**COURT-I**

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**
**(APPELLATE JURISDICTION)**

**APPEAL NO. 114 OF 2017**

**Dated: 17th December, 2019**

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

**In the matter of :**

**Kishangarh Hi-tech Textile Park Ltd (KHTPL)**
**Though its Authorised Signatory**
**Having its registered office at**
**Agrawal Sadan, Bhat Mohalla,**
**Madanganj-Kishangarh,**
**District Ajmer – 305801, Rajasthan … Appellant(s)**

**Vs.**

1. **Rajasthan Electricity Regulatory Commission**
**Through its Secretary,**
**"Vidyut Viniyamak Bhawan",**
**Near State Motor Garage,**
**Sahakar Marg,**
**Jaipur – 302 006 Rajasthan**

2. **Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,**
**Through its Director,**
**Vidyut Bhawan, Janpath,**
**Jaipur – 302005, Rajasthan**

3. **Ajmer Vidyut Vitaran Nigam Ltd.,**
**Through its Director,**
**Old Power House,**
**Hathi Bhata Road,**
**Jaipur Road,**
**Ajmer – 305001, Rajasthan**

**… Respondent(s)**

Counsel for the Appellant(s) : Mr. Hemendra Sharma
Mr. Kara Singh Bhati

Counsel for the Respondent(s) : Mr. R. K. Mehta
Ms. Himanshi Andley **for Res. 1**

Mr. Pradeep Misra **for Res. 2**

## JUDGMENT

## PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON

**1.** This appeal is directed against the impugned order dated 22.06.2016 on the file of the Rajasthan Electricity Regulatory Commission (for short "the Commission"). The Appellant has its own captive generation of electricity by setting up wind energy based power plant of 8.4 MW capacity at Jaisalmer district under Government of Rajasthan Policy of 2004 through its developer Suzlon Infrastructure Services Limited. The Appellant is before us claiming that 4% of transmission losses must be compensated in his favour, and therefore the impugned order negating his claim for adjustment of 4% of transmission losses in its favour by Respondent No.3-Ajmer Vidyut Vitran Nigam Ltd., (for short "AVVNL")/Discom is arbitrary and against law.

**2.** In brief, the case of the Appellant is as under:

` **(i)** On 09.12.2010, a Wheeling and Baking Agreement ("**WB Agreement"**) came to be entered into between the Appellant, Suzlon Infrastructure Services limited (Developer) and AVVNL. A separate Wheeling Agreement also came to be executed between the above said three parties on 20.12.2010.

**(ii)** According to the Appellant, Regulation 83 (6) of Tariff Regulations of 2009 provides for consideration of line losses of 1% in respect of metering at 33KV level and 4% for metering at 132/220 KV level. The Appellant claims that he raised bills upon Respondent-AVVNL since he was eligible for 4% line losses. Between December 2010 to April 2012, the Appellant did get the benefit of adjustment of energy by allowing transmission losses @ 4% by AVVNL. However, this was not extended for the months of May and June 2012. Therefore, the Appellant wrote several letters to Respondent-AVVNL; and AVVNL by its reply dated 23.08.2012 intimated the Appellant that there was an audit objection pertaining to adjustment of 4% transmission losses and the same is under examination and if adjustment has to be made, it shall be made at a later stage. The Appellant persisted the issue of adjustment of transmission losses in terms of RERC tariff Regulations of 2009 by writing several letters and ultimately on 17.04.2013, the Senior

Accounts Officer of AVVNL intimated that based on the audit objection, recovery has been made in accordance with the audit report. It was also intimated that AG audit observed that there was no provision in the WB Agreement for encashment of 4% of transmission losses and the same is justified. The Appellant contends that the observation of AG is *per se* bad and consequent recovery action is also bad in law.

**(iii)** According to the Appellant they are injecting power at 220 kV level in the licensee premises, therefore the Appellant is entitled for line losses. The Appellant kept on corresponding with Respondent-AVVNL even by writing letters to the Chairman and Managing Director. The internal audit mechanism cannot come in the way of deciding civil rights of the parties based on the remarks/observation of auditors. The recovery made *per se* is illegal and liable to be quashed. In terms of Clause 12 of the WB agreement, the Appellant, for settlement of disputes, approached the State Commission for adjudication of the same contending that until and unless lawfully constituted authority or Tribunal adjudicates the disputes and determines the amount due, there cannot be forcible demand for recovery of the amount demanded. However, the Commission reduced the rate of line losses from 4% to 2.5% in terms of RERC (Terms and Conditions of Determination of Tariff) Regulations 2014 with effect from 01.04.2014. According to the Appellant, from

December 2010 to August 2015 it works out to Rs. 99,41,508/-. Aggrieved by the same, the Appellant approached the Commission and by its order dated 26.06.2016 the Commission dismissed the petition with several observations from Para No. 11 onwards, which according to the Appellant are not in conformity with the concerned regulations and the clauses of WB Agreement between the parties.

