In the Appellate Tribunal for Electricity
New Delhi
(Appellate Jurisdiction)

APPEAL NO. 389 OF 2017

Dated: 13th February, 2019

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

In the matter of:

Century Textiles and Industries Limited
GhanshyamDham, Lalkua,
Distt. Nainital, ... **Appellant**
Uttarakhand, Pin : 262402

Versus

1. **Central Electricity Regulatory Commission,**
4th Floor, Chandrolok Building,
36, Janpath, New Delhi-110001. ... **Respondent No.1**

2. **National Load Despatch Center,**
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110016. ... **Respondent No.2**

3. **Uttarakhand Renewable Energy**
Development Agency (UREDA)
Urja Park Campus, Industrial Area,
Patel Nagar, Dehradun, Pin 248001 ... **Respondent No.3**

Counsel for the Appellant(s) : **Mr. M.L. Lahoty**
Mr. Paban K. Sharma
Mr.Anchit Sripat

Counsel for the Respondent(s) : **Mr. Arjun Krishnan**
Mr. Sumit Srivastava for R-2

Mr. Sharad Gupta
Mr. Vinayak Gupta for R-3

JUDGMENT

PER HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

1. **Prayer of the Appellant.**

Aggrieved by Impugned Order dated 13.09.2017, the Appellant has filed this instant Appeal and have prayed as under:-

(i) set-aside the Impugned Order dated 13.09.2017 passed by the Central Electricity Regulatory Commission, New Delhi (CERC);

(ii) direct the Respondents restraining them from taking any coercive action pursuant to the Impugned Order dated 13.09.2017 passed by the Central Electricity Regulatory Commission, New Delhi (CERC); and

(iii) pass such other or further order[s] as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances.

1.1 **Questions of Law**

Following questions of law have been raised in the appeal for consideration:

A. Whether when the 21 MW TG set was enabled to generate electricity only by being connected to ENMAS boiler commissioned in 2011, thereby constituting an independent generating unit, the CERC was justified in holding that the Appellant was not covered by the control period, i.e. 29.09.2010 to 31.03.2016 and hence not entitled to grant of RECs for self-consumption?

B. Whether despite holding that the successful commissioning of the generating station would be date on which it starts injecting electricity into the grid and when in the present case 21 MW TG set was enabled to inject electricity to grid by being connected with ENMAS boiler commissioned in 2011, the CERC has not contradicted itself by declining the Appellant the benefit of grant of RECS?

The brief facts of the instant Appeal are as follows:

1.2 The Century Textiles and Industries Limited (hereinafter referred to as the **"Appellant"**) being aggrieved by the order dated 13.09.2017 (hereinafter referred to as the **"Impugned Order"**) passed by the Central Electricity Regulatory Commission has filed this instant Appeal under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the **"Act"**).

1.3 The Central Electricity Regulatory Commission in their Impugned Order held that the Appellant was not entitled to Renewable Energy Certificate (REC) for self-consumption with effect from the date of Notification of Fourth amendment to CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (REC Regulations).

1.4 For the sake of brevity and convenience, Respondent No.1/the Central Electricity Regulatory Commission is hereinafter referred to as the **"1st Respondent/CERC"**. The National Load Despatch

Center is hereinafter referred to as the **"Respondent No.2"**. The Uttarakhand Renewable Energy Development Agency is hereinafter referred to as the **"Respondent No.3."**

1.5 The Appellant, M/s. Century Textiles and Industries Limited, is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the production and manufacturing of paper. During manufacturing process company also produce 'black liquor' as a by-product and this is used for generation of electricity for the purpose of self-consumption through renewable energy Boilers.

1.6 The Appellant meets power requirement of the plant at Nainital by drawing electricity through an independent 132 KV feeder from Kichha 132 KV Sub-station of Uttarakhand Power Corporation Ltd. (UPCL).

1.7 The Appellant also has captive plant consisting of four steam driven power generators. These generators are of varying capacities and have been installed in different years w.e.f. 1985 to 2011 and have been generating electricity for the self consumption of the Appellant.

1.8 Steam to these generators is fed from four coal fired boilers and three chemical recovery boilers (black liquor). These boilers are of varying capacities and have been installed in different years.

1.9 In 2010 the 1st Respondent/CERC notified the RE Regulations for issuance of Renewable Energy Certificates for the development of market in power from non-conventional energy sources.

1.10 On 09.01.2012 the Ministry of New and Renewable Energy [MNRE] categorized black liquor, which is waste material of wood, as renewable energy fuel.

