IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1144 of 2017
and
W.M.P.No.1106 of 2017

M/s.Aruna Alloy Steels (P) Ltd.,
HTSC No.185,
Narasingampatty, Melur Road,
Madurai – 625 112.
Represented by its Authorised Signatory,
Mr.S.R.Chidambaram. ...Petitioner

Vs.

1.TANGEDCO,
Rep.by its Chairman & Managing Director,
No.144, Anna Salai,
Chennai – 02.

2.The Chief Financial Controller (Revenue)
TANGEDCO,
144, Anna Salai,
Chennai – 02.

3.The Superintending Engineer,
Madurai Electricity Distribution Circle,
TANGEDCO, Madurai.

4.The Superintending Engineer,
Tirunelveli Electricity Distribution Circle
TANGEDCO, Tirunelveli. ..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd Respondent to issue working instructions in order to implement the Hon'ble TNERC order in DRP No.19 of 2013 dated 19.1.2015 which has also be confirmed by the Hon'ble APTEL in Appeal No.53 of 2016 and also to implement the order of 3rd respondent Hon'ble TNERCs order in R.A. No.06 of 2013 dated 31.03.2016 in so far as REC windmill adjustments are concerned and consequently direct the 3rd respondent to give adjustment of 3186365 Units of REC Wind energy generated in the petitioner's REC WEG No.4043, which was illegally allowed to lapse for the period from 04/2012 to 04/2016.

For Petitioner	: Mr.Saravanakumar
For R1 to R4	: No appearance

ORDER

The relief sought for in the present writ petition is for a direction to direct the 2nd Respondent to issue working instructions in order to implement the Hon'ble TNERC order in DRP No.19 of 2013 dated 19.1.2015 which has also be confirmed by the Hon'ble APTEL in Appeal No.53 of 2016 and also to implement the order of 3rd respondent Hon'ble TNERCs order in R.A. No.06 of 2013 dated 31.03.2016 in so far as REC windmill adjustments are concerned and consequently direct the 3rd respondent to give adjustment of

3186365 Units of REC Wind energy generated in the petitioner's REC WEG No.4043, which was illegally allowed to lapse for the period from 04/2012 to 04/2016.

2. The petitioner company has invested in establishing wind farms in the State of Tamil Nadu of a total capacity of about 4.075 MW. Of this total capacity of 1 No is REC windmill (WEG/WTG) and 4 Nos are Non-REC windmills (WEGs/WTGs). All the 5 WEGs are wholly owned by the petitioner for its captive use. As per the Energy Wheeling Agreement (EWA) executed in respect of the first 4 WEGs, the surplus energy after adjustment is banked into the account of the petitioner, which is eligible for utilization during lean seasons of wind and even if energy is left out at the closure of the financial year, it is entitled for encashment @ 75% of preferential tariff (i.e., 75% of Rs.2.90). With respect to the last WEG, the surplus energy after adjustment is to be treated as sold to electricity Board at the pooled price cost under REC scheme as follows:

	Make	***Capacity KW***	***Wind Fan HTSC No.***	***Date of Commissioning***	***Scheme***
1	NEPC	225KW	1324	15.10.2006	Wheeling to their own captive consumption at their units bearing HTSC No.185 with an
2	NEPC	225KW	1325	15.10.2006	
3	MICON	750KW	2226	19.10.2010	

	Make	*Capacity KW*	*Wind Fan HTSC No.*	*Date of Commissioning*	*Scheme*
4	VESTAS	1650KW	T-12	02.11.2009	arrangement to bank the surplus energy in the account of the petitioner.
5	GAMESA	2000KW	4043	17.03.2012	Wheeling to their own captive consumption at their units bearing HTSC No.185 with an arrangement to sell the surplus energy to the respondents under REC scheme.

3. All the wind mills set up are for captive consumption with adjustment through respective wheeling agreements. The petitioner accordingly, wheels and adjusts the energy so generated from the wind mills and is being paid for the units that remained unadjusted at the end of the financial year at applicable and specified rates in accordance with the regime pertaining to the date of commissioning of WEG except for the 5^{th} windmill. The 5^{th} windmill is covered under REC mechanism, which is not originally eligible for the banking arrangement of surplus energy as per the orders of the TNERC in Order No.6/2012 dated 31.07.2012 and however reversed by the Appellate Tribunal for Electricity, New Delhi to provide banking through its order dated 24.05.2013 in Appeal No.208 of 2012 and accordingly, the matter has been reviewed by the State Commission in R.A.No.6 of 2013

dated 31.03.2016 and the benefit of one year banking facility has been extended to REC Captive users as well and encashment of lapsed unit at 75% of the applicable rate of REC users.

4. With reference to the above facts, the similar issue raised are considered by this Court and an order has been passed in W.P.No.5322 of 2017 dated 31.10.2022 as follows:

> *"5. The learned counsel appearing for the petitioner submitted that the second respondent has not issued any working instruction for implementing the order of the State Commission passed in D.R.P.No.19 of 2013. This act of the second respondent clearly shows that the intention of the second respondent is to avoid adjustment/payments to the REC WEGs and however, to collect charges erroneously when orders are issued by the State Commission in other issues.*
>
> *6. The learned Standing Counsel appearing for the respondents submitted that he is not disputing the order passed by the Tamil Nadu Regulatory Commission in T.R.P.No.19 of 2013. He further submitted that the dispute in question has reached its finality and in fact, before the Hon'ble Supreme Court, in Civil Appeal No.15618/2017, TANGEDCO also agreed to adopt the procedure laid down in the Notification dated 21.03.2022 for adjustment priority among WEGs under*

REC and non-REC with effect from 01.08.2012 retrospectively. The abovementioned Notification dated 21.03.2022 shall be adopted prospectively for other energy sources of the High Tension Consumers.

7. Submission of the learned Standing Counsel for the respondents is recorded.

8. In the result, this writ petition is disposed of, directing the respondents to either adjust 580526 units of REC wind energy generated in the petitioner's REC WEG No.2200 or encash the same towards the future bills. No costs. Consequently, the connected Miscellaneous Petition is closed."

5. In view of the order cited *supra*, the present writ petition stands disposed of, directing the respondents either to adjust 3186365 units of REC wind energy generated in the petitioner's REC WEG No.4043 or encash the same towards the future bills. No costs. Consequently, connected miscellaneous petition is closed.

13.04.2023

Index : Yes
Speaking order
Neutral Citation:Yes
kak

To

1.The Chairman & Managing Director,
TANGEDCO,
No.144, Anna Salai,
Chennai – 02.

2.The Chief Financial Controller (Revenue)
TANGEDCO,
144, Anna Salai,
Chennai – 02.

3.The Superintending Engineer,
Madurai Electricity Distribution Circle,
TANGEDCO, Madurai.

4.The Superintending Engineer,
Tirunelveli Electricity Distribution Circle
TANGEDCO, Tirunelveli.

S.M.SUBRAMANIAM, J.

kak

W.P.No.1144 of 2017

13.04.2023