

**CENTRAL ELECTRICITY REGULATORY COMMISSION**  
**NEW DELHI**

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

**Petition No. 122/MP/2013**

**Date of Hearing: 16.07.2013**  
**Date of Order : 14.11.2013**

**In the matter of**

Petition under Section 79 (1) (k) of the Electricity Act read with regulations 3(4), 14 & 15 of CERC's (Terms and Conditions for Recognitions and Issuance of Renewable Energy Certificate for renewal energy generation) Regulations, 2010.

**And**  
**In the matter of**

Dalmia Bharat Sugar and Industries Ltd., New Delhi **.....Petitioner**

Vs

1. National Load Despatch Centre, New Delhi  
2. Uttar Pradesh New and Renewable Energy Development Agency, Lucknow  
**... Respondents**

**Petition No. 123/MP/2013**

**In the matter of**

Petition under Section 79 (1) (k) of the Electricity Act read with regulations 3(4), 14 & 15 of CERC's (Terms and Conditions for Recognitions and Issuance of Renewable Energy Certificate for renewal energy generation) Regulations, 2010.

**And**  
**In the matter of**

Dalmia Shriram Consolidated Limited, New Delhi **..Petitioner**

Vs

1. National Load Despatch Centre, New Delhi  
2. Uttar Pradesh New and Renewable Energy Development Agency, Lucknow  
**... Respondents**



**Petition No. 129/MP/2013**

**In the matter of**

Petition under Section 79 (1) (k) of the Electricity Act read with regulations 3(4), 14 & 15 of CERC's (Terms and Conditions for Recognitions and Issuance of Renewable Energy Certificate for renewal energy generation) Regulations, 2010.

**And**

**In the matter of**

Dhampur Sugar Mills Limited

**..Petitioner**

Vs

1. National Load Despatch Centre, New Delhi
2. Uttar Pradesh State Load Despatch Centre, UP, Lucknow
2. Uttar Pradesh New and Renewable Energy Development Agency, Lucknow

**... Respondents**

**Following were present:**

1. Shri M.G. Ramchandran, Advocate for DBSIL
2. Shri Ranjitha Ramachnadran, Advocate for DBSIL
3. Shri Pankaj Rastogi, DBSIL
4. Shri Arjun Krishnan, Advocate, NLDC
5. Ms. Minaxi Garg, NLDC
6. Ms. Jyoti Prasad, NLDC

**ORDER**

The petitioner, Dalmia Bharat Sugar and Industries Limited has filed the present petition against non-issuance of Renewable Energy Certificate by NLDC for generation of biomass based power plant under Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (REC Regulations). The petitioner has made the following prayers in the petition:

"(a) Pass an order clarifying that the Petitioner is not enjoying the benefit of waiver of electricity duty and therefore the co-generation plant of the Petitioner is be entitled to RECs;



- (b) Pass an order settling aside the letter dated 29.5.2013 issued by NLDC regarding the application for issuance of RECs by the Petitioner;
- (c) Pass an order directing the NLDC to process the issuance of RECs to the co-generation plants from November 2011 within 15 days;
- (d) Pass an order directing the NLDC to compensate the Petitioner for delay in issuance of RECs and for the legal costs incurred by the Petitioner; and
- (e) Pass such other order(s) as this Hon'ble Commission may deem just and proper."

2. The petitioner has submitted the factual matrix of the case leading to the filing of the present petition as under:-

(a) The petitioner owns, maintains and operates bagasee based co-generation power plant in its sugar mills under the name of M/s. Dalmia Chini Mills having its manufacturing units at Ramgarh, Jawaharpur and Nigohi in Uttar Pradesh. The petitioner consumes part of such biomass based power and sells the surplus to the distribution licensee under preferential tariff.