1.11 To become eligible under the RE scheme to avail RE certificates the Appellant modified the steam distribution system in such a manner that the two TG sets, being 6.8 MW and 21 MW, were fed from steam generated from chemical recovery based Boilers, which used black liquor as the renewable energy fuel. The above change in plant configuration was made prior to the Fourth Amendment in the REC Regulations. The arrangement of TGs and connected boilers post 2012 is shown below in table 1.

Table - 1 showing the combination of TGs and chemical fired boilers (black liquor)

S.No.	Year of installation of TG	Capacity (MW) and make of TG	Capacity and make of connected boiler	Year of installation of boiler
1.	1985	6.8 MW, 11 kV BHEL make	300 MTPD, BHEL make, solid firing chemical recovery boiler	1984
2.	1994	21 MW, 11 kV, TDK make	350 MTPD, ABL make, solid firing chemical recovery boiler	1995
			1200 MTPD, ENMAS, Solid firing chemical recovery boiler	2011

Table - 2 showing the combination of TGs and coal fired boilers.

S.No.	Year of installation of TG	Capacity (MW) and make of TG	Capacity and make of connected boiler	Year of installation of boiler
3.	2004	16 MW, 11 kV, BHEL make	50 TPH, CVL make, coal fired boiler	1994
			50 TPH, CVL make, coal fired boiler	1994
4.	2011	43 MW, 11kV, BHEL make	60 TPH, Thermax make, coal fired boiler	2006
			100 TPH, CVL make, coal fired boiler	2009

1.14 The Appellant registered the RE plant based on black liquor and the same was accredited in July 2014 and started getting renewal energy certificates.

1.15 However, the self-redemption of RECs ran into difficulties since because the Regulation could be redeemed only in the case the project was registered in the name of the parent company, namely, Century Textile and Industries Ltd, the Appellant herein.

1.16 Accordingly, the Appellant re-applied for accreditation and registration in the name of Century Textile and Industries Ltd. and the accreditation was issued in the name of the Appellant.

1.17 In March 2016, the 1st Respondent/CERC notified the Amendment to the REC Regulation revising the eligibility as under:

*"**5. Eligibility and Registration for Certificates :***

……

(1B) A Captive Generating Plant (CGP) based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption, shall not be eligible for participating in the REC scheme for the energy generated from such plant to the extent of self-consumption, if such a plant :

a) has been commissioned prior to 29th September 2010 or after 31st March, 2016; or

b) is not registered with Central Agency under REC scheme on or before 30th June, 2016.

……."

1.18 Until February, 2016, the Respondent No.2 had been regularly and consistently issuing RECs to the Appellant for the quantum of energy generated by it. After the Amendment to the REC Regulations, the Respondent No.2 stopped issuing RECs to the Appellant as it was not meeting the eligibility criteria.

1.19 The Appellant filed Petition No. 9/MP/2017 dated 04.01.2017 seeking directions to the Respondent No.2 to issue RECs to the Appellant in terms of the Renewable Energy Certificate mechanism for 21 MW self consumption of energy. However the CERC held that the Appellant was not entitled to Renewable Energy Certificate (REC) for self-consumption with effect from the date of Notification

of Fourth amendment to CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (REC Regulations).

1.20 Aggrieved by the Impugned Order of the 1st Respondent/CERC, the Appellant has filed this instant Appeal.

2. Submissions of the learned counsel appearing for the Appellant are as follows:-

2.1 The impugned order suffers from non-application of mind as crucial aspects highlighted by the Appellant in order to show its eligibility for availing the REC mechanism have not been deliberated upon by the 1st Respondent/CERC. The 1st Respondent/CERC despite categorically recording the findings that the date of commercial operation means the date on which the generating plant starts injecting electricity into the grid disentitled the Appellant to Renewable Energy Certificate (REC) benefits. It is evident that the 1st Respondent/CERC by making aforesaid observation has held that unless generated electricity injected into the grid, there is no commissioning. The sequitur of the aforesaid observation is in accord with the contention of the Appellant that commissioning took place in 2011 when ENMAS boiler was connected to feed 21 MW TG set. Therefore, going by the finding recorded by the 1st Respondent/CERC, the date of commissioning of 21 MW TG set is 04.05.2011 as certified by the Dy. Director of Factories/Boilers, Uttarakhand, squarely falling within the control period, i.e. 29.09.2010 to 31.03.2016, which fact qualifies the

Appellant to be eligible for availing the grant of RECs by the Respondents.

