THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO. 112 OF 2017

Dated: 12th February, 2020

Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member

In the matter of:-

M/s Malwa Solar Power Generation Private Limited
Director
4th Floor, Dr. Gopaldas Bhawan,
28, Barakhamba Rorad,
Connaught Place,
New Delhi - 110001

…. Appellant

Versus

1. **Madhya Pradesh Electricity Regulatory Commission**
   The Secretary,
   5th Floor, Metro Plaza, E-5 Arera Colony,
   Bittan Market,
   Bhopal – 462 061
   Madhya Pradesh

2. **M.P. Paschim Kshetra Vidyut Vitran Nigam Limited,**
   The Managing Director,
   GPH Compound, Polo Ground,
   Indore

3. **M.P. Power Management Company Limited**
   The Managing Director,
   Block No. 11, 3rd Floor, Shakti Bhawan,
   Rampur, Jabalpur – 428 008

….Respondents

Counsel for the Appellant(s) : Mr. Hemant Singh
Ms. Shikha Ohri
Mr. Matrugupta Mishra
Ms. Anika Bafna
Mr. Nishant Kumar
Mr. Divyanshu Bhatt
Mr. Shourya Malhotra
Ms. Ananya Mohan

Counsel for the Respondent(s): Mr. Shri Venkatesh
Mr. Somesh Srivastava for R.1

Mr. Nitin Gaur
Ms. Anuradha Mishra
Mr. G.L. Pandey for R.3

JUDGMENT

(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)

This Appeal is filed by a generating company challenging the Order dated 01.02.2017 (impugned order) passed by the 1st Respondent-M.P. Electricity Regulatory Commission ("**Commission/MPERC**") in Petition No. 37 of 2016. In the said petition, the Appellant had sought to implement the export-import net off of the power generated and used for auxiliary consumption by the Appellant' solar power projects or in the alternative to introduce new tariff category for solar power generators for drawing power from the grid for auxiliary consumption.

2. The admitted facts are as under:

The Appellant entered into a Connection Agreement dated 08.10.2014 with Madhya Pradesh Power Transmission Company Limited ("**MPPTCL/3rd Respondent"**) for evacuation of power at 132/220 kV Badod substation in the district of Agar, Madhya Pradesh through the 132 kV DCSS Transmission Line. Prior to this, the Respondent-Commission had issued a tariff order for solar energy based power generation in the State of M.P., wherein requirement for auxiliary consumption by solar power project was recognised. The Appellant Company is a Company incorporated under the provisions of the Companies Act, 1956 and is engaged in generation of electricity including solar and wind renewable energy. The Appellant had installed a two 1 x 20 MW Solar Power Projects located at Kachalla village, Badod Tehsil, Agar District of Madhya Pradesh. The 2nd Respondent is the distribution licensee fully owned by Government of Madhya Pradesh and the 2nd Respondent undertakes activities of distribution and retail supply in the area where the Appellant's solar plants are situated. The 3rd Respondent is the holding company for all the Discoms of State of Madhya Pradesh.

3. In terms of Central Government Policy under Jawaharlal Nehru National Solar Mission (JNNSM), rapid scale up of capacity and technological innovation to drive down costs so that solar generation achieves grid parity was envisaged. Solar Energy Corporation of India ("**SECI"**) has been identified by the Government of India as a nodal agency to facilitate purchase and sale of solar power connected with the grid at 33 kV level. Subsequently, the Appellant was declared as successful bidder under the above said scheme of Government of India and came to establish two solar power projects, as stated above. Power Purchase Agreements came to be entered into with SECI for both the units on 28.04.2014 for the sale of solar power. Various other documents came to be executed in terms of the above said policy of the Government of India.