(b) The petitioner has been accredited with regard to its self consumption by the State Agency, namely, Uttar Pradesh New and Renewable Energy Development Agency (UPNEDA) and registered by the Central Agency, namely, National Load Despatch Centre (NLDC) under the REC Regulations. The petitioner started generation of renewable energy from its bagasse based co-generation plant in November, 2011 and had been applying for issuance of RECs on the on-line interface and submitting the Energy Injection Reports. However, the Uttar Pradesh State Load Despatch Centre (UPSLDC) failed to forward the duly verified Energy Injection Report to NLDC and questioned the eligibility of the petitioner and

similarly placed bagasse based co-generation plants in the State for issue of RECs under REC Regulations.

(c) The petitioner filed Petition No. 45/MP/2012 on 9.3.2012 before this Commission seeking appropriate directions to UPSLDC and NLDC for grant of Renewable Energy Certificates. Similar petitions were filed by various other bagasse based co-generation plants in the State of Uttar Pradesh before this Commission.

(d) The Commission in a common order dated 18.10.2012 in Petition No. 45/MP/2012 held that the bagasse based co-generation plants were eligible to participate in the REC Scheme in accordance with the REC Regulations, even though these plants did not fulfill the requirements of the Captive Generating Plant(CGP) under the Electricity Act, 2003 read with Electricity Rules, 2005. However, the Commission directed that such co-generation plants would be required to forego the concessional benefits or banking facility or waiver of electricity duty, if any availed by them.

(e) The petitioner filed an application for clarification vide I.A. No. 55/2012 on 17.4.2012 to the effect 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 was no option for the co-

generation plants like the petitioner to voluntarily forgo the benefits of the electricity duty. Similar applications and a review petition bearing the No. 26/RP/2012 were filed before the Commission by other co-generation plants. By a common order dated 8.1.2013 disposing of the various Review/IA petitions viz. Review Petition No. 25/2012 in Petition No. 36/MP/2012, I.A.No. 55/2012 in Petition No.45/MP/2012 and I.A. No. 56/2012 in Petition No. 46/MP/2012 filed by various petitioners, the Commission directed NLDC to satisfy itself by calling for a report from the State Agency or UPSLDC that the electricity duty on self consumption has been abolished in the State of Uttar Pradesh and accordingly, process the case for registration of REC.

(f) Consequently, NLDC vide its letter dated 24.1.2013 sought information from UPNEDA in respect of electricity duty in the State of Uttar Pradesh. UPNEDA in its response vide its letter dated 23.3.2013 confirmed that the electricity duty is not leviable in the State of Uttar Pradesh and that all procedures for accreditation in terms of the REC Regulations and approved procedures have been followed in case of RE generators including the petitioner. UPNEDA also enclosed various Notifications dated 3.1.1997, 6.2.1998, and 13.9.2012 issued by Government of Uttar Pradesh, Notification dated 7.12.2012 issued by Energy Department, Government of Uttar Pradesh and letter dated 12.3.2013 issued by the Department of Additional Sources of Energy, Government of Uttar Pradesh. All these notifications and letters clearly established that the electricity duty imposed

on self consumption has been abolished in the State of Uttar Pradesh and such abolition continues to be in effect now.

(g) Despite the clarification and confirmation by UPNEDA regarding abolition of electricity duty on self-consumption in the State of Uttar Pradesh, NLDC did not issue the RECs to the petitioner and directed UPNEDA to review the accreditation granted to the projects for self-consumption and take appropriate action. UPNEDA in its letter dated 1.5.2013 again clarified that electricity duty is not leviable and has stated that appropriate action may be taken by NLDC as per the directions of the Commission. Also UP Sugar Mills Co-gen Association took up the matter with NLDC to issue the RECs to the members of the Association from November 2011 to March 2013 in its letter dated 24.5.2013. NLDC without considering the submissions of the Association and without considering the specific clarification issued by the Government of Uttar Pradesh concluded in its letter dated 29.5.2013 that there is waiver of electricity duty in the State of Uttar Pradesh and therefore, the RECs for self-consumption cannot be issued to the petitioner. In the above background the petitioner has filed the petition for setting aside the said letter and seeking a direction to NLDC to process the issuance of RECs to co-generation plants from November 2011.

