

**GUJARAT ELECTRICITY REGULATORY COMMISSION
BEFORE THE ELECTRICITY OMBUDSMAN, GUJARAT STATE
Polytechnic Compound, Barrack No.3, Ambawadi,
Ahmedabad-380015**

CASE NO. 31/2016

Appellant: M/s. Excel Crop Care Limited
6/2, Ruvapara Road, Bhavnagar-364005.

Represented by: Shri Nachiket D. Mehta, Learned Advocate.
Shri S.S.Iyer, G.M.(Legal)

V/s.

Respondent: Executive Engineer,
Paschim Gujarat Vij Company Ltd.,
City Division Office No.1,
Old Power House, BHAVNAGAR.

Represented by: Shri Y.M.Yadav, EE, PGVCL, Bhavnagar Dn.1.

:::PROCEEDINGS:::

- 1.0.** As per the directives given by Hon'ble High Court of Gujarat in Para No. 11.2 of the order passed in SCA No. 13795 of 2015, the case was registered at this office as Case No.31/2016. Appellant has submitted representation on 15.03.2016 and thereafter submitted written submission on 19.04.2016. The hearing of this case was kept on 29.03.2016. As per request of Appellant the case was adjourned to 19.04.2016.
- 2.0.** Appellant has represented the case as under.
- 2.1.** Appellant is having one of its manufacturing units at Ruvapari Road, Bhavnagar. He has set up 4 No. of wind farms for generation of wind energy having capacity of 6.1 MW at village (i) Dank Taluka Upleta, District Rajkot (ii) Navadra, Taluka Kalyanpur, District Jamnagar (iii) Jodhpur, Taluka Kalyanpur, District Jamnagar and (iv) Vandhiya, Taluka Bhachau, District Kutchh. Appellant entered in an agreement for the period of five years for wheeling of power and later it was extended, which still persists with Respondent for providing wheeling services to

wheel the power generated from the Wind Farm to its manufacturing units. The permission for setting up 6.1 MW Wind Farm was granted to Appellant by GEDA. The energy produced at Wind Farm are supplied to nearest S/s of GETCO and further transmitted to 66KV sub-station of Appellant.

- 2.2. The dispute involved in the present case is that Respondent has granted rebate of Power Factor and Extra High Voltage on units wheeled by the Wind Farm of Appellant from 2003 to June,2013, which are consumed at manufacturing location of Appellant.

Respondent has without giving any opportunity of being heard refused to grant rebate from June,2013 onwards and issued recovery notice for recovery of said rebate of PF and EHV, which was granted earlier since last 10 years. The said action is de hors to an extent that there is neither policy of Respondent nor of Government Resolution or Circular or Notification or Amendment in tariff to the said effect. Thus Respondent has acted prejudicial and in a malafide manner in refusing to grant rebate of PF and EHV on consumption of electricity at its unit since July,2013 also recovery of amount from the year 2003 to June,2013 which is estopped by the doctrine of promissory estoppel and legitimate expectation.

- 2.3. Appellant is a registered company having a business of manufacturing, marketing, sale and export of crop protection agro-chemicals.
- 2.4. Respondent had granted rebate on PF and EHV on units wheeled by Wind Farm of Appellant's company up to June,2013, which are consumed at its manufacturing units. Appellant has placed records of bills from 2003 to 2015 issued by Respondent.
- 2.5. Respondent, vide letter dated 17.08.2013 informed the Appellant that Appellant has not deducted PF and EHV rebate in the Wind Farm calculation and therefore it was informed to Appellant to deduct the same from the month of July,2013 failing which Respondent will generate the bill for the month of August,2013 without any adjustment. Appellant, vide letter dated 26.08.2013, informed Respondent that he

was not agree with the proposal of Respondent and requested to give credit as per the earlier practice.

- 2.6. Appellant, vide letter dated 27.08.2013 informed Respondent that Appellant was availing credit of wind farm units without deduction of PF and EHV rebate since beginning. Appellant insisted for Rs.58,10,106.69 to be credited in the bill without deduction of PF and EHV. However, after deduction of PF and EHV rebate, Rs.57,10,482.64 was calculated by Respondent. Appellant has requested Respondent to consider the prevailing practice for calculation of PF and EHV rebate, which was not granted by Respondent, hence Appellant is paying the energy bills under protest from July,2013 onwards.