**(iv)** The Appellant contends that Section 61 (h) and Section 86(1) of the Electricity Act, 2003 (for short "the Act") enjoins the Central Electricity Regulatory Commissions and State Electricity Regulatory Commissions, respectively, to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures. The State Commission has to discharge its functions in terms of National Electricity Policy, National Electricity Plan and National Tariff Policy as published under Section 3 of the Act.

**(v)** According to the Appellant, the State Commission has provided that the transmission charges applicable to the renewable energy power stations will be half of the transmission charges specified for other open access consumers. This is clear from Regulation 90 and 92.

**(vi)** According to the Appellant recovery made solely based on audit objection is illegal, since it is against Regulation 83 (6) of RERC

Tariff Regulations as well as Regulation 90 and 92. It is nothing but unjust enrichment despite the existence of agreement and the Regulations under which the Appellant is entitled to transmission losses. With these averments , the Appellant has sought for the following reliefs.

*"(a) set aside the Order dated 22.06.2016 passed by the Rajasthan Electricity Regulatory Commission in Petition No.RERC-561/15, denying the Appellant the 4% transmission losses as the same is erroneous, untenable and unsustainable both in law and in facts;*

*(b) Order and direct the Respondent AVVNL may kindly allow four percent (4%) transmission losses to the Appellant as per Tariff Regulations, 2009;*

*(c) order and direct Respondent may kindly be to repay Rs.99,41,508/- , the total amount recovered for the period from December, 2010 to March, 2012 and payment of transmission losses from April, 2012 to November 2016 and to the Petitioner along with interest @12% p.a. till the date of repayment;*

*(d) such further or other order or orders as the Hon'ble Appellate Tribunal may deem fit."*

## 3. *Per contra*, contentions of the 2nd Respondent are as under:

According to 2nd Respondent, there is nothing in the tripartite wheeling agreement dated 20.12.2010 entered between the Appellant along with Suzlon Infrastructure Service Ltd. and the 2nd Respondent

which speaks about 4% losses to be taken into account for supply of energy by the Appellant. The Appellant has not made any allegation against the replying Respondent nor has sought any relief. No issue was raised by the Appellant with the replying Respondent regarding the controversy involved.

**4. 3rd Respondent contends as under:**

**(i)** The action of discontinuing the transmission losses to the Appellant was justified and valid in view of the following facts:

**(ii)** The appellant was not given the transmission losses of 4% as Respondent No. 3 found that Appellant has exported energy on 132 KV grid of RVPN and further consumed the same exported energy for its own use or banked the same as per WB Agreement. Thus the appellant was not entitled for the transmission loses as per clause 5 (A) of WB Agreement. The same was brought to the notice of Respondent No.3 through AG audit report. Accordingly the Appellant was not given the transmission losses of 4%.

**(iii)** Clause 5 (A) of the WB Agreement provides as under:-

*"5(A) Transmission & Wheeling of Energy.*

*Keeping in view the Gor Policy and amended from time to time th e power produced shall be*

*free to use the power of their captive consumption at their unit viz (Kishangarh Hightech) after paying the transmission and wheeling charges and losses as per RERC order dated 23.01.2009 amended from time to time."*

**(iv)** That a bare perusal of the above mentioned clause of the WB Agreement makes it quite perspicuous that the appellant can use power for their captive consumption at their unit after paying the transmission losses as per RERC order dated 23.01.2009 and amended from time to time. The answering Respondent No.3 after the AG audit report found that the energy generated by the Appellant was exported on the 132 KV grid of RVPN and that exported energy was used by the Appellant. Respondent No.3 had been erroneously granting the transmission losses and accordingly, the same were immediately stopped and unjust units awarded to the Appellant were recovered. There is no illegality committed by the answering Respondent No.3.