3. The petitioner has submitted that NLDC's decision to deny issuance of RECs to the petitioner cannot be sustained for the following reasons:

(a) As per the directions of the Commission in the order dated 8.1.2013, the only issue to be considered by NLDC was whether the electricity duty has been

abolished or not. NLDC has completely ignored this specific direction of the Commission and the clarification issued by the Government of Uttar Pradesh and has made a generic reference to the applicability of conditions under fourth proviso to Regulation 5 of the REC Regulations.

(b) NLDC has erroneously concluded that abolition of electricity duty on self-consumption is an exemption granted by the Government of UP being equivalent to waiver of electricity duty. Abolition of electricity duty is not merely an exemption and the petitioner has no option to voluntarily forgo the benefit of waiver of electricity duty and pay the same. NLDC has failed to consider that the petitioner has neither applied for nor sought for any waiver of electricity duty and therefore, abolition of electricity duty on self consumption is not a concessional benefit envisaged in the REC Regulations.

(c) Government of UP has abolished the electricity duty on all forms of self-consumption and not only on consumption of renewable energy. The cardinal principle under the REC Regulations is that if a generating unit has already availed promotional benefits by virtue of its renewable energy status, it should not be eligible for further benefits of RECs. The Government of UP notification dated 6.2.1998 abolishing the electricity duty on self-consumption was notified prior to coming into force of Electricity Act, 2003 and was not intended to promote renewable energy projects. Therefore, the petitioner cannot be said to avail any

benefit of electricity duty by virtue of being a renewable energy project and the petitioner cannot be held ineligible under the REC scheme.

4. NLDC in its reply dated 11.7.2013 has submitted as under:

(a) A reading of paras 33 and 35 of the order dated 18.10.2012 leads to the conclusion that the co-generation plants, not being CPP, in order to avail the benefits of RECs for self consumption, would have to forego the benefits including waiver of electricity duty in terms of second proviso to Regulation 5 of the REC Regulations. Though NLDC has been directed to verify the eligibility of the petitioner and other co-generation plants by calling for certification from State Agencies, the ultimate responsibility of verifying the eligibility was firmly vested with NLDC. Similarly, in the order dated 8.1.2013 in the Review Petition No.26/RP/2012, the Commission has not decided whether the electricity duty has been abolished under the Uttar Pradesh (Electricity Duty) Act, 1952 and has left it to NLDC to satisfy itself whether the electricity duty was abolished or not by calling for a report from State Agencies.

(b) NLDC called for a report from UPNEDA who vide letter dated 23.3.2013 and 1.5.2013 stated that electricity duty was not leviable in the State of Uttar Pradesh. NLDC examined the Uttar Pradesh (Electricity Duty) Act, 1952 and the submissions made by the petitioner and petitioner's association and sought legal advice on the issues before it. After examination of the relevant legal provisions, NLDC came to the conclusion that electricity duty, in the eyes of law, had been

exempted and not abolished, irrespective of the nomenclature used in the subsequent notification.

(c) Under section 3 of the Uttar Pradesh (Electricity Duty) Act, 1952, the only method available for removing the levy of electricity duty that was otherwise leviable under section 3(1)(c) was by means of an exemption under section 3(4) of the Act. Since the parent Act specifically provides for levy of electricity duty on self-consumption, it would not be possible by way of a notification to do away with the levy itself. Therefore, the notification dated 6.2.1998 must necessarily be read as an exemption granted by the State Government under section 3(4) from the levy of electricity duty and cannot be construed as a case of duty that has been abolished. Further vide letters dated 23.3.2013 and 1.5.2013, the UPNEDA has clarified that electricity duty for self-consumption in the State of Uttar Pradesh is not leviable.

(d) NLDC 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, and the same has not been abolished.

(e) As regards the averment of the petitioner that it has not applied nor sought waiver of electricity duty, NLDC has submitted that the fourth proviso to Regulation 5 makes it clear that 'waiver of duty' is something that was to be granted or taken away by the State Government, and not something that was to be voluntarily given up by the petitioner.