Appellant had written a letter dated 20.09.2013 to Respondent that no explanation/clear guidelines for PF and EHV rebate have been given by Respondent in his letter dated 05.09.2013.

- 2.7. Respondent had issued supplementary bill No. 7538 dated 21.11.2013 along with calculation of Rs. 64,78,759.33 towards PF and EHV rebate for the period 2003 to June,2013, mentioning to pay the amount before 20.12.2013.

On receipt of above bill, Appellant had asked clarification vide letter dated 19.12.2013, regarding the basis on which the above supplementary bill was issued.

It is submitted that in spite of replying the letter dated 19.12.2013, Respondent had issued notice dated 21.12.2013 to pay the supplementary bill within 15 days failing which the connection would be disconnected.

- 2.8. Appellant had challenged the action of Respondent before Hon'ble High Court by filing SCA 18726 of 2013, which was ordered by Hon'ble High Court on 27.12.2013 and granted stay directing Respondent not to take any corrosive steps and further directed to Appellant to pay Rs. 10 lakhs as deposit to Respondent which was complied by Appellant and undertaking was filed before Hon'ble High Court. Hon'ble High Court had

disposed of the Petition on the ground of availability of alternative remedy.

- 2.9. Appellant had filed grievances before CGRF, which was rejected by CGRF without giving any reason and findings and passed non-speaking order. In the meantime, disconnection notice was issued by Respondent to pay Rs. 54,78,759.33 within 30 days, failing which the connection would be disconnected.

The order of CGRF was further challenged before Ombudsman, which was rejected without assigning any reason vide order dated 05.08.2015 in case No. 71/2015. It was directed to approach GERC for the dispute of billing and recovery against PF and EHV rebate for wind farm generation.

- 2.10. SCA No. 13795 of 2015 was filed by Appellant challenging order of Ombudsman, in which Hon'ble High Court remanded the matter back to Ombudsman for deciding the controversy between the parties and issues involved afresh.

- 2.11. Appellant has submitted below mentioned grounds:

- (1) The letter dated 20.12.2013 issued by Respondent is illegal and require to be quashed and set aside.
- (2) Without any policy or Govt. Resolution, Respondent has issued a recovery notice for recovery of PF and EHV rebate, which was granted earlier since last 10 years, and started billing from June,2013 without giving rebate on PF and EHV.
- (3) Wheeling charge is not a question in the disputed matter, therefore, Circular dated 20.01.2003 and 16.10.2013, relied by Respondent, cannot be accepted.
- (4) The recovery proposed by Respondent is against the violation of principles natural justice and the said act is in the absence of any circular.
- (5) Respondent has not justified in raising recovery bill of Rs.64,78,759.33 towards PF and EHV rebate with retrospective effect from 2003. As per Supply Code Regulations Notification

No.11 of 2005, Licensee shall not be eligible for recovery of the dues from the consumer after a period of two years from the date when such amount becomes first due, if such dues are not shown as arrears continuously for a period of two years from the due date.

Appellant submitted that Section 56(2) of Electricity Act,2003, deals with disconnection of supply in default of payment. The said action for recovery by Respondent is illegal.

- (6) Appellant is having a wind farm generation under Wind Farm policy of GoG, and eligible for PF rebate as well as EHV rebate in view of policy framed for Wind Farm.
- (7) In case No.71/2015 Appellant was directed to approach GERC for the dispute of billing for recovery against PF and EHV rebate for wind farm generation. Appellant had referred the judgement of Hon'ble Supreme Court reported in (2007) 8 SCC 381 wherein the court held that where the statute concerned had created a proper forum/ombudsman for redressal of grievances of individual consumers, the consumer can only resort to these bodies for redressal of their grievances. Hence views taken by authority to approach Commission are unsustainable.
- (8) Appellant has referred the Writ Petition No. 16216 of 2008 dated 02.04.2008 of Hon'ble Allahabad High Court and stated that the grievance is not settled through conciliation the Ombudsman has power to proceed with the grievance and make orders. Therefore, the order passed by Ombudsman directing Appellant to approach GERC is without settled legal preposition.
- (9) Appellant has relied on judgement dated 30.09.2002 passed by Hon'ble GERC in Group petition No. 27/000, 57/2001, 58/2001, 74/2002, 75/2002 pertaining to the issue of wheeling of electricity. The question involved in this petition does not pertain to wheeling of electricity but in fact dispute is with regard to reversal of rebate