**(v)** That purpose of AG audit report is to ascertain the mistakes committed while applying the relevant Regulation. In the instant case, the AG Audit Report specified the error in applying the Regulation, 2009. Accordingly, on the basis of the said report the impugned action has been taken against the Appellant. Appellant is not justified to claim

unjust enrichment over the error committed by Respondent No.3. Thus, it is denied that Respondent No.3 has violated any civil right of the appellant.

**(vi)** It is further contended by 3rd Respondent regarding the non grant of transmission losses to the Appellant that Para N.4.1 (ii) of the WB Agreement merely states that the bill shall be considered as per note (i) appearing under Regulation 83 (6) of Tariff Regulation, 2009. The above mentioned Regulation does not specifically speak about transmission losses. Therefore, the AG audit was justified and correct in opining that transmission losses cannot be extended to the Appellant as raised in the bills of the Appellant.

**(vii)** 3rd Respondent further contends that since Appellant is not supplying any energy to Rajasthan DISCOM and on the other hand, using the power to its own captive use.

The heading of Sub-Regulation (6) of Regulation 83 mentions as under:

*"Norms for Generic Tariff determination for Wind Energy Projects"*

Therefore, 3rd Respondent contends that note (i) of Regulation 83 (6) would apply only while determining the tariff of wind energy projects for

sale to DISCOMs to be commissioned during the control period under the said Regulation; and therefore, it shall not be applicable in the case of wheeling of electricity for own use.

**(viii)** With the above averments, 3rd Respondent sought for dismissal of the Appeal.

**5. In rejoinder, the Appellant contends as under:**

**(i)** According to the Appellant, 3rd Respondent is not interpreting the terms and conditions of WB Agreement as they are intended to. The Appellant is entitled to receive transmission losses at the rate of 4% continuously in terms of WB Agreement. They also contend that the audit team has not understood the terms and conditions which are well settled between the parties. Reading of Clause 4(i) of WB Agreement with Regulation 83(6) of Regulations 2009, which are as under, clearly shows that for billing purposes, losses have to be considered:

> ***"83. Tariff determination for New renewable energy generating stations to be commissioned during control period under these Regulations***
>
> ***… …***
>
> ***Norms for Generic Tariff determination for Wind Energy Projects***
>
> ***…***

***Note:***

*(i) For metering at the premises of licensee, following line losses be considered:*

*1% for metering at 33 kV system*

*4% for metering at 132 kV or 220 kV system*

*(ii) On the basis of above parameters, the tariff corresponding to the levelised tariff for twenty years shall be determined. Such levelised tariff shall be effective for the wind power projects commissioned during first year of the Control Period i.e. FY 2009-10."*

**(ii)** The objection raised by audit team is untenable in the eye of law. When Appellant strictly follows the terms of WB Agreement, it is incumbent upon both the other parties to follow the same. Note attached clearly shows that "for metering at the premises of the licensee, the following line losses shall be considered" which include 4% loss for metering at 132 kV is the stand of the Appellant.

**(iii)** With the above submissions in its rejoinder, the Appellant has sought for setting aside the impugned order.

**6. The point that would arise for our consideration is –**

**"whether the impugned order warrants any interference?"**

**7.** To understand and appreciate the controversy involved in the above matter, Clause 4 of the WB Agreement is very relevant, so also Clause 5(A) of the Agreement. They read as under:

> "***4. Interconnection, Delivery Point and Metering***
>
> *4.1 Grid Interfacing*
>
> *(i) The Power Producer/Developer at its own cost or in association with other Power Producers /Developer would set up and maintain the requisite power injection system upto the interface point at RVPN/ Discom's 220 kV Amarsagar GSS through Suzlon's 33/220 kV Pooling station as per specifications approved by RVPN vide letter no. RVPN/SE(P&P)/XEN(Proj)/AE-1/F 4731/D. 578 Dated 3.8.09.*
>
> *(ii) Wind energy Developer shall be responsible for development of evacuation and dedicated transmission arrangement up to pooling station. RVPN/transmission licensee be responsible for development of evacuation system beyond pooling stations till the nearest Grid sub station. Alternatively, if wind energy Developer wants to develop the evacuation system beyond pooling station up to Grid Sub-station the commission separately determines the transmission tariff for the same on case to case basis.*
>
> *However, for billing purposes the losses shall be considered as per Note (i) appearing under Regulation 83 (6) of the RERC Tariff Regulations dated 23rd January 2009.*
>
> *iii) Discom/RVPN has the right to connect any additional loads on the interconnection- feeder without adversely affecting the interests of the existing power producer/ generating companies on the same feeder.*
>
> *iv) Till such time the common delivery point and injection facilities are ready the Power Producer is allowed for injection of power generated into Distribution*