5. During the hearing, learned counsel for the petitioner submitted that UPNEDA in its letter dated 23.3.2013 has confirmed that electricity duty for self-consumption is not leviable in the State of UP based on a clarification dated 12.3.2013 from the Govt. of UP. Learned counsel submitted that the Govt. of UP has clarified that electricity duty on self consumption was abolished vide notification dated 6.2.1998 and the subsequent notification dated 13.9.2012 has not reintroduced the provisions of electricity duty on self-consumption and the policy of such abolition continues to be effective. Learned counsel submitted that as per the second proviso to Regulation 5 (1) of the REC Regulations, a CPP should not have "availed or proposes to avail" any benefit in the form of waiver of electricity duty. This restrictive proviso becomes operative only when such generator "avails" the benefit by choice. However, in the present case, non levy of electricity duty on all forms of self consumption was introduced by the State Government as a matter of policy, and therefore, there was no choice to such generators to avail it or to forgo it. Such policy measures are introduced by State and can only be taken away by the State. The generators are not at freedom to "avail" or "forgo" it. Besides, there is no such forum where generators can deposit such duty.

Under Article 265 of the Constitution of India, no tax can be levied or collected without authority of law. Therefore, the RE generator cannot deposit the electricity duty even if they want to, in the absence of any notification to that effect by the State Government. In the written note of argument, learned counsel for the petitioner has submitted that the Commission vide Notification dated 10.7.2013 has amended the REC Regulations under which 'waiver of electricity duty' as a disqualification for grant of REC has been removed. It has been argued that such an amendment is clarificatory in nature and applies even to the period prior to the amendment of REC Regulations. In this connection, reliance has been placed on the judgement of the Supreme Court in Zile Singh v. State of Haryana {(2004) 8 SCC 1}.

6. Learned counsel for NLDC during the hearing and in his written note of argument has reiterated the submission made in the affidavit dated 11.7.2013 which has been discussed in para 4 above.

7. We have heard the learned counsel of the parties and perused the documents on record. The dispute between the parties revolves around interpretation of the directions of this Commission in order dated 18.10.2012 in Petition No.34/MP/2012 and related petitions and order dated 8.1.2013 in Review Petition No. 26/RP/2012. While the petitioner insists that according to these orders, NLDC is required to only verify as to whether electricity duty on self-consumption has been abolished in Uttar Pradesh by calling for a report from State Agency and process the case of the petitioner and other co-generation plants for grant of RECs, NLDC is of the view that electricity duty on self-

consumption in the State of Uttar Pradesh has not been abolished but has been merely exempted and such exemption amounts to availing waiver of electricity duty and consequently, the petitioner and other co-generation plants are not eligible for grant of REC. We consider it appropriate to refer to our directions in our order dated 18.10.2012 read with order dated 8.1.2013.

8. In petition No.34/MP/2012, an issue arose as to whether the co-generation plants which do not fulfil the conditions of Captive Generation Plants as defined in the Electricity Rules, 2005 are eligible for grant of REC under the REC Regulations for their self-consumption. The Commission after examining the provisions of the Electricity Rules and REC Regulations came to the following conclusion:

"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.

9. 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. The



petitioner also filed IA No 55/2012 in Petition No. 45/MP/2012 for clarifications on the order dated 18.10.2012. The Review Petition and IA filed by the petitioner were disposed of by the 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 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 cogeneration 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 cogeneration 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.”

On the question of the abolition of electricity duty, the Commission had observed the following in the said order:

“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."