by Respondent in absence of any notification/circular and contrary to the tariff.

- (10) Appellant has submitted tariff order passed by Hon'ble GERC and referred Clause No. 13.6. for PF rebate, which is as under:

“If the Power Factor of the consumer’s installation in any month is above 95%, the consumer will be entitled to a rebate at the rate of 0.5% (half percent) in excess of 95% power factor on the total amount of electricity bill for that month under the head “Energy Charges” for every 1% rise or part thereof in the average power factor during the month above 95%.”

The petition maintains Power Factor above 95% for every month.

The very purpose to provide higher Power Factor rebate is to encourage the consumer to maintain High Power Factor and to minimize the system losses. Any loss before the meter installed at consumer’s premises is on account of the distribution licensee. In order to reduce these losses, the State Commission has incentivized High Power Factor based on pure technical and engineering principle. It has nothing to do with the source of power. Accordingly, Power Factor rebate is payable to the consumer on gross consumption instead of net consumption.

There is no mechanism by which one can maintain Power Factor for units which are purchased from DISCOM and units wheeled from wind farm individually. Appellant has to maintain desired power factor on total power consumption and not for the units which are purchased only. Total installation cost and operating as well as maintenance cost is also to be taken into consideration for maintaining higher Power Factor, on total electricity consumed.

The benefit to the distribution licensee on account losses will be for total power consumed by consumer. Therefore, the PF rebate is given on gross consumption and not on purchase of units.

Therefore, the Appellant was given rebate as per the terms of tariff. In view of above, Appellant is entitled to rebate.

- (11) Appellant has submitted that the Tariff passed by GERC as per Clause No.13.9 regarding EHV rebate as under:

Rebate of supply at EHV:

On energy charges:	Rebate @
If supply is available at 33/66KV	0.5%
If supply is available at 132KV and above	1.0%

EHV rebate is payable to consumer as per the above tariff. It has nothing to do with source of power. Hence the action of Respondent is disregard to the tariff.

- (12) Appellant has referred the judgement of Jindal Stainless Limited in Appeal No.231 of 2012 and Tata Steel Limited in Appeal No. 25 of 2012 for similar type of issue.
- (13) Appellant has submitted that no other Petition related to the above subject matter is pending before any Court. Appellant has also paid 1/3rd amount of the disputed amount.

2.12. Appellant has denied that PGVCL is purchaser and WIND MILL is a seller. The concept of buyer and seller is not the issue involved in the present case. He has denied that PF and EHV rebate is recoverable from 2001.

Respondent admit that neither the circular nor any agreement speaks of adjustment of Wind Farm unit. Respondent's admission itself established that there was no base for raising the alleged supplementary bill of Rs. 64,78,759.33. The tariff only speaks of giving rebate of power factor & EHV to a consumer and does not specify any adjustment, reversal and set off or circumstances under which PF and EHV rebate are to be denied.

2.13. Appellant has prayed as under:

- (i) To quash and set aside the Notice issued by Respondent dated 30.12.2013 directing to pay Rs.64,78,759.33 towards PF and EHV rebate with retrospective effect.
- (ii) To quash and set aside the supplementary bill No. 7538 dated 21.11.2013.

- (iii) To quash and set aside order passed by CGRF dated 28.05.2015.
- (iv) To quash and set aside the disconnection notice dated 02.06.2015.
- (v) To refund 1/3rd amount paid with interest.

3.0. Respondent has represented the case as under.

3.1. It is submitted that it is not true that no opportunity is given being heard to Appellant, prior to issuance of recovery notice against PF and EHV rebate.