4. For the power purchased from the Appellant's solar projects in the State of Madhya Pradesh, SECI made arrangements for sale of power to Discoms in Maharashtra and Goa on long term basis for 25 years. Commercial Operation Date (COD) was apparently achieved on 23.05.2015. The two solar plants of the Appellant are connected at 132 kV as stated above with the State Transmission Utility. As stated above, on 08.10.2014, Connection Agreement came to be entered into between the Appellant and MPPTCL. Appellant contends that it had

invested Rs.5.29 Crores capital expenditure to construct 12.65 kms 132 kV DCSS transmission line from the project up to the interconnection point of STU for the purpose of evacuation of solar power generated from solar plants. This involves substantial expenses to be invested to install the infrastructure till the point where it is connected to grid (delivery point) at its own cost.

5. The Appellant further contends that in the States of Maharashtra, Gujarat, Andhra Pradesh, Tamil Nadu, Karnataka, Rajasthan the power used for auxiliary consumption by the generating plants is net off against the power supplied so far as all the wind projects. Some of wind projects in Madhya Pradesh also have such mechanism, which is envisaged in terms of PPA. Almost all solar projects in other states other than Madhya Pradesh, power imported for auxiliary consumption is net off against power exported. Such policy is adopted even in several thermal projects also.

6. According to the Appellant, generating power through Appellant's project is done only when natural resource i.e., sunlight is available and if sunlight is not available though the project is operational, it cannot generate power. During such time, it draws power from grid for auxiliary

consumption of the plant. This does not amount to either shutting down or closure of the plant for maintenance. This mechanism of net off is followed in all other states for solar projects except the State of Madhya Pradesh.

7. By virtue of Tariff order for solar energy based power generation in the State of Madhya Pradesh, 1st Respondent-Commission by Order dated 01.08.2012 recognised auxiliary consumption by a solar project. The relevant provisions of which are as follows:

> *"6.8.10 Auxiliary Consumption: The Commission in its discussion paper has provided auxiliary consumption at the rate of 0.25%. The CERC in its Regulations dated 06.02.2012 has not specified auxiliary consumption for such projects. The GERC has also not allowed auxiliary consumption.*
>
> ***Commission's decision:***
>
> *The Commission is of the view that some equipment in the plant shall require supply to be consumed and also to promote these technologies, an auxiliary consumption of 0.25% of gross generation is allowed"*

8. This clearly indicates that some auxiliary power is required for such projects. Though such fact was recognised, Respondent-Commission had different approach in the case on hand while considering the relief sought by the Appellant. The deviation of drawl of power during the night was considered as auxiliary consumption and this

was a measure to promote solar power generation within the State. According to the Appellant, the generating company cannot be treated as a consumer for the purposes of consumption of power qua the running of plant auxiliaries.

9. The Appellant in response to the invoice raised by 2nd Respondent has paid an amount at Rs.8.27 per unit as the rate for import of power. On 08.07.2015, the Appellant requested the 2nd Respondent to provide a copy of the agreement executed between the Discoms-2nd Respondent and the Appellant for import of power from the grid followed by another letter on 12.08.2015.

10. The 2nd Respondent on 13.08.2015 informed that the billing of import energy used by the Appellant's project was on temporary industrial category tariff as per the prevailing MPERC Regulations. They also informed that no agreement for temporary category consumers is being executed. The Appellant raised a dispute contending that the Appellant could not be billed under the category of temporary HT industrial consumer, since temporary power supply given to a consumer (for temporary purpose) for a period of two years which could be extended up to five years only in terms of MP Electricity Supply Code of

2013 when such extension is for construction of buildings, power plants and setting up of industrial units. Since the construction of the power plant is complete, the auxiliary power consumption shall be for the entire terms of PPA of 25 years and it cannot be in terms of MP Supply Code since it is beyond 25 years.

11. They also place reliance on Regulation 10 of MPERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) (Revision – I), Regulations, 2010 ("**2010 Regulations / Regulations of 2010"**) to contend that HT Industrial Category (tariff) would apply to temporary connection only during shut down period of its plant or during other emergencies. The 3rd Respondent started raising bills charging fixed charges for import of power at the rate applicable to temporary connection under HT industrial category. In spite of several representations to 2nd Respondent and Government of MP, no remedy was evolved therefore the Appellant had to approach the Respondent-Commission after making payments towards the invoices between 10.02.2016 to 09.03.2016.