It is evident from para 10 of the above order that the Commission has taken a view that the notification dated 6.2.1998 has abolished the electricity duty on self-consumption in Uttar Pradesh. In the absence of any indication in the notification dated 13.9.2012, the Commission could not come to a conclusion that electricity duty on self-consumption had been abolished in the said notification. The Commission left it to NLDC to satisfy itself by calling for a report from the State Agency as to whether electricity duty in the State of UP has been abolished or not and accordingly process the case for issue of REC. A combined reading of our directions in order dated 18.10.2012 and order dated 8.1.2013 leads to the conclusion that NLDC was required to call for a report from the State Agency as to whether in terms of the notification dated 13.9.2012, electricity duty on self-consumption has been abolished in the State of Uttar Pradesh and after being satisfied, to process the cases for issue of REC.

10. NLDC called for report from UPNEDA which stated in its letter dated 23.3.2013 and 1.5.2013 that electricity duty is not leviable in the State of UP. However, by interpreting the provisions of section 3 of the UP Electricity Duty Act, 1952, NLDC came



to the conclusion that the co-generation plants in Uttar Pradesh are availing waiver of electricity duty and accordingly rejected the claims of the petitioner and other co-generation plants. This has been contested by the petitioner on the ground that electricity duty has been abolished in UP and the petitioner and other co-generation plants are not availing any electricity duty. In view of the rival contention of the parties, it is necessary to examine the relevant provisions of the U. P. Electricity Duty Act, 1952, which are extracted as follows:

"3. *Levy of electricity duty – (1) Subject to the provisions hereinafter contained, there shall be levied for and paid to the state Government on the energy:*

- (a) *Sold to a consumer by a licensee, the Board, the State Government or the Central Government: or*
- (b) *Consumed by a licensee or the Board in or upon premises used for commercial or residential purposes or in or upon any other premises except in the construction, maintenance or operation of his or its works: or*
- (c) *Consumed by any other persons from his own source of generation; a duty (hereinafter referred to as electricity duty) determined at such rate or rates as may from time to time be fixed by the State Government by notification in the Gazette, and such rate may be fixed either as a specified percentage of the rate charged or as a specified sum per unit:*

*Provided that such notification issued after October 1, 1984 but not later than March 31, 1985 may be made effective on or from a prior date not later than October 1, 1984.*

- (2)        x            x            x            x
- (3)        x            x            x            x

- (4) *The State Government may, in the public interest, having regard to the prevailing charges for supply of energy in any area, the generating capacity of any plant, the need to promote industrial production generally or any specified class thereof and other relevant factors, either fix different rates of electricity duty in relation to different classes of consumption of energy or allow any exemption from payment thereof."*

11. Clauses (a) to (c) of sub-section (1) of Section 3 of UP Electricity Duty Act provides for different categories of consumption of electricity on which electricity duty is

leviable. The State Government may levy electricity duty on all or any of the categories of consumers mentioned in clauses (a) to (c) through notification in the Gazette. Sub-section 4 of the said Act empowers the State Government to either fix different rates of electricity or allow exemption from payment of electricity for different classes of consumption of energy 'in public interest'. Sub-section (5) enumerates the categories of consumptions where there is levy of electricity duty. Thus, the State Government has the power to levy electricity duty either on all or on any category of consumers mentioned in clauses (a) to (c) or to exempt any category of such consumers from levy of electricity duty. The Government of Uttar Pradesh issued the notification regarding the electricity duty on 3.1.1997 the English Translation of which is reproduced below:

Government of Uttar Pradesh  
Energy Department-3  
No.02 P-3/97-24-85-P,84  
Lucknow: 3 January, 1997

**Notification**

In exercise of powers under section 3 of Uttar Pradesh Electricity (Duty) Act, 1952 (Uttar Pradesh Act No.33 of 1952) and in supersession of Government Notification No.6089 P-3/86-23 dated December 23, 1988, and amending the rate of electricity duty on various types of electricity consumption determined vide Notification No. 1839 P-3/86-23-85 P.84 dated March 29, 1985, Hon'ble Governor of U.P. orders that electricity duty shall be charges at the following rates from the date of this notification.