*System /State Grid provided with appropriate metering. The Power Producer shall furnish the electrical layout showing the alternate arrangement for injection of power into the State Grid/Distribution System for approval by RVPN/Discom as the case may be and shall abide by the arrangement approved by RVPN/Discom.*

*v) All the parties agree that power generated from the Wind farm shall be fed to the State Grid to the extent power evacuation system is available. The decision of RVPN/ concerned Discom about the extent of power evacuation facility available in the system shall be final and binding on the Power Producer and no compensation on this account shall be admissible.*

*vi) It is further agreed that proper evacuation system required for evacuating power from the project is being created. Till proper evacuation network is in position, RVPN/ Discom do not assume any responsibility for full and reliable evacuation of power from existing network. Therefore till the pooling station is created as per plan, there may be restrictions in power evacuation and the Power Producer shall restrict injection of power in the State Grid/Distribution System to the extent evacuation capacity is available as determined by RVPN/Discom(s).*

*vii) The equipments and protection schemes installed in Developer's line bays at RVPN's sub-station as well as in Developer's own sub-station are required to be coordinated with overall systems and protection schemes. As such, salient parameters of specifications of major equipment and protection schemes being provided by Developer should be got approved from PPM wing of RVPN.*

*viii) The power delivered by the Power Producer/Developer at the Delivery Point shall conform to the parameters and technical limits as specified at Annexure 'A' attached with this WBA.*

*ix) The Power Producer/Developer will install necessary current limiting devices such as Thyristors etc. if required. The Power Producer/Developer shall provide protection system in compliance to Grid Code requirement for short circuit level, neutral grounding,*

*current unbalance limiting of harmonics, fault clearing time etc. as per data provided by RVPN and / or Discom authorities after deciding the place of interconnection. A generating unit may be synchronized to the State Grid/Distribution System, when the Power Producer has obtained permission for synchronization after meeting system requirements and such generating unit complies with prudent utility practices.*

*x) The active/reactive energy drawn from the State Grid/Distribution System shall not be used for any other purposes except for Wind Electric Generator.*

*xi) Not withstanding any provision contained in the Agreement, the Power Producer/Developer shall comply with the Grid Code, Load Despatch & System Operation Code, Metering Code, Performance Standards, Protection Code and Safety Code etc. as applicable from time to time in the State of Rajasthan.*

*xii) The power Producer/Developer shall abide by the RVPN Connection Conditions as applicable from time to time.*

*xiii) The Power Producer/Developer shall also provide suitable protection devices/controls as may be required by RVPN and/or Discom so that the Generating Units of the Power Stations could be isolated automatically when the Grid supply fails.*

*xiv) RVPN /Discom(s) shall evacuate all the delivered energy. However, the State Load Despatch Centre of RVPN looking to system requirement, may direct the Power Producer to temporarily curtail or stop its electricity generation without any liability on account of:*

*a. Inspection/repair/maintenance of RVPN and/or Discom Grid System and associated equipment or under forced outage conditions;*

*b. Safety of equipment and personnel of the RVPN and / or Discom(s)*

*c. Any other technical requirement to maintain the Grid discipline and security*

*xv) In the event of abnormal voltage conditions, RVPN/Discom will have right to ask to the Power Producer/Developer for regulating the reactive power generator by the Wind Generator as per system requirements.*

*xvi) RVPN/Discom shall disconnect the interconnection of Power Plant from State Grid/Distribution System in case of default of the Power Producer to comply with any of the provisions of WBA including technical parameters of supply as prescribed in Annexure 'A' of the WBA and such disconnection will continue till default continues.*

*Merit Order dispatch*

*The power plants commissioned under the policy would not be subject to Merit Order Despatch regulations.*

### *4.2 Measurement of Energy and Metering*

*(i) The Metering equipment at the Delivery Point shall be in accordance with relevant provisions of Metering Code as applicable for generating stations/CPP and shall be provided by the Power Producer himself or in association with other Power Producer(s)/Developer at his/ their cost RVPN/ concerned Discom will seal the meters and metering boxes.*