2.2 The 1st Respondent/CERC preferred to ignore the fact that the Respondents had been consistently issuing the RECs to the Appellant since 2014 to February, 2016 after the ENMAS boiler was commissioned in 2011 and connected to the 21 MW capacity TG set constituting thereby a separate generating unit. As such the Appellant squarely fell within the control period i.e. 29.09.2010 to 31.03.2016 which was notified with the insertion of Regulation 5 (1B) in the REC Regulations setting out the eligibility criteria for the CGP for participation in the REC Scheme. The 1st Respondent/CERC committed grave factual error by not recording any finding on this aspect while declining issuance of RECs to the Appellant. The 1st Respondent/CERC remained oblivious to the submissions made by the Appellant that the ENMAS boiler, connected to 21 MW TG set, constituted separate generating unit in terms of Indian Electricity Code, 2010. The fact that the ABL boiler (commissioned in 1995) and EMAS boiler (commissioned in 2011) fed the same turbine does not mean that the said two boilers, in a state of connection with 21 MW TG are not two separate units. The Grid Code defines the generating unit to mean:

"an electrical generating unit coupled to a turbine within a power station together with all plant and apparatus at that power station which relates exclusively to the operation of that turbo generator."

The ENMAS boiler needs to be recognized as a separate unit along with all its associated apparatus, i.e. the 21 MW TG system in order to determine whether or not the Amendment in the REC Regulations applies in the case of the Appellant.

2.3 The 1st Respondent/CERC did not consider that in REC mechanism boiler cannot be an auxiliary part as REC stands for Renewable Energy Certificate and Boiler section is only the section which decides whether a plant is a Renewable fuel based plant or non-renewable fuel based plant, role of turbine is only to generate power whether it is from fossil fuel or renewable source of fuel. Therefore, REC mechanism is completely for renewable sources utilization and for power generation renewable sources can only be utilized at boilers thus date of commissioning of project should be based on the date of commissioning of boilers instead of the date of commissioning of turbines or other auxiliary part. The fact that the ENMAS Boiler which was commissioned on 04.05.2011 as certified by Dy. Director, Factories and Boilers, Uttarakhand clearly demonstrates the untenability of the action of the Respondents to keep the Appellant outside the purview of the control period.

2.4. The 1st Respondent/CERC has relied on the actual dates of commissioning, i.e. 1994 but has refused to take into account the reason why such dates were recorded in the first place. It is pertinent to mention herein that the entire reason why the dates in 1984 and 1995 were noted in the first place was on account of anomalies existing in the Forms issued by the Respondent No.2 and the aforesaid amendment in the REC Regulations. For Forms

issued by the Respondent No.2 only record the date of commissioning of the turbine of a generating station. These Forms, until now, could be processed without any difficulty since the permission to operate in the REC market was not incumbent upon the date of commissioning of a renewable power station. The aforesaid permission was to be granted based on the eligibility factors, as listed in Regulation 5 of the REC Regulations and that the same was not incumbent/dependent upon the date of commissioning of power station. Therefore, the requirement was never felt to get the REC registration Forms modified so as to include situations wherein different boilers could be commissioned with the same TG set, on different dates. However, in the light of the aforementioned modification in the REC Regulations it was imperative for CERC under Regulation 14 to cater to this anomaly. The said Forms were issued to the Appellant yet again, vide letter dated 29.07.2016 wherein the Appellant was asked to furnish certain details in order to determine its eligibility under the amended REC Mechanism. The said Form merely records the date of commissioning of the TG set of a power generating station and does not take into account the peculiar situation of the Appellant where the boiler has been commissioned much later than the date of commissioning of the TG set.

2.5 The commissioning of ENMAS Boiler was not an up-gradation but rather a complete change-over of fuel/type of plant. To avail the benefit under REC mechanism, it is mandatory to produce power using the renewable source of fuel. Therefore, the commissioning of the power plant would be the date on which the power is generated by using the renewable fuel through connecting ENMAS

boiler, i.e. on 04.05.2011. it is clear from the said judgement that the 1st Respondent/CERC while adjudicating the issues raised by the Appellant in the petition as well as during the course of other submissions, has completely lost sight of certain important facts, such as, the alteration of the plant design, the dedication of the 21 MW TDK make turbine to ENMAS boiler and the re-commissioning of this combined set in July, 2014, the ENMAS boiler only using Black Liquor as fuel thus making the plant a renewable energy based generating plant. However, the most significant factor which was not considered by the 1st Respondent/CERC during the entire process was the fact that the plant was entitled to, eligible for and was actually receiving RECs prior to March, 2016.

3. Submissions of the learned counsel appearing for the 2nd Respondent are as follows:-

3.1 The learned counsel appearing for the Respondent No.2 submitted that the Appellant is not an eligible entity for grant of RECs in view of the amendment dated 30.03.2016 to the REC Regulations ('4th Amendment'), as the subject renewable energy generating unit against which RECs are sought for, was commissioned on 01.12.1994, which is beyond the control period prescribed under the said amendment. The same has been rightly held to be so by the 1st Respondent/CERC in the Impugned Order. Therefore, the Respondent No.2 is strictly in compliance with the aforesaid 4th Amendment to the REC Regulations.