Ser No.	Details of consumption	Electricity Duty
1.(a)	Where consumer's contracted load is not more than 75 kW or 100 hp	9 paise per unit
(b)	Where consumer's contracted load is more than 75 kW or 100 hp	9 paise per unit
2.	On the energy consumed by State Government or energy sold for consumption by State Government	3 paise per unit
3.	For purposes other than mentioned in ser No.1 & 2 above	
(a)	On fixed charge without meter	20% of present rate
(b)	In cases where the meter is installed	



Effective Rate	Electricity Duty
1. Upto 24 paise per unit	9 paise per unit
2. More than 24 paise per unit but less than 38 paise per unit	9 paise per unit
3. More than 38 paise per unit	9 paise per unit
4. On the energy consumed for industrial and other uses by any other person from his captive generation source	3 paise per unit

2. The Governor also orders that exemption from electricity duty on auxiliary consumption up to 10% of total generation from captive generating unit shall be given to a person.

By order of the Governor  
Shankar Agarwal  
Secretary

The above notification dated 3.1.1997 imposed a duty of 3 paise per unit for self-consumption which was abolished by the Government of UP vide Notification dated 6.2.1998 in exercise of its power under section 3 of the U.P. Electricity (Duty) Act, 1952.

Government of Uttar Pradesh  
Energy Department-3  
No.232P-3/98-24-85-P,84  
Lucknow: 6 February, 1998

### **Notification**

In exercise of powers under section 3 of Uttar Pradesh Electricity (Duty) Act, 1952 (Uttar Pradesh Act No.33 of 1952) and partially amending the electricity duty rates notified vide Government Notification No.02 P-3/97-24-85-P,84 dated 3<sup>rd</sup> January 1997, Hon'ble Governor orders abolition of electricity duty @ 3 paise per unit on sl. No. 4- On the energy consumed for industrial and other uses by any other person from his captive generating source from the date of publication of this notice in the Official Gazette. Accordingly, section 2 of Notification dated 3<sup>rd</sup> January 2007 stands amended to this extent.

By Order of the Governor  
Shankar Agarwal  
Secretary



12. The notifications dated 3.1.1997 and 3.2.1998 were replaced by the following notification dated 13.9.2013:

Government of Uttar Pradesh  
Energy Department-3  
No.1845/XXIV-P-3-2012  
Lucknow: 13 September, 2012

**Notification**

In exercise of powers under section 3 of Uttar Pradesh Electricity (Duty) Act, 1952 (Uttar Pradesh Act No.33 of 1952) and in supersession of Government notification no. 02 P-3/97-24-85-P,84 dated January 3, 1997 and in modification of the rates of Electricity duties fixed on various uses of electricity vide Government notification no. No.232P-3/98-24-85/84 dated February 06, 1998, the Governor is pleased to order that from the dates of this notification, the electricity duty shall be levied at the following rates:

Ser No.	Details of Consumption	Determined rates of electricity duty(Value of rate charge %)
i	For residential lights and fans	5% of rate charge
ii	For energy consumed by State Government	5% of rate charge
iii	Or purposes other than mentioned in (i) and (ii) (a) For without meter supply on fixed charge (b) For metered supply	20% of Fixed Charge 7.5% of Fixed Charge
iv	For consumption in case of one part tariff where rate charge is based on units of consumption	9 paise per unit

By Order

ANIL KUMAR GUPTA  
Pramukh Sachiv

Subsequently, it was clarified vide notification No. 2304/24-P-3-2012 dated 7.12.2012 that the policy of abolition of electricity duty on the electricity consumed for industrial and other purposes of electricity from his own source ordered vide notification dated 6.2.1998 shall remain in force. The English Translation of the said notification is extracted as under:



Government of Uttar Pradesh  
Energy Department  
No.: 2304/24-P-3-2012  
Lucknow: Dated 7 December, 2012

### **Notification**

In exercise of power under Section 3 of the Uttar Pradesh Electricity (Duty) Act, 1952 (Uttar Pradesh Act No. 33 of 1952), Hon`ble Governor has issued an order vide Notification No. 232 P-3/98-24-85 P-84, dated 6 February, 1998 to abolish the Notification No. 02P-3/97-24-85P/84, dated 3 January 1997 whereunder electricity duty was fixed at the rate of 3 paise per unit for energy consumed for industrial and other purposes from a private power generation source established by other person. This arrangement shall continue as before under the U.P. Infrastructure and Industrial Policy, 2012.