3.2. It is true that Respondent has informed to Appellant on 17.08.2013 to deduct PF & EHV rebate in the wind farm calculation from July,2013 and failing which Respondent will generate bill for the month of August,2013 without any adjustment. It is true that Appellant was directed to pay the balance of the disputed amount and supplementary bill of Rs.64,78,759.33 out of which Rs. 10 lakhs were paid as per the order of Hon'ble High Court, therefore alleged outstanding amount was of Rs.54,78,759.00.

Forum has framed the issue involved therein and had passed reasoned order which is crystal clear.

Respondent has acted as per rules and regulations framed in the Act. It is pertinent to note that the notice to pay the normal bill is issued according to Clause No. 6.4.7 of Electricity Supply Code, 30 days notice is given for the supplementary bill which is according to law.

It is true that Hon'ble High Court has directed to Appellant to file an application before CGRF and granted stay against the disconnection notice till actual communication to Appellant of the order to be passed by CGRF in the application.

3.3. Respondent had directed to Appellant to make payment of Rs.54,78,759.33 within a period of 30 days failing which the connection would be disconnected. CGRF has ordered with taking all the averments of Appellant made therein. The order of CGRF is proper.

Order of Appellate Authority Ombudsman confirmed the said order and Appellant was directed to approach GERC for the dispute of billing and recovery against PF and EHV rebate for the wind farm generation.

The notice issued vide letter dated 20.12.2013 is in order and there is no any violation.

- 3.4. It is not true that Circular dated 20.02.2003 and 16.10.2003 on which Respondent is relying on cannot be accepted. The interpretation of Appellant is not true. It is not true that act of recovery by Respondent is illegal and against fundamental right of Appellant.
- 3.5. The interpretation of Section 56(2) of Electricity Act,2003 is not correct in the present case. It is not true that the action of Respondent defeats the purpose of wind farm policy of Govt. of Gujarat.
- 3.6. It is not true that the act of Respondent to recover rebate on PF and EHV granted to the Appellant on consumption of electricity in an efficient manner from 2003 till June,2013 and subsequently is contrary to the wind policy of GoG and the Tariff order issued by GERC.
- 3.7. The judgement relied dated 30.09.2013 by Appellant passed by GERC in Group Petition No. 27/2000, 57/2001, 58/2001, 74/2002 and 75/2002 pertaining to the issue of wheeling of electricity. It is not true that question involved in this petition does not pertain to wheeling of electricity but in fact dispute is with regard to reversion of rebate by Respondent in absence of any Notification/Circular or legal provision and contrary to the tariff.
- 3.8. It is submitted that tariff is passed by GERC. Clause No. 13.6.2 speaks of Power Factor rebate, which is reproduced herein below:

“If the power factor of the consumer’s installation in any month is above 95% the consumer will be entitled to a rebate at the rate of 0.5% (half percent) in excess of 95% power factor on the total amount of electricity bill for that month under the head “Energy Charges” for every 1% rise or part thereof in the average power factor during the month above 95%.”

The Appellant maintains power factor above 95% every month.

It is not true that there is no mechanism by which one can maintain power factor for units which are purchased from DISCOM and units wheeled from wind farm individually. Appellant has to maintain desired power factor on total power consumption and not for the units which are

purchased only. Total installation cost and operation and maintenance cost is also to be taken into consideration for maintaining higher power factor on total electricity consumed.

It is not true that benefit to the distribution licensee on account of losses will be for total power consumed by the consumer. Therefore, power factor rebate is given on gross consumption and not on purchase of units.

3.9. It is not true that EHV rebate is payable to the consumer as stated by Appellant. Appellant is HT consumer of Respondent having wind turbine installed for its captive consumption. Generally Respondent calculates energy bill of Appellant on total energy recorded in the meter. While calculating energy bill the power factor rebate is also calculate on total relevant parameter. Therefore, on receipt of wind generation, eligible wind generation is being set off from the billing of respective month effectively for giving set off, the equivalent amount of energy charges towards the wind energy consumed and related parameters are credited in the account of consumer. However, while calculating the credit amount Respondent was not debiting to rebate given earlier for the energy consumed by Appellant from its captive wind generation. Therefore, erroneous calculated rebate on power factor for the period February,2003 to June,2013 is in order and Appellant is liable to pay the supplementary bill raised by the Respondent.