3.2 That in exercise of powers conferred under sub-section (1) of Section 178 and Section 66 read with clause (y) of sub-section 2 of Section 178 of the Act, the 1st Respondent/CERC, brought into force the REC Regulations. Subsequently, the 1st Respondent/CERC issued a notification dated 29.01.2010, and designated the Respondent No.2 as the 'Central Agency' under Regulation 3(1) of the REC Regulations.

3.3 Subsequently, on 30.03.2016, the 4th Amendment was published in the official gazette whereby inter alia, a new clause i.e. (1B) was inserted under Regulation 5. The aforesaid clause is reproduced below for ready reference: -

"(1B) A Captive Generating Plant (CGP) based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption, shall not be eligible for participating in the REC scheme for the energy generated from such plant to the extent of self-consumption, if such a plant:

a) has been commissioned prior to 29th September 2010 or after 31st March 2016

b) is not registered with Central Agency under REC scheme on or before 30th June 2016.

Provided that a CGP based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption, and fulfilling both the following conditions:

a) having date of commissioning between 29th September 2010 and 31st March 2016; and

b) registered with Central Agency under REC scheme on or before 30th June 2016

shall be eligible for the entire energy generated from such plant for participating in the REC scheme subject to the condition that such plant does not avail or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges and/or banking facility benefit:

Provided further that if such plant meeting the eligibility criteria for REC, forgoes on its own, the benefits of concessional transmission or wheeling charges and/or banking facility benefit, it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits:
Provided also that the above-mentioned condition for participating in the REC scheme shall not apply if the benefits given to such plant in the form of concessional transmission or wheeling charges and or banking facility benefit are withdrawn by the concerned State Electricity Regulatory Commission and/or the State Government:

Provided also that if any dispute arises as to whether a CGP or any other renewable energy generator has availed such concessional/promotional benefits, the same shall be referred to the Appropriate Commission for decision.

Explanation:- For the purpose of this regulation, the expression 'banking facility benefit' shall mean only such banking facility whereby the CGP or any other renewable energy generator gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours."

Bare reading of the aforesaid clause, makes its abundantly clear that Captive Generating Plant (CGP) that do not fulfil the conditions prescribed under Electricity Rules, 2005 are eligible to participate under the REC scheme to the extent of self-consumption, only if, the date of commissioning is between 29.09.2010 and 31.03.2016; and if they are registered under the REC scheme on or before 30.06.2016.

3.4 That the submission of the Appellant Counsel that the date of commissioning of its generating unit must be reckoned from the date of commissioning of the associated ENMAS Boiler is wrong and self-serving. It is submitted that the whole argument is a misleading attempt on part of the Appellant for reaping benefit under the REC scheme, which otherwise it is not entitled to receive. It is submitted that the 1st Respondent/CERC in its Impugned Order has correctly observed that boiler along with the turbine would constitute a complete and separate generation plant. This is also the position as laid down under clause 2(l)(ii) of the *Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010* which defines the term "generating unit" as :

“an electrical Generating Unit coupled to a turbine within a Power Station together with all Plant and Apparatus at that Power Station which relates exclusively to the operation of that turbo-generator”

The aforesaid position is further supported by section 2(30) of the Act which defines the term ‘generating station’ as under: -

"generating station" or “station” means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station

A bare perusal of the two definitions makes it clear that an electrical generating unit must be seen in its totality. It is only when all the associated parts come together as a whole does an electrical generating unit becomes a reality and the date of commissioning of the entire generating plant is to be ascertained from that day and no other. The 1st Respondent/CERC in its Impugned Order has correctly observed that mere technical upgrades to the generating station or commissioning of a single equipment/apparatus in isolation does not lead to change in the date of commissioning of the entire plant.

3.5 Without prejudice to the foregoing, the Appellant's contention that 21 MW Turbine Generator (TG) set along with ENMAS boiler (installed in 2011) should constitute a separate generating unit is erroneous, especially when admittedly the ABL boiler (installed in 1995) remains connected with the above stated TG set. Admittedly, the ABL boiler also exclusively relates to the operation of the turbine-generator in question.

