the electricity duty. We have decided the broad principles on which self-consumption of electricity by a co-generation plants not being a CGP will be considered for the issue of RECs and left it to the State and Central Agencies to satisfy themselves that the co-generation plants fulfill the conditions for supply of electricity by a generating company for the purpose of availing RECs for self

consumption. In view of the foregoing discussion, we do not find any merit in the submission of the petitioner that there is error in the impugned order which requires rectification in review.

10. It is noticed that the Government of Uttar Pradesh has abolished the electricity duty in its letter dated 6.2.1998. However, the recent notification dated 13.9.2012 by the Government of Uttar Pradesh regarding levy of electricity duty does not explicitly provide for the category of self-consumption under the heading "details of consumption". On this basis the petitioner has submitted that the electricity duty on self-consumption has been abolished in the State of Uttar Pradesh. On perusal of the UP Electricity (Duty) Act, 1952, it is noticed that the electricity duty on the energy consumed by any person from his sources of generation is leviable by and payable to the State Government under Section 3 (1) (c) unless he is exempted under Section 3 (4) of the said Act. In the absence of any exemption in the notification dated 13.9.2012, this Commission is unable to conclude that the electricity duty on self-consumption has been abolished in the State of Uttar Pradesh and issue any clarifications regarding the liability of the co-generation plants for electricity duty for self consumption. However, we leave it to NLDC to satisfy itself by calling for report from the State Agency or SLDC as to whether the electricity duty on self consumption has been abolished in the State of UP or not and accordingly process the case for registration of RECs. When any such report is sought by NLDC, the State Agency or SLDC shall ensure that the report is submitted within 15 days. We further direct that RECs for the period ending 31.10.2012

if not issued on account of the clarification regarding electricity duty may be issued by 28.2.2013.

11. The review petition is disposed of in terms of the above.

**IA No. 55/2012 & 56/2012**

12. Dalmia Bharat Sugar & Industries Ltd and DCM Shriram Consolidated Limited which were petitioners in Petition No. 46/MP/2012 and 45/MP/2012 respectively have filed the Interlocutory Applications seeking clarification that foregoing of waiver of electricity duty cannot be a condition for participating in REC scheme, since electricity duty has been abolished by the Government of Uttar Pradesh and there is no option for the petitioners to voluntarily forego the benefits for waiver of electricity.

13. We have clarified issue in para 10 above. IA Nos. 55/2012 and 56/2012 are disposed of in terms of the said clarification.

sd/-  
**[M. Deena Dayalan]**  
**Member**

sd/-  
**[V.S. Verma]**  
**Member**

sd/-  
**[S. Jayaraman]**  
**Member**

sd/-  
**[Dr. Pramod Deo]**  
**Chairperson**