

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO.83 OF 2015**

**Dated : 2<sup>nd</sup> February, 2016**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I.J. Kapoor, Technical Member.**

**In the matter of:-**

**Paschim Gujarat Vij Company )  
Limited, Corporate Office, Off. Nana )  
Mava Main Road, Laxminagar, )  
Rajkot-360 004. ) ... Appellant**

**AND**

**1. Gujarat Electricity Regulatory )  
Commission, 6<sup>th</sup> Floor, GIFT\_1, )  
Road No.5-C Gift City, )  
Gandhinagar-332 335. )  
2. Abellon Clean Energy Limited, )  
Sangeeta Complex, Nr. Parimal )  
Crossing Ellisbrige, Ahmedabad- )  
380 006. ) ... Respondents**

**Counsel for the Appellant(s) : Mr. M.G. Ramachandran  
Ms. Swapna Seshadri  
Mr. Anand K. Ganesan**

**Counsel for the Respondent(s) : Mr. C.K. Rai  
Mr. Arvind Tiwari  
Mr. Paramhans a/w  
Mr. S.R. Pandey(Rep.) for **R.1****

**Mr. Arpit Christy(Rep) for **R.2****

## **JUDGMENT**

### **PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON:**

1. The Appellant is a distribution licensee, who operates and maintains distribution system in western part of the State of Gujarat. Respondent No.1 is the Gujarat Electricity Regulatory Commission ("**State Commission**"). Respondent No.2 is a generating company which has commissioned 9.9 MW Biomass power project on 23/02/2014 at Khas, Ranpur, District Ahmedabad.

2. The State Commission has by the impugned order allowed the petition filed by Respondent No.2 and held that Respondent No.2 would not be required to forego concessional benefit of non-payment of demand charges/waiver of demand charges even when Respondent No.2 is availing of the Renewable Energy Certificate (REC) on selling power.

3. Counsel are agreed that the issue which arises for consideration in this appeal is the entitlement of promotional

and concessional measures applicable to Respondent No.2 as renewable generator in the form of availing of waiver from paying demand charges for start-up when Respondent No.2 is duly availing of RECs for the electricity generation.

4. We have heard Ms. Swapna Seshadri, learned counsel appearing for the Appellant at some length. She submitted that the State Commission has proceeded on the basis that benefit of no demand charges referred to in its order dated 08/08/2013 is applicable to plants both under preferential tariff mechanism and REC mechanism without appreciating the basic principles of CERC REC Regulations. Counsel submitted that the scope of the order dated 08/08/2013 is clear from the following observations made in the said order.

*“In exercise of the powers conferred under Sections 61(h), 62(1)(a) and 86(1)(e) of the Electricity Act, 2003 and all other powers enabling it on this behalf, the Gujarat Electricity Regulatory Commission(hereinafter referred to as “the Commission”) **determines the tariff for procurement of power by Distribution***

**Licenseses and Others in Gujarat from biomass based power projects and bagasse based co-generation projects.”**

5. Counsel submitted that in the order dated 08/08/2013 the State Commission dealt with the concessional and special benefits for biomass projects supplying power to the distribution companies. These include special transmission and wheeling charges in paragraph 4.1, exemption from cross subsidy charges in paragraph 4.2, energy metering under paragraph 4.3, special pricing of reactive power in paragraph 4.4, exemption from demand charges for start-up power in paragraph 4.5, sharing of clean development mechanism benefits in paragraph 4.6, Banking of surplus energy in paragraph 4.7, purchase of surplus power in the case of captive use and third party sale in paragraph 4.8. In paragraph 4.9 of the Tariff Order, the State Commission has specifically held as under:-

***“4.9 Renewable Energy Certificates for Third-Party Sale and Captive Use of Power Generated from Biomass based Power Projects and Bagasse based Cogeneration Projects.***

*In the discussion paper it was proposed that the power generated from biomass based power projects and bagasse based co-generation projects, if wheeled to third-party or for captive use, will be eligible for availing the Renewable Energy Certificates under the CERC REC mechanism. The accreditation and registration of biomass based power projects and bagasse based co-generation projects under REC mechanism shall be as per the CERC REC Regulations 2010 and its subsequent amendments if any.*

### **Suggestions from Objectors**

*On the issue of availability of REC to third-party and captive sale of electricity, GUVNL has requested to specifically clarify if the biomass based power project is set up in REC mode and opted for sale of power to third-party then such project will have to forgo the concessional transmission and wheeling charges/losses, payment of CSS and other benefits provided by State Govt.*

### **Commission's Decision**

*The Commission has specified the concessional treatment for wheeling of power generated from biomass based power projects and bagasse based co-generation projects at specified voltage level below 66 kV. However, the qualification of the biomass based power projects and bagasse based co-generation projects opting for captive use or third-party sale of electricity and registering in the REC mechanism in case they avail any concessional benefits is governed by the CERC REC Regulations and its amendments if any, and the same shall also be applicable to the biomass based power projects and bagasse based cogeneration projects Commissioned in Gujarat.”*

6. Counsel submitted that accordingly, the sale of power under REC mechanism is to be treated as if it is the sale of conventional power without any green attributes. Therefore, there can be no question of Respondent No.2 availing of any concessional benefits under preferential tariff mechanism including exemption from payment of demand charges.

7. Mr. C.K. Rai, learned counsel appearing for the State Commission, submitted that since Respondent No.2 is registered under REC scheme it is not entitled to receive any

concessional benefit. Counsel submitted that the issue raised by the Appellant is no more res-integra as it stands decided against the Appellant by this Tribunal's **judgment dated 22/4/2015 in Appeals Nos.22 and 24 of 2014** in **Madhya Gujarat Vij Company Limited V. Ankur Scientific Energy Technologies Pvt. Ltd. & Ors.** Counsel submitted that Civil Appeal No.5462 of 2015 filed against the said judgment has been dismissed by the Supreme Court on 3/8/2015.

8. We have been taken through the judgment of this Tribunal in Appeal Nos.22 and 24 of 2014 mentioned hereinabove. In that judgment, this Tribunal has held as under:

***“According to REC Regulations, 2010 of the Central Commission, as amended, a renewable energy based IPP supply power to third party through open access is entitled to concessional benefits such as transmission/wheeling charges, losses, cross subsidy surcharge etc. and simultaneously avail the benefit of REC if such concessions are permitted by the concerned State Commission. However, captive generating***

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***plant based on renewable energy sources shall be eligible for entire generated from such plant including self consumption for availing REC subject to the CGP not availing concessional/promotional benefit of transmission or wheeling charges, banking facility benefit and waiver of electricity duty.”***

9. It is clear therefore that the issue raised by the Appellant has been decided against the Appellant by this Tribunal in the above judgment. Admittedly, civil appeal filed in the Supreme Court against the said judgment has been dismissed.

10. In view of the above, this appeal will have to be dismissed and is accordingly, dismissed.

11. Pronounced in the Open Court on this 2<sup>nd</sup> day of February, 2016.

**I.J. Kapoor**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**

√**REPORTABLE/NON-REPORTABLE**