12. The Respondent-Commission after hearing the Appellant and the concerned Respondents upheld levy of temporary commercial tariff for

import of standby power (auxiliary consumption). According to the Appellant, this opinion of the Respondent-Commission in the impugned order is contrary to the express intention of Section 86(1)(e) of the Electricity Act 2003, which aims at promotion of generation from renewable energy. They further contend that the Respondent Commission has wrongly interpreted the provision of MP Electricity Supply Code of 2013 so also failed to appreciate Regulation 10 of Co-Generation Regulations of 2010.

13. They also contend that the Respondent-Commission erred in placing reliance on the Judgment of this Tribunal dated 23.04.2015 in Appeal No. 297 of 2013 between GMR Gujarat Solar Power Private Limited vs. GERC & Anr. The Appellant contends that the Respondent-Commission failed to recognise and take into account that except for less than 3.2 GW solar and wind projects installed in the State of MP i.e., for the rest of around 313 GW generation capacity installed in India, auxiliary consumption is being charged at the same rate as export power tariff so that there is no rationale for charging the solar projects within the state of MP in a different way. The Respondent-Commission failed to consider the general principles adopted with regard to auxiliary consumption in the entire country.

14. The Respondent-Commission, according to the Appellant, failed to consider the material fact that no fixed assets were created by 2nd Respondent for supply of electricity to the Appellant on temporary basis. They further contend that in the absence of any firm contract between the parties, they ought not to have been raising tariff with retrospective effect. The Respondent-Commission failed to appreciate the general principles that the Appellant incurred huge capital cost towards laying the lines and setting up the evacuation facility. With these contentions it has sought for the following reliefs:

a) To set aside the impugned order dated 01.02.2017 passed by the Respondent-Commission in Petition No. 37 of 2016, to the extent challenged in the present appeal; and

b) To direct Respondent Commission to determine the tariff for power used towards auxiliary consumption of the plant at the rate of Rs.5.45/kWh on the principle of net off of the import-export of auxiliary consumption power to have harmonious regulatory regime in the country encouraging renewable projects and

c) To pass such other or further orders as this Tribunal may deem appropriate, keeping in view the facts and circumstances of the present case.

15. As against this, the 1st Respondent-Commission filed objections, in brief, they are as under:

According to the 1st Respondent the interpretation of salient provisions of M.P. Electricity Supply Code of 2013 read with relevant provision of PPA executed between the Appellant and Solar Energy Society of India is erroneous. The Appellant became successful bidder to generate solar power through a reverse bidding route with Solar Energy Society of India, i.e, 4th Respondent. The 4th Respondent, in turn, entered into Power Sale Agreement with the 2nd Respondent licensee. The tariff order dated 01.08.2012 applies to the power sale agreement entered into between the 2nd Respondent and the 4th Respondent. This tariff order is applicable to limited projects, since it applies to those who have directly entered into PPA with the licensees of State of MP. Apparently, the Appellant has not entered into any such PPA with the licensee in the State of M.P. i.e., 2nd Respondent. Therefore, PPA with Solar Energy Society of India has no relevance to the facts of the present appeal.

16. By virtue of impugned order, the Respondent-Commission correctly interpreted the application of the Supply Code concerned and accordingly held that temporary HTP category is the one under which

the concerned charges have to be charged during shut down/emergency situation.

17. The Respondent-Commission has rightly appreciated the contentions of the Appellant vis-a-vis the judgment in Appeal No. 297 of 2013. The Respondent-Commission having framed Regulations providing various tariff to be charged for the import of power by the generator for the electricity drawn from the grid during shut down, has rightly followed those regulations. Regulation 10 of 2010 Regulations clearly provides how renewable generator would be entitled to draw power exclusively for its own use from the network of the distribution licensee and at what rate. In the light of the said regulation, the State Commission was justified in rejecting the request of the Appellant to net off the power utilised for auxiliary consumption. Since Regulation 10 clearly indicates how the energy consumed during shut down period would be billed and at what rate, the Appellant's prayers cannot be appreciated.

