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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 10464/2018

RBA PROPERTIES LTD. AND ANR. ..... Petitioners

Through: Mr Ravi Sikri, Sr. Advocate with Mr Sumit Goel, Ms Sonal Gupta and Ms Malvika Bhanot, Advocates.

versus

MINISTRY OF NEW AND RENEWABLE ENERGY AND ANR. ..... Respondents

Through: Mr Ravi Prakash, CGSC with Mr Nitish Gupta and Mr Farman Ali, Advocates with Mr Bahul Rawat. Scientist and Mr R. K. Vimal, IREDA.
Mr Sumit Nagpal, Advocate for R-2 with Mr R. K. Vimal, officer of IREDA.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 03.10.2018

1. The petitioners have filed the present petition impugning a communication dated 20.02.2018, whereby the request of the petitioner (hereafter 'RPL') for registration of its 2.1 MW Wind Power Project under the Scheme of Generation Based Incentives for Grid Interactive Wind Power Projects (hereafter 'the GBI Scheme') was rejected. The petitioners also impugn a communication dated 02.07.2018, whereby RPL's request for review of the said order was rejected.

2. The Ministry of New and Renewable Energy of India (hereafter 'MNRE') had floated the GBI Scheme to provide certain incentives to Wind Power Plants. Admittedly, such units could either avail incentives under the GBI Scheme or be considered for 'Accelerated Depreciation' which would have a direct impact in the form of reduction of the taxable revenue.

3. RPL's plant was commissioned on 20.09.2016 and it applied for registration on 16.01.2017. The petitioners state that by an inadvertent error, RPL paid fees for being registered for availing Accelerated Depreciation instead of the benefits under the GBI Scheme. However, it is claimed that the annexure to the said application clearly indicated that RPL had sought registration under the GBI Scheme.

4. Mr Sikri, learned Senior Counsel appearing for the petitioners contended that the format of the declaration used by RPL was one that was prescribed for the GBI Scheme and therefore, RPL was entitled to seek rectification of its registration. He also submitted that the response received to an application under the Right to Information Act, 2005 indicated that the respondent no.2 (Indian Renewable Energy Development Agency Ltd. – IREDA) had in certain cases accepted applications for registration of units under the GBI Scheme even after expiry of six months from the date of commissioning of the plants.

5. It is not disputed that the online form clearly provided for the applicant to select the incentive that it sought to avail. It contained a drop menu against the entry: "Select Proposed Incentive". Admittedly, RPL had selected "Accelerated Depreciation" as the proposed incentive. In this view, there can be no dispute that RPL had elected to avail Accelerated Depreciation and not the incentive under the GBI Scheme. Any doubt that

could have been entertained was put to rest by the letter dated 27.02.2017 sent by IREDA, whereby RPL was clearly informed that *“the Wind Turbine Generators (WTGs) has/have been registered with IREDA for availing Accelerated Depreciation for the financial year 2016-17 and thereafter”*.

6. RPL did not raise any protest at the material time and accepted the said letter. It is the petitioners’ case that later in the year they were informed by its auditors that it was registered for an Accelerated Depreciation incentive or accelerated depreciation. According to the petitioners, this was informed to RPL on 12.07.2017. After waiting for almost three months RPL made an application on 11.10.2017 seeking registration under the GBI Scheme and cancellation of the registration granted for Accelerated Depreciation. Thereafter, RPL filed the income tax returns for the assessment year 2017-18 (relevant to the previous year 2016-17) wherein RPL did not claim Accelerated Depreciation.

7. RPL’s request for registration under the GBI Scheme was rejected by the communication dated 20.02.2018 (which is impugned in the present petition) informing RPL that it could not be considered for registration under the GBI Scheme as it was mandatory to register the unit within a period of six months from commissioning of the eligible unit.

8. The petitioners does not dispute that it was mandatory to register the unit within a period of six months as provided. However, they claim that RPL was not seeking a fresh registration but only a rectification of an application that was filed earlier.

9. Subsequently, RPL also made various representations to the respondent, which was rejected by the impugned order dated 02.07.2018.

10. This Court is not persuaded to accept that any relief can be granted to

the petitioners. A plain reading of RPL's application clearly indicates that the RPL had selected the proposed incentive scheme by accepting the option of Accelerated Depreciation. Although, RPL has, in the declaration submitted as an annexure to its application, referred to GBI Scheme as well as in Accelerated Depreciation, the same is not material. This is so as the online form clearly indicates that RPL had not elected the option of availing incentive under the GBI Scheme.

11. In view of the aforesaid, the action of the respondents in denying registration under the GBI Scheme cannot be considered as capricious, arbitrary or unreasonable. More importantly, the GBI Scheme is now closed with effect from 31.03.2017 and, therefore, it is now not possible to accommodate the petitioner under that scheme.

12. It is also seen that the petitioners have taken inordinate long to apply for change in the option (referred to as rectification). The explanation that the petitioners were unaware of the same till its auditors had pointed out, cannot be accepted. The letter dated 27.02.2017 issued by IREDA is unambiguous and clearly indicates that RPL was registered for Accelerated Depreciation for the financial year 2016-17 and thereafter.

13. In view of the above, the petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

OCTOBER 03, 2018
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