(Anil Kumar Gupta)  
Principal Secretary

13. It is evident from the above notifications 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. While the petitioner has argued in its written note that the electricity duty has been abolished by the Government of Uttar Pradesh in exercise of its power of levy under section 3(1) of the said Act, NLDC has argued that the electricity duty has been exempted under section 3(4) of the said Act and since exemption can be considered as waiver, the petitioner has availed the waiver of electricity duty. There is no dispute that the notifications have been issued under section 3 of the UP Electricity Duty Act, 1952 and therefore, it is not necessary for us to go into the controversy whether the notifications have been issued under section 3 (1) or section 3(4) of the said Act. We need to examine the language of the Notification to



understand whether electricity duty has been abolished. The Hindi word used in the 1998 notification is "samapt". As per the Legal Glossary published by Government of India, the word "samapti" can be translated into English as "abolition" or "termination". Therefore, electricity duty at the rate of 3 paise per unit which was imposed vide notification dated 3.1.1997 has been terminated or abolished vide notification dated 6.2.1998 and continues to be so till today as a matter of policy of the State Government. It is pertinent to mention that electricity duty was not levied on earlier occasions also by the Government of UP which has been noticed and noted by Hon'ble Supreme Court in State of Uttar Pradesh & Others v. Renusagar Power Company & Others {1988 AIR 1737} in the following terms:

“.....As it is apparent on the state of law mentioned hereinbefore, from 1952 to 1970 no duty was payable if electricity was generated from own source of energy. From 1970 to 1973 duty of one paise was payable in respect of electricity supplied from own source of generation. However, after 1973 no duty was payable in respect of electricity supplied from own source of generation.”

From the above discussion, we have come to the conclusion that electricity duty on consumption from own sources of generation has been abolished or terminated in the State of UP since February 1998 and the position continues to be the same.

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.

15. It needs to be emphasized that REC is a promotional scheme to encourage renewable sources of energy. This Commission has taken the pioneering initiative by introducing renewable energy certificates under the REC Regulations in order to encourage renewable sources of energy. The Commission in its order dated 18.10.2012 and 8.1.2013 had clarified about the eligibility of the co-generation plants for grant of REC. Subsequently, the Commission has made appropriate provisions in the REC Regulations through amendment and has also done away with the disqualification based on 'availing waiver of electricity duty'. Therefore, the approach of the Commission all along is to encourage promotion of renewable sources of energy. Considering the overall objective and perspective of the REC Regulations, we are of the view that RECs should not be denied to the co-generation plants including the petitioner on the ground that the co-generation plants are not required to pay the electricity duty in the State of UP.

16. In view of the above discussion, we hold that the notification of the Government of UP dated 6.2.1998 which has been clarified to be in force vide notification dated 7.12.2012 abolishing the electricity duty on consumption from own sources of generation cannot be treated as waiver of electricity duty for the purpose of REC Regulations. Accordingly, we set aside the NLDC letter dated 29.5.2013 (Annexure 14 of the petition) and direct NLDC to process the case of the petitioner and other co-generation plants for issue of REC from November 2011 till July 2013 (date of operation of second amendment to REC Regulations) by 31.12.2013.

17. Petition No.123/MP/2013 has been filed by DCM Shriram Consolidation Ltd and Petition No.129/MP/2013 has been filed by Dhampur Sugar Mills Ltd. Since the facts of these cases and reliefs prayed for in these cases are similar, these petitions are disposed of in terms of our directions in para 16 above.

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

Sd/-  
**(M Deena Dayalan)**  
Member

Sd/-  
**(V. S. Verma)**  
Member