18. Section 181 of the Act has vested powers with the State Commission to frame regulations. Having exercised such power, the Respondent-Commission has followed the regulations, therefore, the

Appellant cannot have any grievance. They further contend that though the Appellant consumes auxiliary power from the state licensee's network, the rate at which such consumption of power has to be charged is clearly dealt with, in the above said regulations, which are followed by the State Commission. Therefore, the rate applicable to a temporary connection under HT Industrial category was rightly applied in the impugned order. Therefore, it does not warrant any interference. They further contend that energy drawn by the consumer generator does not make the generator a temporary consumer, but consumption of power by such generator would be charged at the rate applicable to temporary connection under HT industrial category. With these submissions they have sought for dismissal of the appeal.

19. The 3rd Respondent is MPPMCL. MPPMCL is the holding company of three Discoms. It is stated that the contention or the relief sought by the Appellant pertains to allowing net off of power imported by the generator as auxiliary consumption. The consumer generator is a permanent consumer, who draws power from the grid for auxiliary consumption of the power plant. Therefore, tariff has to be applied. In terms of regulations, the rate at which tariff has to be charged is the rate applicable to temporary connection under HT industrial category in terms of Regulation 10 of the Regulations of 2010. The Respondent-

Commission after considering the facts so also the regulation 10 of Regulations of 2010 has properly opined that in terms of Regulations applicable, the auxiliary consumption of the Appellant has to be charged at the rate applicable to temporary connection under HT industrial category.

20. The entire power generated by solar power projects cannot be available for sale and therefore while issuing solar tariff order dated 01.08.2012, the Respondent-Commission had properly allowed off setting their auxiliary consumption against the electricity generated by them. The adequate compensation towards auxiliary consumption requirement of the plant is an in built mechanism at the time of determination of generic tariff.

21. So far as the Appellant's plant is concerned, it is a solar power plant of 20 MW capacity. At the time of competitive bidding process conducted by Solar Energy Corporation of India, it had the opportunity of working out its own assessment of auxiliary consumption and charges to be paid for such consumption. No doubt, Section 86(1) and 61(h) of the Act empowers State Commissions to perform its functions including promoting co-generation and the generation of electricity from renewable

sources of energy and also regulations thereunder. These Regulations of 2010 are to promote renewable generators indulging in production of renewable energy and to facilitate connectivity of these generating plants with the grid and also to specify a percentage of total requirement of distribution licensee which would be purchasing energy from generation of new and renewable sources of energy. These regulations apply to all generating plants from renewable sources of energy including solar energy plants.

22. Tribunal in Appeal No. 297 of 2013 opined that the Appellant thereunder was entitled to be charged for import of power at temporary HT category as determined by the State Commission in retail supply tariff order from time to time. The facts and circumstances, and the context in which the said appeal came to be disposed of, altogether are different from the facts and circumstances of the present appeal. In the said appeal, the Appellant was prevented from being charged for imported power at the rate of temporary connection of HT industrial category, in spite of Regulation 10 of the Regulations, but the Appellants were forced to accept netting off of all export and import power. In the present case, it is quite contrary as the Appellant was charged at the rate of temporary HT industrial category, since this Tribunal already opined that charging a solar power plant for import of power at the above

said rate is a valid and justified exercise after upholding the provisions of the concerned tariff order, directives and tariff determined by State Commission as the principle which is applicable to such situation is clear.

23. The Appellant cannot demand that it must get net off benefit which is applied in the State of MP and to all solar plants and so also other states. The requirements in question deal with charges for import of power from the grid by renewable generating plants which were already in force when Appellant offered setting up solar power plant and entered into agreement with the beneficiaries allocated through Solar Energy Corporation of India. The answering Respondent does not raise any invoice/bill on any consumer or generator for power drawn from the grid. It is the concerned distribution licensee within whose jurisdiction such power is drawn raises such invoice/bill, therefore, the distribution licensees are bound to charge only at such rates which are determined or provided by the State Commission. In that view of the matter, the provisions of schedule HV-7 in retail supply order cannot be applied to billing process concerned, and Regulations of 2010 alone are applicable, which was relied upon by the State Commission. Therefore, the 1st Respondent-Commission has justified in opining that the methodology adopted by the concerned Discom for billing cannot be found fault with