3.6 It is submitted that the Appellant's 21 MW TG set was installed on 01.12.1994. It is not disputed that the same is also connected to the ABL make boiler which was installed in the year 1995. It is very clear that a fully functional electrical generating unit was already in existence since at least 1995, prior to the commissioning of the ENMAS boiler as an additional boiler in 2011. Considering the same, the observation made by the 1st Respondent/CERC that the date of commercial operation would mean the date on which the generating plant starts injecting electricity into the grid squarely applies to the present case. The Appellant has nowhere contended that it was not generating electricity through the subject generating unit prior to the installation of the ENMAS boiler in 2011. Therefore, as the same was being used for its intended purpose even prior to 2011, the date of commissioning of the generating plant must be necessarily construed to be from 1994 i.e. the date of installation of the turbine. The argument of the Appellant that the date of commissioning of the whole plant should be 2011 as a mere technical modification was made to it is completely erroneous.

3.7 The malafide of the Appellant is further evident from the admission made by it in the appeal that in case the 4th Amendment had been notified at an earlier time, it would have modified its plant configuration accordingly just to meet the requirements of the amended Regulations. The Appellant is once again trying to misguide this Tribunal into believing that by merely altering the constituent parts of the electrical generating unit, or by making technical upgradation, it can fall within the control period of the REC Regulations. If this position of the Appellant is accepted, then it would lead to some anomalous situation wherein unscrupulous entities would carry out superficial modifications to their generating unit just to reap the benefits of REC when they are not really entitled to.

3.8 It is submitted that the date of commissioning of the generating unit ought to be considered as the commissioning of the whole unit and not by a later date on which one or more parts have been installed or any modification has taken place. Hence, in the facts and circumstances of the present case, it would be wrong to suggest that the 'generating unit' which consists of the 21 MW TG set as well as the ABL make boiler apart from ENMAS boiler, was commissioned in 2011, solely because the ENMAS boiler was installed in that year.

3.9 It is also submitted that the submission of the Appellant that because it was receiving the benefits of REC until February 2016, it is entitled to receive the same in the future as well is completely unfounded. As per the NLDC letter no. POSOCO/NLDC/REC/6

dated 19.07.2016 (annexed as Annexure A-6 by the Appellant), it has been clearly stated at point no. 1.1 as follows :

Recently, the information has been received from fourteen (14) State Agencies. On perusal, it has been observed by Central Agency that further clarity / information is required as either incomplete information is received, or a mismatch is occurring as per the records.

In this regard, it is pertinent to mention that the request of issuance of REC(s) for the month of March 2016 onwards have been kept in abeyance till the complete information from respective State Agency is received.

3.10 Thereafter, the Appellant was adjudged to be falling outside the control period and hence not eligible to receive the benefits of REC. Thus, the contention of the Appellant that merely because it was receiving benefits of REC in the pre 4th Amendment era, the same should be extended to it even though it manifestly does not fulfill the eligibility criteria, is illegal and incorrect.

3.11 Lastly, the submission of the Appellant Counsel that there existed anomalies in the Forms issued by the answering Respondent is totally unfounded. As one can see from Annexure 7 filed by the Appellant along with the appeal, the Form merely asks for "*Date of Commissioning of Generating Units"* and not for any particular constituent part of the same. A bare perusal of the statement can lead to no other conclusion but the one being contended by the answering respondent and confirmed by CERC in the impugned

order i.e. generating unit must be seen as a whole and therefore the date of commissioning of the generating unit would be the date on which the entire unit became functional for the first time. Thus, the argument of the Appellant with respect to the alleged anomaly in the Forms is completely unfounded.

4. Submissions of the learned counsel appearing for the 3rd Respondent are as follows:-

4.1 The learned counsel appearing for the respondent No.3 submitted that it is wrong to say that the 21 MW TG set constitutes a separate generating unit and the date of commissioning of the unit has to be reckoned from the year 2011. The amendment has now placed certain restrictions on the Renewable Power Generators availing the benefits under the REC mechanism. The certificate of accreditation was given by the Respondent No.3 to the Appellant after going through the procedures led down in the CERC Regulations. At the time of seeking registration, the Appellant while filing up online application form no. APPLULOACCR1102162787 dated 11.02.2016 had declared the dates of commissioning of its 21MW and 6.8 MW turbines for REC generation to be that of 01.12.1994 and 26.12.1985 respectively. As a matter of procedure under the CERC Regulations 2010, a State Agency required to go through the check list and rely upon the commissioning certificate from State Transmission utility/concern distribution licensees.