3.10. It is stated that GEDA/GETCO supplies electricity produced by Wind Mill Turbine to Respondent PGVCL. Thus PGVCL is a purchaser and Wind Mill Turbine is a seller. The Appellant was given PF and EHV rebate in his bill. But PF and EHV rebate is not given in the calculation of wind mill advisory, whereas Respondent has given PF and EHV rebate from the year 2001. Therefore, the amount of PF and EHV rebate is to be recoverable from the Appellant for this period.

In Circular dated 20.01.2003 it is not mentioned to give PF and EHV rebate, even though it is credited by Respondent from October,2000 to June,2013 in the bill.

Further it is not mentioned how to give adjustment of Wind Farm unit according to the agreement entered in by Appellant and wind policy declared by Government of Gujarat. But adjustment is given according to the tariff of GERC. The Appellant has received the adjustment according to the GERC tariff from 1995 to 2001. But wind farm adjustment is not given from 2001 to 2013 according to tariff. According to GERC tariff, PF and EHV rebate has been started from October,2000.

The correction in the Wind Farm adjustment from October,2000 which if it is more than 10 years and if it is not in accordance with GERC tariff, then also it must be corrected. There is no limit. Therefore, the dues are recoverable.

Audit team has sanctioned the recovery vide letter dated 20.11.2013.

3.11. Appellant has submitted rejoinder dated 25.04.2016, and submitted as under.

- (1) Respondent is a distribution company and billing to the consumers is done on the basis of tariff formulated by GERC from time to time. The units sold are billed as per the tariff formulation.
- (2) Consumers are installing Wind Turbine and as per wind policy the units generated through wind turbine are given set off in their corresponding consumption from the distribution company as per the agreement with wind turbine owner. It means that Respondent PGVCL sells as well as purchases power and tariff applicable is same in both the cases.
- (3) Respondent has given credit to account of Appellant of EHT connection, bearing No.23025, located at Bhavnagar from February,2003 to June,2013 as per complete calculation sheet of units generated from WTGs of Appellant submitted by Appellant. Audit Team has observed that PF and EHV rebate is not considered in the calculation sheet as per the tariff. Thus the amount credited on units generated through wind generation was more than stipulated. This matter on tracing come to the knowledge of Respondent that this practice was prevailed from February,2003

and continued up to June,2013. Hence above rebate which was not considered in the calculation sheet needs to be recovered from the Appellant. This is the base of issuance of supplementary bill.

- (4) Respondent has recovered such type of supplementary bill for the similar issues from the following other consumers.
- (i) Investment and Castings Ltd.
Con.No.23031: Rs. 1783015.88.
 - (ii) Khusbu Ispat. Con. No.23869. Rs. 55328.23.
 - (iii) Munjani Brohters. Con.No.23070. Rs. 74310.34
- (5) Appellant by realizing the above mistake and rectified in the submission of complete calculation of units generated through their WTG from the month July,2013. This indicates that Appellant has accepted the error of calculation and partial amount of supplementary bill was also paid without objection.
- (6) Against Section 56(2) of Electricity Act,2003, Respondent has stated that this Section implies only to the PDC consumers who are not on Ledger i.e. consumers which are not alive. While in this case Appellant is live consumer and hence Section 56(2) does not imply in this case. Respondent further stated that this is a human error committed due to which more credit has been given to Appellant which is required to be recovered.
- (7) At the time of hearing on 19.04.2016, Appellant has submitted copy of judgement in Appeal No.231/2012 before APTEL. In this appeal Appellant has pointed out Para No. 20, 25, 26 and 36. Against above submission Respondent has represented that the Case No. 231/2012 is related to issue with Open Assess and cross subsidy surcharge, while present case is pertaining to Wind policy and not related with Open Assess.

::ORDER::

- 4.0.** I have considered the contentions of the Appellant and the Respondent and the facts, statistics and relevant papers, which are on record, and considering them in detail, my findings are as under.