since it is in accordance with the regulations applicable to import power. In this case, the tariff of export power has been determined through competitive bidding, but whereas the tariff for import power has been determined by the Commission, therefore the concept of netting off otherwise applicable cannot be applied to the case of the Appellant. The power plant in question has not exported any power to the grid but it has only imported power during the same billing cycle. Hence, the question of netting off power cannot be applied. The power generated by the Appellant's power plant is exported or injected in the grid for sale to utility/agency through open access in accordance with laws applicable. With these averments, they have sought for dismissal of the appeal.

24. By way of rejoinder, the Appellant has reiterated what is contended in the appeal.

25. The point that would arise for our consideration is "***whether the impugned order warrants any interference, if so what order?***

26. The Appellant has submitted written arguments in brief as under:

The consumption of electricity by the Appellant's project during evening/night hours i.e., post sunset for the operation of auxiliary plant equipment is the auxiliary consumption made by the Appellant's solar

project. The controversy in this appeal is “whether this temporary/make-shift consumption of electricity can be billed at temporary HT tariff or whether the Appellant has to be treated as temporary consumer for the auxiliary plant equipment run by the Appellant”? The Appellant contends that since the Appellant has obligation to supply power for a term of 25 years, it cannot be considered as a temporary consumer qua its auxiliary consumption during the above said period. In terms of impugned order, the Appellant is being charged at a tariff which works out to Rs.17-18/kwH for auxiliary consumption while it receives tariff of Rs.5.45/kwH under PPA for supplying power from its plant. This would definitely lead to severe and serious financial problem is the contention of the Appellant and that the very viability of the project would become difficult. According to them, there is no rationale even in the arguments submitted before the Bench as to how the Appellant could be categorised as HT temporary industrial consumer, since he is not a temporary consumer in terms of Regulation 4.43 of the M.P. Supply Code. Even in the arguments of the Respondent-Discom, they contended that the Appellant is being charged under the category of HT Industrial Temporary tariff and he is not charged as temporary consumer, therefore, the Respondent-Discom in effect supports the case of the Appellant is the stand of the Appellant. They also reiterate the contentions raised by them in the appeal memo. They further refer to

relevant extracts of impugned order i.e., paragraphs 7 and 8. The findings given in the impugned order based on the above paragraphs clearly indicate that the impugned order came to be passed by considering extraneous facts which are in total contravention of settled principle of law and fact.

27. The Respondent-Commission ought not to have placed reliance on the judgment of this Tribunal passed in Appeal No. 297 of 2013 since it is wholly inapplicable to the facts of the present case. They also refer to paragraphs 20 to 25 of the said judgment. According to the Appellant, the Respondent-Commission ignored and lost sight of actual law and facts, consequently without pragmatic view of the matter has proceeded to pass impugned order. They further contend that auxiliary consumption would include energy/power required for meeting the load of control room, air-conditioning, lighting, electrical panels etc., therefore, it would be logical and is expected to charge same tariff for export of power by solar projects and import of power must be netted off against the energy supplied by the Appellant to the distribution licensee. They also refer to generic tariff order of Respondent-Commission where it speaks of such netting off night time auxiliary consumption from the gross energy injected into the grid during day time by the solar plants. They bring on record, the difference between the temporary supply at HT tariff and the

temporary HTP category tariff for standby power which are applicable to solar PV projects as held in the case of GMR i.e., the above mentioned appeal. They again reiterate Regulation 10 of Regulations of 2010 contending that it has no application to the facts of the present case, since it is not a case of drawl of power by generators on account of shut down or during emergencies. They categorically contended that drawl of power by generators for auxiliary consumption cannot be equated with drawl of power during shut down or during emergencies. The very inherent and intrinsic character of solar PV projects post sunset cannot lead to opinion that it is in a state of shut down. Therefore, deliberate or actual shut down or closure of the plant during emergencies mean unforeseeable exigencies, but not to a situation where power is not generated after sunset in a solar plant. Similarly, it cannot be a case where power plant is shut down for maintenance or repairs. They again contend that the Appellant cannot be treated or deemed as 'temporary consumer' in terms of Regulation 4.43 of M.P. Supply Code. They also contend that a generating company cannot be treated as a 'consumer' for the purpose of consumption of power during commissioning and qua the running of plant auxiliaries. Even under CERC Regulations, for grant of connectivity, long term access and medium term open access, regulations of 2009 allows interchange of power from grid by generators

for availing power during commissioning by only paying the transmission charges.

