

Court-II
Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 289 of 2015

Dated : 29th April, 2016

Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member

In the matter of:

M/s Raj West Power Ltd. Appellant(s)
Versus
Jaipur Vidyut Vitran Nigam Ltd. & Ors. Respondent(s)

Counsel for the Appellant (s) : Mr. M.G.Ramachandran
Ms. Poorva Saigal
Ms. Ranjitha Ramchandran
Mr. Rahul Kumar
Mr. Aman Anand

Counsel for the Respondent (s) : Mr. P. N. Bhandari for R-1 to R-3/DISCOMs
Mr. Raj Kumar Mehta
Mr. Abhishek Upadhyay &
Ms. Himanshi Andley for RERC/R-5

ORDER

Heard the rival parties, namely, Mr. M.G.Ramachandran, for the Appellant and Mr. P. N. Bhandari, appearing for Respondent Nos.1, 2 & 3/DISCOMs in this appeal. The Appellant submits that, it is a case fully covered by *Change of Law*. The benefit of *Change in Law*, with regard to clean energy cess should be allowed to the Appellant/Petitioner.

Mr. P.N.Bhandari, learned counsel for the DISCOMs, also admits that, this is a case where *Change in Law* with regard to seeking energy cess, should be allowed. Mr. P.N.Bhandari, for the DISCOMs, submits that, though, there was no counter claim or any petition before the State Commission, but facts regarding counter claim are mentioned by the State Commission in the **Impugned Order**. Mr. Bhandari, wants the matter to be remanded to the State Commission, with direction that, if, there was any counter claim on behalf of the DISCOMs, Respondents, herein, pending on date of passing of Impugned Order filed by the State Commission in Petition No.523 of 2015, the Commission should decide the same.

We **allow** the instant Appeal; being Appeal No.289 of 2015, and set aside the Impugned Order dated 07.10.2015 passed by the State Commission in Petition No.523 of 2015. We further direct the State Commission to allow the benefit of *Change in Law* with regard to clean energy cess to the Appellant. The State Commission is further directed to decide the counter claim of the DISCOMs, Respondent Nos.1, 2 & 3, if any, was pending before the State Commission on the date of passing the Impugned Order.

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We further, make it clear today that, if, there was no counter claim or counter demand of DISCOMs, pending at the time of passing the Impugned Order, the Commission cannot decide the same.

Mr. R.K.Mehta, learned counsel appearing for the State Commission, sincerely, states that, if there was any counter claim pending at the time of passing of the Impugned Order, the State Commission, shall consider it. Thus, instant Appeal, being Appeal No. 289 of 2015, is allowed to the extent, as indicated above. No costs.

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

sh/kt