4.1. In the present case, the issue emerges for decision of Electricity Ombudsman is pertaining to the interpretation of the GoG, Wind policies, tariff schedule of Tariff Order of Distribution Licensee passed by GERC and terms and conditions of tariff supply of erstwhile GEB and interpretation of provisions of Electricity Act, 2003, I.E. Supply Act, 1948 and terms and conditions of Transmission and necessary agreements. Hence, Ombudsman has vide order dated 05.08.2015 decided that the issue emerge for decision falls in the jurisdiction of GERC. However, I note that Hon'ble High Court of Gujarat, in SCA No. 13795 of 2015 passed order dated 29.01.2016 as under:

“11.1: The Ombudsman is directed to consider and decide all the issues in the dispute between the parties including the interpretation and application of Tariff Regulations relating to availability of Power Factor Rebate and EHV Rebate as well as the question of legality of retrospective recovery of the charges beyond period of two years by considering the scope and ambit of Section 56(2) of the Act.”

Hence, the present appeal is decided on merits as per the directive of Hon'ble High Court of Gujarat and in compliance of said directives the subject matter is decided as under.

4.2. The first issue involved in the appeal is that whether four WTGs installed by the appellant for captive consumption at Ravapar Road, Bhavnagar (consumer of Respondent) is eligible for Power Factor and EHV rebate on the electricity which is generated and wheeled from its 6.1 MW WTGs at different locations for captive consumption as detailed in para No.2.1 above, during February, 2003 to June 2013.

The second issue involved in the present appeal is whether the recovery of the PF rebate as well as EHV rebate earlier granted by the Respondent i.e. PGVCL, and is withdrawn and demanded vide letter No.7538 dated 21.11.2013 for the amount of Rs.64,78,759.33 is permissible or not? Whether such demand is limited only for two years prior to date of notice issued under section 56 of Electricity Act, 2003.

The third issue emerge for decision is whether promissory estoppel is applicable in the present case or not?

- 4.3. It is undisputed between the parties that the Appellant had set up 4 No. of WTGs total capacity of 6.1 MW at different places as stated in Para No.2.1 and energy generated and injected from WTGs is transmitted and wheeled at captive consumption place of the appellant located at Bhavnagar from the date of commencement of WTGs. Appellant is a consumer of Respondent (PGVCL) bearing consumer No. EHT-23025, having contracted demand of 2600KVA. The WTGs of the Appellant were commissioned during the year prior to 2000.

It is also undisputed that WTGs commissioned prior to the year 2000 are governed by the relevant GoG prevailing Wind Power Policies.

The captive consumption of energy generated from WTGs of appellant is liable to pay the transmission charges and transmission losses, wheeling charges and wheeling losses as per the appropriate Government of Gujarat Wind Power policies during which it was commissioned as well as the provisions of the Transmission and wheeling agreements and provisions of tariff schedules of erstwhile GEB and Tariff orders issued by the GERC from time to time. Similarly, Appellant is liable to pay the reactive charges and eligible for PF rebate/penalty and EHV rebate as per the tariff schedule of erstwhile GEB and tariff order issued by GERC as per the appropriate policy/tariff of distribution licensee.

It is also necessary to refer and note that Appellant is also a consumer of the Respondent (PGVCL). Hence, whenever any energy supplied by PGVCL and consumed by the Appellant the same is governed by the prevailing tariff rate as decided by erstwhile GEB/GoG or tariff order passed by GERC from time to time.

It is, therefore, necessary to refer the provisions made out of PF rebate and EHV rebate of relevant category of consumers provided in tariff order of GERC and also schedule of erstwhile GEB/GoG from time to time.

- 4.4. The Appellant WTGs which have generated the energy is transmitted and wheeled at consumption place of the Appellant is consumed by the

Appellant as captive consumption is an energy nor supplied by DISCOM/erstwhile GEB or Respondent (PGVCL).

Thus the energy which is generated and injected into grid and finally consumed as captive consumption is eligible for the benefit as per relevant provisions of Wind Power Policies under which it was installed.