4.2 The Commissioning certificate dated 19.04.2014 issued to the Appellant by Executive Engineer Electricity Test Division, Haldwani & Executive Engineer Electricity Distributive Division, Haldwani,

also reflects the date of commissioning of both the generators i.e. 21 MW and 6.78 MW turbines as 01.12.1994 and 26.12.1985 respectively. The Appellant was rightly stopped from the benefit of the REC mechanism, as the commissioning of the TG system does not fall within the control period mentioned in the amendment REC Regulations. The Power System Corporation Ltd. vide its letter ref. POSCO/NLDC/REC6/537 dated 19.07.2016 sought certain information/declarations from RE Generators, in order to ensure smooth implementation of the fourth amendment to CERC REC Regulations. Consequently the Respondent No.3 sent a letter dated 29.07.2016 to the RE generators including the Appellant to provide the required information sought by NLDC. The Respondent No.3 received the information from Appellant vide its letter dated 10.09.2016. That in its declaration the Appellant did not mention the date of commissioning of TG set of project but gave date of commissioning of the ENMAS Boiler, which was not considerable in view of the procedures laid down under the CERC Regulations, 2010 for accreditation of RE Generation project by State Agency. There was no reason to file petition number 9/MP/2017 by the Appellant. However, the petition was liable to be dismissed and as such the 'Central Electricity Regulatory Commission' rightly dismissed the said petition. The Respondent No.3 revoked the registration of Appellant from the RE scheme, in accordance to the law.

4.3 The 1st Respondent/CERC by passing Impugned Order dated 13.09.2017 rejected the prayers made in petition number 9/MP/2017 of the Appellant. The 1st Respondent/CERC observed in lawful manner that since the generating plant of the Appellant

was commissioned on 01.12.1994 and as per the 4th Amendment to the REC Regulations, the Renewable Energy generating plants commissioned prior to 29.09.2010 are not eligible for grant of Res for self consumption and therefore the Appellant ceases to be eligible for grant of RECs for power utilized for self consumption with effect from the date of notification of 4th Amendment to REC Regulations. Admittedly, ENMAS boiler was commissioned in 2011 and was connected to already operating 21 MW Turbine (make 1994). The 21 MW Turbine is in operation since 1994 with ABL Boiler. The boilers along with the Turbine, as a whole only can be constituted to be a separate generation plant. In the present case the date of commissioning of entire generating plant is 01.12.1994 and not the date 01.05.2011.

4.4 The terms “Generating Station” or “Station” and term “Generating Unit” are two different terms. Once the generating plants get commissioned, the same can be upgraded technically as per the requirements. Technical upgrades to the Generating Stations do not lead to change in the date of commissioning of the plant. In the present case admittedly the plant was commissioned in 1994 and this time period is outside the control period of the REC Regulation, 2010 for captive generators i.e. between 29.09.2010 to 31.03.2016. That State Agencies are bound to follow the rules and regulations in the form of checklist/otherwise to consider the entitlement of the parties for the benefit of a scheme. The term date of commercial operation of plant and the term date of generating operation of plant are two different things. The date of commercial operation means the date of successful commissioning of the generating plant starts injecting electricity

into the grid. Whereas commissioning of generating plant means the date on which the plant generates the electricity. In the present case the plant started generating electricity in 1994 and as such its date of commissioning is deemed to be that of 1994 as contended by the learned counsel for the Appellant.

4.5 The restrictions were imposed vide amendment in the Regulations in March, 2016. After amendment the State Agency did not issue RECs. The Appellant was not entitled for the benefit. The 1st Respondent/CERC gave finding that the Appellant has themselves admitted that TG set was commissioned in 1994. The 21 MW TG set constituted in 1994 does not become a new and separate generating unit after connecting a new Boiler in 2011. The learned counsel appearing for the Respondent No.3 submitted that for an electricity generating unit, turbine is the main and important part of the plant. The turbine may be operated by different source of energy including inter alia hydraulic, thermal, fossil fuel or any other renewable source of energy. In the present case the turbine was in operation since 1944 through ABL Boiler and the plant was generating electricity. The Appellant further connected the turbine with ENMAS Boiler in 2011 in addition to the ABL Boiler. In these circumstances it cannot be stated that the already functioning unit has become a new and separate unit in 2011. The commissioning date of the electricity generating unit will be the date of the commissioning of turbine and not the date of commissioning of a new Boiler. The date of commissioning of a new boiler cannot change the date of operation of an old turbine generator/electricity generating plant.

4.6 The State Agencies follow the rules and regulations and prescribed checklist etc. for the consideration of issuance of REC and cannot go beyond the rules and regulations applicable at that time. The dates for the operation of the TG are mentioned in the checklist and the same was considered by the Respondent No.2 and Respondent No.3. The Appellant has wrongly interpreted the date of commissioning of power plant for its own benefit, which is against the spirit of the 4th Amendment in the CERC Regulations, 2010. That the restrictions were imposed in march, 2016 and as such the Appellant was not entitled to the benefits under the scheme as the electricity generating plant evidently had been commissioned before the 29.09.2010. The Appellant have themselves admitted the commissioning of the electricity generating plant of 21 MW TG set is 1994.