28. The Appellant further contends that imposition of temporary industrial tariff for the power imported by the Appellant at a higher rate than the rate at which the power is exported by the solar power plant in question would not make the project viable for with any commercial prudence, and on the other hand, it discourages the renewable/solar power generators in the State of M.P. Therefore, they contend that whatever rate billed for the export of power under PPA with SECI, same rate should be applied for the import of power. In the alternative, they seek intervention of the Tribunal to direct the Respondent-Commission to frame new tariff category for solar power generators drawing power from the grid for auxiliary consumption, if the Appellant's case does not fall under any of the prevailing regulations of MPERC. Therefore, the Appellant contends that imposition of temporary tariff rate on the Appellant for import of power under HT industrial category is unjust and unreasonable.

29. They Appellant further contends that according to the Commission's argument, the Respondent Commission has started

deliberations on rationalisation of such tariff category, which would clearly indicate that at present excessive import tariff chargeable for auxiliary consumption is not correct. They also seek for a direction to the Respondent-Discom to refund the excess tariff already charged till date by setting it off against the tariff for export of energy at Rs.5.45/kwH. They also seek interest @ 15% to be paid by the Respondent-Discom on such excess amount collected by it till now.

30. Respondents have submitted oral arguments reiterating the contentions raised by them in their respective replies filed by them.

Our Discussion & Opinion

31. Para 7 & 8 of the impugned order reads as under:

"7. Having heard the petitioner and the respondents and on considering their written submissions, the Commission has noted that the main issue is whether drawl of power during night hours daily by the petitioner from the grid may be billed at the rate as specified in the relevant Regulations or as per schedule HV-7 of the retail supply tariff order. The Hon'ble APTEL passed an order on 23.04.2015 in Appeal No. 297/2013 (GMR Gujarat Solar Power Pvt. Ltd. Vs GERC & Others) wherein this issue was discussed and held that:

" *The Appellant is entitled to be charged for import of power at temporary HTP category tariff as determined by the State Commission in retail supply tariff order from time to time…."*

8. Under the above circumstances, the Commission is also of the view that the petitioner shall be billed as per the provisions of the Regulation 10 of MPERC (Cogeneration and generation of electricity from renewable sources of energy) (Revision-I) Regulations, 2010 for import of power from the grid which provides as under:

"*10. Drawing Power during shut down by Generator/Co-generation from Renewable Sources:*

The Generator/Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Distribution Licensee's network during shutdown period of its Plant or during other emergencies. The energy consumed would be billed at the rate applicable to Temporary Connection under HT Industrial Category."

32. The admitted facts are under Jawaharlal Nehru National Solar Mission, to promote and build solar world in India, Government of India came up with a proposal in November 2009. Apparently, SECI was identified by the Government of India as nodal agency for facilitating purchase and sale of solar power connected with the grid at 33kV level and above under Phase II, Batch I of the above said scheme. The Appellant became successful bidder and set up his 2 x 20 MW solar power projects within the state of MP. It is not in dispute that entire power generated from the Appellant's solar plants was to be sold to SECI. In turn, SECI entered into various Power Sale Agreements (PSAs) with various Discoms for sale of power, which would be bought by them under different PPAs including PPA entered into with the

Appellant. Apparently, it was long term supply of power for 25 years. The COD was achieved on 23.05.2015. It was connected to State Transmission Utility at 132 kV which could be termed as 'delivery point' in terms of PPA.