- 4.5. On verification of aforesaid policy it is observed that said policy does not consist of any provisions regarding PF rebate as well as EHV rebate. The relevant portion of the captive utilization of WTGs is in the Wind Power Policy Year-2002 issued by EPD, Govt. Resolution No.EDA-10-2001-3054-B(Part-II) dated 20.06.2002, is stated below:

8. Wheeling of Electricity:

“The industrial undertakings setting up wind energy generator while opting for wheeling the electricity to their manufacturing units may be allowed to do so at a wheeling charge of 4%.”

12. Metering of Electricity:

“The Electricity generated from the WTGs would be metered on a monthly basis jointly by GEDA/GEB at the sending sub-station located at the Wind Farm site at 66KV.”

The relevant portion of Wind Power Policy Year-2007, issued by EPD, GoG Resolution No. EDA-10-2001-3054-B dated 13.06.2007 is stated as under:

13. Reactive Energy charges:

“The drawl of reactive power shall be charged as per GERC order, amended from time to time.”

From the aforesaid provisions it is clear that the energy which is generated and injected in to the Grid by the WTGs is liable to maintain the desirable as specified PF, in case of failure to maintain the same to supply the reactive energy, the Appellant, WTGs is liable to pay the reactive energy charges.

The aforesaid provisions do not contemplate that the Respondent is liable to give the PF rebate as well as EHV rebate which is disputed between parties.

- 4.6. GERC passed Tariff order No. 2 of 2006 dated 11.08.2006 in the matter of Determination of price for procurement of power by the Distribution Licensees in Gujarat from Wind Energy Projects state as under:

20. Transmission & Wheeling Charges:

Many respondents sought clarifications about the applicability of transmission and wheeling charges in case of procurement of power by distribution licensees from wind energy sources. The Commission clarifies that the procurement of power by distribution licensees/GUVNL from wind energy sources shall be undertaken on 'Ex-Bus' basis (pooling station i.e. =66 KV Sending end). However, in case the owner of a WEG opts for wheeling power for own use, the GETCO / Distribution Licensee shall transmit the power to the point of use. For transmitting this power to the point of use, only GETCO will be entitled to charge 4% of energy injected (in kind) as all inclusive Transmission charges/wheeling charges.

- 4.7. The Appellant who is also a consumer of Respondent is supplied electricity by the Respondent from time to time as well is not disputed by the parties (such energy was supplied during February,2003 to June,2013 and the same is continued). The Appellant himself has admitted the said fact.

The electricity utilized by the Appellant is having industrial load and it affect to the PF of the supply of the licensee. Therefore, the tariff schedules of the erstwhile GEB/GoG provides that consumer shall maintain the PF within permissible limit. In case Appellant fails to maintain the desired PF, he is liable to pay PF penalty and if the Appellant maintain the PF better than the prescribed limit, he is entitled to get PF rebate. Similarly Hon'ble GERC determined the tariff of erstwhile GEB and the unbundled entities of erstwhile GEB including PGVCL have provisions of PF rebates/penalty.

- 4.8. The general conditions under Tariff Schedule for Tariff for Supply of Electricity at Low Tension, High Tension and Extra High Tension as per

Tariff order for the year 2004 passed by GERC, in case No.292/2003, are reproduced as under:

1. *The tariff figures indicated in this tariff schedule are the tariff rates payable by the consumers. The distribution of revenue as between GEB and its successor entities can be decided by them while remaining within the tariff schedule given by the Commission.*
2. *These tariffs are exclusive of Electricity Duty, tax on sale of electricity, taxes and other charges levied by the Government or other competent authorities from time to time which are payable by the consumers, in addition to the charges levied as per the tariff.*
3. *All these tariffs for power supply are applicable to only one point of supply.*
4. *The charges specified are on monthly basis. GEB may decide the period of billing and adjust the tariff rate accordingly.*
5. *The energy supplied under these tariffs can be utilised only within the compact area of the premises not intervened by any area/road belonging to any person or authority other than the consumer.*
6. *Except in cases where the supply is used for the purpose for which the GEB has permitted lower tariff, the power supplied to any consumer shall be utilised only for the purpose for which supply is taken and as provided for in the tariff.*
7. *The above is without prejudice to the rights of the GERC to determine different tariffs for such consumers as it may consider it expedient under the provisions of Section 61 and Section 62 of the Electricity Act, 2003.*
8. *The meter charges shall be applicable as prescribed under GEB's "Conditions and Miscellaneous Charges for Supply of Electrical Energy".*
9. *The Fuel Cost Adjustment Charges shall be applicable on approval from the Gujarat Electricity Regulatory Commission.*