*(ii) Wherever more than one Power Producer(s) are injecting energy produced by them using the common evacuation / injection system and through the common Metering equipment, then they shall identify a common agency responsible for joint metering with RVPN/ Discom(s). The Joint Meter Reading taken at common evacuation / injection system shall be supported by controller readings of individual power producers using such common evacuation / injection system. Based on this break up, limited to total energy injection, the power purchase from the individual power plant shall be regulated for the purpose of wheeling & Banking. The Power Producer(s) having the same category and same tariff structure will only be allowed to use common injection/ metering equipment. This implies that wheeling power for third party sale or for the captive*

*consumption cannot be clubbed with the power produced for sale to Discom. Further, the Power Producer having different Tariff structures due to GoR policies will also not be eligible to have common evacuation/ injection and metering system.*

*(iii) The injection and metering arrangement will be finalized by RVPN / Discom in consultation with RREC on the basis of details furnished by Power Producer/Developer. The Power Producer/Developer or RVPN/Discom shall be responsible for security & protection of metering arrangement based on the location of metering arrangement as stipulated in clause no. 5 of the metering code.*

### *4.3 Construction and /or operational Power*

*Upon a request by the Power Producer/Developer, the Distribution Licensee of the area shall provide, at the sole cost and expense of the Power Producer/Developer, the electrical energy for the construction testing, start up and commissioning of the Power Plant. The Distribution Licensee shall make all reasonable efforts to provide uninterrupted power supply, provided however, that any breakdown or interruption in power supply shall not impose any liability on the Distribution Licensee concerned. The Power Producer/Developer shall make payment to the concerned Distribution Licensee for such energy in accordance with the applicable Tariff.*

### *4.4 Other Charges*

*The commission in the Regulation dated 23rd January, 2009 has specified other charges for the wind power projects as under:-*

*(i) KVArh Charges:- Net KVArh drawl by RE power plant from the grid will be billed @ 5.75 paisa/KVArh w.e.f. 01.04.2009 escalated at 0.25 paisa/KVArh unless revised by RERC as per clause no. 90(2) of RERC regulations dated 23.01.2009.*

*(ii) The wind generating station with installed capacity of 1 MW or above shall submit weekly schedules of generation as per RERC order. In case, they fail to furnish their schedule, the SLDC shall be entitled to charge a fee of Rs. 5,000 per schedule or as may be decided by RERC from time to time.*

*(iii) Grid Connectivity Charges:- The Power Producer/ developer shall pay Rs. 2.0 lac per MW to RVPN/Discom as connectivity charges for creation of proper facility for receiving power. These charges include a bay for interconnection, breaker, CT's, PT's, isolator, protection and metering equipments.*

*(iv) Start-up Power:- Energy drawn during start up and backing down upto a maximum of 42 days in a financial year be set off against the energy sale to the distribution licensee within the state thereafter energy drawn be billed at temporary tariff on daily basis. Where sale to distribution licensee is not affected, such drawl be billed on daily basis."*

***"5(A) Transmission & Wheeling of Energy***

*Keeping in view the GoR Policy and amended from time to time the Power Producer shall be free to use the power for their captive consumption at their unit viz. (KISHANGARH HI-TECH TEXTILE PARK LTD., RIICO Industrial Area, Silora, VIA-Kishangarh, District Ajmer-305802) after paying the transmission & wheeling charges and losses as per RERC order dated 23rd January 2009 & amended from time to time."*

**8.** The AG audit took the following objections:

*"In audit, we noticed that imported energy by the consumer from WTC were adjusted by the AVVNL after adding 4% transmission losses, however, for addition of four percent of transmission losses, there is no provision in the Wheeling and Banking Agreement. We also noticed that four (4) percent transmission losses for injection of power through 132 kV or 220 kV system from WTC were allowed by the RERC in the case of sale of electricity from wind based generation stations to Distribution Licensee and impact of four (4) percent on this ground has already been in the tariff fixed by the RERC for wind projects. Hence due to addition of four (4) percent transmission losses in the exported energy by the consumer, under benefit of banking of 596559 units were allowed from December, 2010 to March, 2012 by the AVVNL to consumer needs justification.*"

**9.** Apparently, based on the AG audit, AVVNL intimated that 4% of line losses cannot be extended and also proposed recovery, since 3rd Respondents was satisfied with the objection raised by the AG audit.