33. Appellant also entered into Connection Agreement with MP Power Transmission Company for evacuation of power generated from its solar plant through transmission lines.

34. The controversy involved in this appeal is at what rate the Appellant should be charged for the power used as auxiliary consumption to run its solar plants. It is not in dispute that the Appellant was charged at the rate applicable to consumers falling under the category of temporary HT industrial. The Appellant's contention is, since renewable energy has to be promoted in the light of scheme promoted by Government of India, charging the consumption of power by the Appellant at temporary HT industrial consumer is arbitrary and unreasonable. He tries to defend his stand by contending as follows:

The power supplied by him (export) to SECI by evacuating the power to the grid is charged at Rs.5.45 kwH, whereas he has been

charged for auxiliary consumption much beyond this rate which becomes sometimes double the rate at which the Appellant supplies power to SECI.

35. He also bases his argument on the fact that since he does not fall within the definition of ‘temporary consumer’, he cannot be charged for importing power under ‘temporary HT industrial category’.

36. Appellant further fortifies his argument by contending that the auxiliary consumption is not due to any shut down or emergency situation as stated in the concerned tariff code, therefore charging the Appellant under the category of ‘temporary HT consumer’ is wrong.

37. He also contends that the Regulation 10 of Regulations of 2010 would apply to temporary connection only during shut down period of its plant. He also contends that charging him at the rate at which he is paying is against the very purpose of Section 86(1)(e) of the Act.

38. He further contends that in the State of MP and so also in various other states, the policy of netting off auxiliary consumption against the gross energy supply into the grid was to be applied to the Appellant’s

case, and if no such provision is available, then a different tariff regime to cases like Appellant has to be directed to be framed by the Respondent-Commission.

39. We have gone through the Madhya Pradesh Electricity Supply Code 2013. In terms of this Code, Clause 2.1(n) refers to definition of 'consumer', which reads as under:

> *"(n) 'Consumer' means any person who is supplied with electricity by the licensee and includes any person whose premises are for the time being connected for the purpose of receiving electricity from the licensee, persons who have applied for an electricity connection, persons whose supply is not yet connected even after due notice to avail connection or whose electricity supply has been disconnected.*
>
> *A consumer is –*
>
> *(i) 'Low Tension Consumer (LT Consumer)' if he obtains supply from the licensee at low voltage.*
>
> *(ii) 'High Tension Consumer (HT Consumer)' if he obtains supply from the licensee at High Voltage.*
>
> **(iii)** *'Extra High Tension Consumer (EHT Consumer)' if he obtains supply from the licensee at Extra High Voltage."*

Clause 4.43 refers to 'temporary power supply', which reads as under:

> "*4.43 Any person requiring power supply for purpose that is temporary in nature, for a period of less than two years may apply for temporary power supply in the specified form (Annex- 1 or 2).*

The period of temporary connection can be extended up to five years for construction of buildings/power plants and for the purpose of setting up of industrial units. Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10 kW and 30 days before for higher loads."

Clause 4.51 refers to how final bill is prepared for 'temporary supply of power', which reads as under:

"4.51 After the period of temporary supply is over and supply has been disconnected, the licensee shall prepare the final bill and send it to the consumer within 30 days from the date of disconnection of supply and return the balance amount, if any, within 30 days of surrender of original money receipt or submission of indemnity bond by the consumer. On any delay beyond the said time limit, the licensee will be liable to pay an interest @ 1% per month on the amount of refund outstanding for the number of days proportionately beyond the last date of payment, as specified above. In case the consumer does not make the payment of balance amount, if any, within 30 days of issue of bill, he shall be liable to pay surcharge as provided in Distribution and retail supply tariff order."

Clause 4.58 refers to 'supply at extra high tension' which reads as under:

"4.58 After receipt of the requisition in the specified format for supply of energy at E.H.T., the licensee shall intimate within 15 days the consumer and the Transmission licensee in writing the date of inspection to check the feasibility of supply. The licensee and the

Transmission Licensee shall carry out the inspection jointly. The consumer or his authorized representative shall remain present at the time of inspection. The two licensees shall check the feasibility of supply and if found feasible shall fix the point of supply."