5. We have heard learned counsel appearing for the Appellant and learned counsel appearing for the Respondents at considerable length of time and carefully gone through the written submissions and the Impugned Order passed by the 1st Respondent/ the 1st Respondent/CERC and the relevant material on records available in file.

On the basis of the pleadings and submissions of the learned counsel appearing for the parties, the core issue emerges in the instant appeal for our consideration i.e.:-

"Whether the RE plant was commissioned within the control period as defined in the fourth Amendment dated 30.03.2016 to REC Regulations 2010 or outside the control period".

6. **Our considerations and analysis:**

The learned counsel appearing on behalf of the Appellant has submitted that the 1st Respondent/CERC in their findings have recorded that the successful commissioning for the generating station would be the date on which it starts injecting electricity into the grid. In the present case ENMAS boiler was commissioned in 2011 and started injecting electricity to the grid by being connected with 21 MW TG. As per the findings of 1st Respondent/CERC the date of commissioning of the 21 MW RE Plant should be 2011, however the 1st Respondent/CERC have not deliberated on this aspect and have declined the Appellant the benefit of RECs.

The Appellant has submitted that generating station as defined under Section 2 (30) of the Act also refers to any building and plant with step up transformer, switchgear, switchyard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof. The 1st Respondent/CERC in their Impugned Order has correctly observed that mere technical upgrades to the generating station or commissioning of a single equipment/apparatus in isolation does not lead to change in the date of commissioning of the entire plant.

The Appellant had submitted that initially it had a common header and the mixed steam produced from coal and biomass boilers was fed to TG. But later on for the purpose of REC mechanism biomass system was segregated. The Appellant first tried to avail REC on

methodology based on steam measurement. The ABL boiler was not capable of running 21 MW TG alone as its capacity was highly inadequate as compared to the requirement to 21 MW TG. He has further submitted that as REC is for the uses of renewable sources, the determining factor for the purpose of REC would be the connection of turbine with the boiler which is the main sources of uses of fuel. The installation of ENMAS boiler was not a mere technical modification as the process of installation resulted in complete changeover of fuel (from fossil fuel to biomass) thereby fulfilling the object of renewable energy certification.

In its letter dated 19.09.2016 the Appellant, while submitting the filled format along with the check list for establishing its eligibility under RECs mechanism pursuant to the 4th Amendment, submitted, "earlier for unit 2 we had provided the commissioning date of 21 MW TG while our ENMAS boiler (RE Boiler) is a new boiler & commissioned on 04.05.2011, 21 MW TG steam is fed through ENMAS boiler thus now we are providing commissioning of unit-2 as per commissioning of RE boiler i.e. ENMAS Boiler." The expression "change of plant configuration according to regulation" meant that if this amendment has been notified earlier, it would have changed the configuration in such a manner that 21 MW TG set could be fed through ENMAS only. The REC mechanism boiler cannot be an auxiliary part as REC stand for Renewable Energy Certificate and boiler section is only the section which decides whether a plant is a Renewable fuel based plant or non-renewable fuel based plant, role of turbine is only to generate power whether it is from fossil fuel or renewable source of fuel. Therefore, REC mechanism is completely for renewable sources

utilization and for power generation renewable sources can only be utilized at boilers thus date of commissioning of project should be based on the date of commissioning of boilers instead of the date of commission of turbines or other auxiliary part.

The learned counsel appearing on behalf of the Respondent No.2 submitted that, the submission of the Appellant that ENMAS boiler connected to 21 MW TG constitute a separate RE generating plant and the date of commissioning of the RE generating plant should be 2011 when the ENMAS boiler was commissioned is wrong.

The 21 MW TG set is connected to two boilers ABL boiler installed in 1995 and ENMAS boiler commissioned in 2011 and have been generating electricity prior to commissioning of ENMAS boiler.

The learned counsel appearing for the Respondent No.3 submitted that, it is wrong to say that the 21 MW TG set constitutes a separate generating unit and the date of commissioning of the unit has to be reckoned from the year 2011. The Commissioning certificate dated 19.04.2014 issued to the Appellant by Executive Engineer Electricity Test Division, Haldwani & Executive Engineer Electricity Distributive Division, Haldwani, also reflects the date of commissioning of both the generators i.e. 21 MW and 6.78 MW turbines as 01.12.1994 and 26.12.1985 respectively. Admittedly, ENMAS boiler was commissioned in 2011 and was connected to already operating 21 MW Turbine (make 1994). The 21 MW Turbine is in operation since 1994 with ABL Boiler. The boilers along with the Turbine, as a whole only can be constituted to be a separate generation plant. In

the present case the date of commissioning of entire generating plant is 01.12.1994 and not the date 01.05.2011.