**10.** During the course of arguments, the Appellant contended that the Petition of Appellant was dismissed by the Commission primarily on the following two main grounds:

"(i) The Part VII and Regulation 83 of Tariff Regulation 2009 are not applicable to the Appellant's Power Plant as the energy

produced is being used for Captive purposes. The findings of the commission with respect to this, are reproduced below:

> "15. The very heading of Regulation 83, i.e., "Tariff determination for new renewable energy generating stations to be commissioned during control period under these Regulations" also makes it clear that the said Regulation would be applicable for tariff determination of new renewable energy generating stations. The heading of sub-regulation (6) of Regulation 83, i.e., "Norms for Generic Tariff determination for Wind Energy Projects" further clarifies the position that note (i) of Regulation 83 (6) comes into play only for tariff determination of wind energy projects for sale to Discoms to be commissioned during control period under this Regulations and not for wheeling of electricity for own use.
>
> 16. In the present case, the Petitioner is not supplying any electricity to Rajasthan Discoms but is instead supplying power to its own captive consumers. The Petitioner is only wheeling its power through the systems of the licensees.
>
> 17. Conjoint reading of applicability of Part VII, Regulation 83 and sub-regulation (6) of Regulation 83 leads to the conclusion that note (i) of Regulation 83(6)of Tariff Regulations, 2009 is not applicable to the

Petitioner's case as the Petitioner is not supplying electricity to Discoms."

(ii) The Clause 5A of Wheeling and Banking Agreement dated 9.12.2010 states that Power Producer shall be free to use the power for their captive consumption at their unit after paying the transmission & wheeling charges and losses as per Tariff regulations 2009. The findings of the commission with respect to this are reproduced below:

"18. We have also looked into WBA dt. 09.12.2010 to find out whether Petitioner has made out any case. Clause 5 of Agreement only allows the Petitioner to use the power generated by it for captive consumption after paying transmission and wheeling charges and losses as per Commission's order dt. 23.01.2009. In other words, this clause provides what Petitioner has to pay to the transmission and distribution companies and also the bearing of losses.

Clause 7 of Agreement, which provides for method of billing, also specifies that the basis for energy delivered shall be the energy fed at common evacuation/injection system. This clause also does not speak of any addition for losses to the energy wheeled while raising the bills."

**11.** The Appellant contends that reasoning of the Commission is erroneous since conjoint reading of Proviso to Regulations 80, Regulation 90(3), Regulation 92(2)(a) and Regulation 92(3)(b)(iii) of Tariff Regulations 2009 clearly and unambiguously show that Regulation 83 of Part VII is also applicable to captive power plants in particular cases under particular circumstances because of proviso to Regulation 80 allows for deviation from norms. The Commission ought to have granted the benefit to the Appellant based on this Section 80.

**12.** Regulation 80 of Part-VII of Tariff Regulations 2009 reads as under:

*"Tariff for Renewable Energy Generating Stations*

*80 Applicability*

*(1) The Regulations specified in this Part VII shall apply for determining the tariff for procurement of power by distribution licensees within Rajasthan from Renewable Energy(RE) based Generating Stations located within Rajasthan.*

*(2) The Commission shall be guided by the terms and conditions contained in this Part in determining the tariff for supply of electricity by a Renewable Energy based Generating Company to a Distribution Licensee in the following cases:*

*(a) where such tariff is pursuant to a power purchase agreement or arrangement entered into*

*subsequent to the date of notification of these Regulations; or*

*(b) where such tariff is pursuant to a power purchase agreement or arrangement entered into prior to the date of notification of these Regulations and the Commission has not previously approved such agreement/ arrangement or adopted the tariff contained therein; or*

*(c) where such tariff is pursuant to a power purchase agreement or arrangement, which is the subject of a review by the Commission:*

*Provided that the Commission may deviate from the norms contained in this Part or specify alternative norms for particular cases, where it so deems appropriate, having regard to the circumstances of the case:*

*Provided that the reasons for such deviation(s) shall be recorded in writing."*

*Regulation 90(3)Part VII of Tariff Regulations 2009 at Page 102 of the Appeal is as follows:*

*"(3) Transmission & wheeling charges:*
*In case of third party sale or for captive use both within the State, the transmission & the wheeling charges be recovered in cash and in kind as follows:*