Regulation 10 of Regulations of 2010 reads as under:

"10. ***Drawing power during shut down by Generator/Co-generation from Renewable Sources***

The Generator/Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Distribution Licensee's network during shutdown period of its Plant or during other emergencies. The energy consumed would be billed at the rate applicable to Temporary Connection under HT Industrial Category."

40. Apparently, the Appellant is not selling power to any of the Discoms within the State of MP. Entire power generated by the Appellant Solar Plants is sold to different Discoms outside MP through SECI as stated above i.e., back to back PSA by SECI with different distribution companies. Therefore, the question of netting off power imported by the Appellant, whatever name it is called auxiliary or otherwise cannot be netted off against the power it would generate and supply to various Discoms through SECI. If the power generated by the Appellant from its solar plant was sold to MP Discom, then whatever

regulation would apply to such import and export of power would also apply to the Appellant.

41. Coming to the Judgment of this Tribunal in Appeal No. 297 of 2013 dated 23.04.2015, the facts involved in the said appeal are entirely different from the facts involved in the present case. In the said Appeal, the controversy was at what rate generator is to be charged for import of power by solar plant. In the said case, Appellants were prevented from being charged for import of power at the rate applicable to temporary connection of HT industrial category. In spite of providing such provision in the tariff order issued by the concerned State Commission, in the said appeal the Appellants were forced to accept netting off import power against the power exported. In the present case, the regulations of the state concerned, according to the Commission, provides how Appellant should be charged and at what rate for the power imported by him. This Tribunal in the said case opined that the Appellants must be charged for import of power at the rate applicable to temporary connection of HT category consumer. They further opined that the Appellants ought not to have been forced to accept netting off import power against export power.

42. In the present case, the Appellant was charged for import of power at the rate applicable to temporary connection under HT industrial category in accordance with the directions of the State Commission's regulations. Therefore, this Tribunal in Appeal No. 297 of 2013 already opined that charging a solar power plant for import power at the rate applicable to HT temporary industrial category is valid and justified by opining that provision of extant tariff orders, directives and tariff determined by the State Commission are applicable to solar power plants for power imported from the grid.

43. Then coming to the arguments of the Appellant that the Appellant is being treated as temporary consumer, we are of the opinion that this argument is incorrect for the following reasons:

44. The Appellant has long term PPA for more than 25 years to supply power from its solar plant, which was entered into between the Appellant and SECI. That apart, a reading of definition of 'consumer' and also 'temporary power supply', as stated above, clearly indicate that the import of power from the grid by solar plants is not as a temporary power supply, since as long as solar plants supply power to SECI on long term

basis, Appellant needs to get power from the grid for its auxiliary consumption during the period of non-generation in a routine manner.

45. The energy consumed by the Appellant is charged at the rate applicable to temporary connection under HT industrial category and not as a temporary consumer or not as a temporary supply.

46. In other words, the rate at which the power is imported from the grid is in accordance with Regulation 10 of 2010 Regulations, and there is no question of temporary status of either temporary consumer or temporary supply so far as the Appellant is concerned.

47. The provision, which refers to 'temporary power supply' clearly shows that temporary connection can be extended to a maximum period of five years only for construction of buildings, power plants and for the purpose of setting up of industrial units. The import of power by the Appellant, at any stretch of imagination, does not come within the above activity.

48. On the other hand, in terms of Regulation 10, it says during shutting down period or during other exigencies, the generator from

renewable source who is entitled to draw power exclusively for its own use from the distribution network has to be charged at the rate applicable to temporary connection under HT industrial category. In other words, the rate at which he has to be charged, has to be the rate which is applicable to temporary connection under HT industrial category.

49. Therefore, viewed from any angle, reasoning and the finding of the State Commission cannot be found fault with. The Appellant has not made out any grounds warranting interference. Accordingly, the appeal is dismissed. All the pending IAs, if any, shall stand disposed of.

50. No order as to costs.

51. Pronounced in the Open Court on this the 12th day of February, 2020.

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

Ts