7. Our findings:

As per the facts submitted by the Appellant the ENMAS was commissioned in 2011 and at the time of its commissioning there was no segregation of the biomass.

Steam produced by both the boilers i.e. coal fired as well as chemical recovery boilers was mixed in a common header and this common steam was fed to all the TGs. As such there was no separate RE plant at the time of commissioning of ENMAS boiler in 2011.

The learned counsel for the Appellant have submitted that installation of ENMAS boilers was not a mere technical modification as the process of installation resulted in complete changeover of fuel from fossil to biomass thereby fulfilling the object of renewable energy certification. It was only in 2012 when MNRE categorised black liquor as a renewable energy fuel. To avail benefit of RE scheme, the Appellant modified the system and segregated steam produced by chemical recovery boilers and coal fired boilers. The RE plant with ABL boiler and the ENMAS boiler connected to 21 MW TG was registered and accredited in 2014.

Therefore the Appellant has no case for registration of this RE plant in 2011 on the basis of commissioning of ENMAS boiler.

i) As per Section 2(30) of the Electricity Act, 2003, the generating station is defined as under:-

"generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station."

ii) As per clause 2(l)(ii) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, the generating unit is defined as :

"an electrical Generating Unit coupled to a turbine within a Power Station together with all Plant and Apparatus at that Power Station which relates exclusively to the operation of that turbo-generator"

iii) It is evident from the definitions given above that the generating station comprises of many elements including electrical generating units comprising of turbines and generators, building, transformer, switchgear, switch yard, cables, site for a generating station, building used for housing the operating staff.

The date of commercial operation of the generating station is the date of commissioning of the generating station as a whole i.e. the

date on which the station starts generation of electricity and feed it to the grid. In this instant case the generating station has been in operation since 1985 using coal and black liquor and has developed in phases with addition of TG and boilers (both coal fired and chemical recovery) of varying capacity in different years.

vi) In 2011, the Appellant installed ENMAS boiler and kept ABL boiler as standby boiler. When the ENMAS boiler was commissioned in 2011 there was no segregation of steam and all the TGs were generating electricity using mixed steam from a common header.

It is only in 2012 when the MNRE categorized black liquor as a renewable energy fuel that the Appellant segregated the steam and modified the plant in such a way that the ENMAS and ABL boilers, (both chemical recovery boilers) were connected to 21 MW TG Set and this was registered, accredited as RE plant in 2014 and started getting REC certificates. This whole arrangements of segregation of the steam was primarily done to measure the generation of electricity exclusively from black liquor so as to be eligible under the RE scheme. <u>This is a rearrangement of the existing generating station and cannot be taken as a commissioning of a new plant because the plant was already functional using both fuel coal as well as black liquor for several years, even before 2012, even when ENMAS was commissioned in 2011.</u>

The installation of ENMAS boiler alone as just one element in 2011 is an upgradation of the generating station. Therefore the submissions that the date of commissioning of the RE plant should be taken as the date of commissioning of the ENMAS boiler in 2011

is wrong. Moreover in 2011 steam produced by both the boilers i.e. coal fired as well as chemical recovery boilers was mixed in a common header and this common steam was fed to all the TGs. As such there was no separate RE plant at the time of commissioning of ENMAS boiler in 2011. Therefore, the submissions of the learned counsel appearing for the Appellant has no substance.

vii) Regarding the issuance of Renewable Energy Certificate to the Appellant, as per the fourth amendment dated 30.03.2016 of the REC Regulation 2010, the issuance of Renewable Energy Certificate is limited to only such RE plants which have been commissioned between 29th September 2010 and 31st March, 2016. Since this RE plant under reference had not been commissioned during the control period, as per the amendment of RE Regulation in 2016 the RE plant under reference is not eligible under the scheme and Renewable Energy Certificate cannot be issued to the Appellant plant.

7. **Conclusion**:

After careful evaluation of the oral, documentary evidence and other relevant materials available on the file, we are of the considered view that the 1st Respondent/CERC has rightly justified in answering the issue against the Appellant. Therefore, we do not find any error, material irregularity or legal infirmity in the Impugned Order passed by the 1st Respondent/CERC. The Impugned Order dated 13.09.2017 passed 1st Respondent/CERC is sound and proper and hence, interference of this Tribunal does not call for.

ORDER

Having regard to the facts and the circumstances of the case as stated above, the Appeal filed by the Appellant is dismissed as devoid of merits.

The Impugned Order dated 13.09.2017 passed by the Central Commission is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **13th day of February, 2019.**

(Ravindra Kumar Verma)
Technical Member

(Justice N. K. Patil)
Judicial Member

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REPORTABLE/NON-REPORTABLE

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