*(a) The transmission charges (in cash) applicable to RES power stations be half (i.e. 50%) of the transmission*

*charges, specified by the Commission for open access consumer.*

*However, where distribution licensee network below 132 kV level is utilized, the wheeling charges (in cash) applicable to RES power stations, be 50% of normal charges, as applicable & specified for 33 kV by the Commission, irrespective of the voltage at which electricity is supplied.*

*(b) These charges (in kind) i.e. transmission & wheeling losses shall be as detailed at regulation 91.*

*Provided, in case of Power Purchase Agreements executed and plants commissioned upto 31.03.2007, under the State Government policies specified in regulation 82, the wheeling charges as per policy shall be applicable as for transmission and wheeling charges (in cash and kind) as specified above unless RE power plant opts otherwise."*

*Regulation 92(2)(a)of Part VII of Tariff Regulations 2009 at Page 103 of the Appeal is as follows:*

*"(2) Period of banking;*
*(a) In respect of third party sale and/or captive use of non firm energy, the banking and drawal shall be on six monthly basis i.e. April to September and October to March."*

*Regulation 92(3)(b)(iii) of Part VII of Tariff Regulations 2009 at Page 103 of the Appeal is as follows:*

*"(b) Non-firm RE power station shall intimate to SLDC and to concerned distribution licensee on 1st of every month, out of available energy for that particular month, the quantum of energy;*

*(i) it wishes to bank,*

*(ii) it wishes to distribute amongst third party and*

*(iii) it wishes to captive use during that month out of available energy for that particular month. Where no such intimation is received on or before 1st of the month the intimation last received become applicable for the month."*

**13.** On perusal of the impugned order and going through the above said Regulations, we are of the opinion that Respondent-Commission was justified in opining that Regulation Part-VII of Regulation 2009 is applicable only for determining the tariff for procurement of power by DISCOM within Rajasthan from renewable energy based generating stations which are located within Rajasthan.

**14.** Reading of the heading of Sub-Regulations 6, Regulation 83 also makes it crystal clear that Note (i) of Regulation 83 (6) will come into effect only in the case of wind energy projects selling energy to DISCOMs while determining the tariff of wind energy projects, that too if such projects are commissioned during the control period. At any stretch of imagination, one cannot understand that this provision i.e.,

Note (i) applies even in the case of wheeling of electricity by own use of generator. Apparently, the Appellant is not supplying power to Rajasthan DISCOM. On the other hand, the Appellant is supplying power to its own captive consumers by wheeling its power through the system/infrastructure of the licensees (DISCOM).

**15.** A conjoint reading of Part-VII and Sub-Regulation 6 of Regulation 83 will not lead to conclusion that the benefit envisaged would apply even to the case of Appellant when he is not supplying electricity to DISCOMs. On the other hand, the energy is consumed by Appellant's captive consumers. Even from the terms of WB Agreement entered into between the parties, it does not give such indication. Clause 5 clearly envisages that the Appellant is entitled to use the energy generated by it for its captive consumption on payment of transmission and wheeling charges and so also losses as per Commission's order dated 23.01.2009. This abundantly makes clear that the Appellant was required to pay transmission and wheeling charges to the concerned companies apart from bearing/sustaining losses.

**16.** Clause 7 of this Agreement only provides the methodology of billing. This clearly manifests that the accounting of energy will be based on the energy delivered i.e., energy fed at common evacuation/injection system. Except this, it does not specify anything

about addition of losses to the energy wheeled at the time of raising the bills.

**17.** Therefore, we are of the opinion that neither the provisions of WB Agreement, nor the Regulations referred to above would fortify the arguments advanced for the Appellant. On the other hand, the terms of agreement and the reading of the Regulations mentioned above make it clear that none of the Regulations are applicable to the Appellant since the Appellant is not supplying any energy to distribution licensees.

**18.** In the light of above discussion and reasoning, we are of the opinion that the Appellant has not made out the case warranting interference with the impugned order. Accordingly, the Appeal is dismissed.

**19.** No order as to costs.

**20.** Pronounced in the Open Court on this the 17th day of December, 2019.

**(S.D. Dubey)**
**Technical Member**

**(Justice Manjula Chellur)**
**Chairperson**

**REPORTABLE / ~~NON-REPORTABLE~~**

*ts/ tpd*