The Appellant is receiving the power supply over and above 33KV he is entitled to get EHV rebate on consumed units. The GERC passed tariff order from time to time, the relevant portion of provisions of PF rebate and EHV rebate is stated below.

GERC tariff order for the Year	Provision for PF	Provision for EHV	
2004	If the average power factor of the consumer's installation in any month is above 95%, the consumer is entitled to a rebate at the rate of 1% in excess of 95% power factor on the total amount of electricity bill for that month under the head "Demand Charges" and "Energy Charges", for every 1% rise or part thereof in the average power factor during the month above 95%.	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above 1.0%
2006	The power factor adjustment charges shall be levied at the rate of 1% on the total amount of electricity bills for the month under the head "Demand Charges" and "Energy Charges" for every 1% drop or part thereof in the average power factor during the month below 90% upto	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above

	85%. In addition to the above clause, for every 1% drop or part thereof in average power factor during the month below 85% at the rate of 2% on the total amount of electricity bill for that month under the head “Demand Charges” and “Energy Charges”, will be charged.		1.0%
2007	The power factor adjustment charges shall be levied at the rate of 1% on the total amount of electricity bills for the month under the head “Demand Charges” and “Energy Charges” for every 1% drop or part thereof in the average power factor during the month below 90% upto 85%. In addition to the above clause, for every 1% drop or part thereof in average power factor during the month below 85% at the rate of 2% on the total amount of electricity bill for that month under the head “Demand Charges” and “Energy Charges”, will be charged.	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above 1.0%
2009	If the power factor of the consumer’s installation in any month is above 95%, the consumer will be entitled to a rebate at the rate of 0.5% (half percent) in excess of 95% power factor on the total amount of electricity bill for that month under the head “Demand Charges” and “Energy Charges” for every 1% rise or part thereof in the average power factor during the month above 95%.	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above 1.0%
2010	If the power factor of the consumer’s installation in any month is above 95%, the consumer will be entitled to a rebate at the rate of 0.5% (half percent) in excess of 95% power factor on the total amount of electricity bill for that month under the head “Energy Charges” for every 1% rise or part thereof in the average power factor during the month above 95%.	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above 1.0%
2011	If the power factor of the consumer’s installation in any month is above 95%, the consumer will be entitled to a rebate at the rate of 0.5% (half percent) in excess of 95% power factor on the total amount of electricity bill for that month under the head “Energy Charges” for every 1% rise or part thereof in the average power actor during the month above 95%.	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above 1.0%
2012	If the power factor of the consumer’s installation in any month is above 95%, the consumer will be entitled to a rebate at the rate of 0.5% (half percent) in excess of 95% power factor on the total amount of electricity bill for that month under the head “Energy Charges” for every 1% rise or part thereof in the average power actor during the month above 95%.	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above 1.0%
2013	If the power factor of the consumer’s installation in any month is above 95%, the consumer will be entitled to a rebate at the rate of 0.5% (half percent) in excess of 95% power factor on the total amount of electricity bill for that month under the head “Energy Charges” for every 1% rise or part thereof in the average power factor during the month above 95%.	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above 1.0%
2014	If the power factor of the consumer’s installation in any month is above 95%, the consumer will be entitled to a rebate at the rate of 0.5% (half percent) in excess of 95% power factor on the total amount of electricity bill for that month under the head “Energy Charges” for every 1% rise or part thereof in the average power factor during the month above 95%.	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above 1.0%
2015	If the power factor of the consumer’s installation in any month is above 95%, the consumer will be entitled to a rebate at the rate of 0.5% (half percent) in excess of 95% power factor on the total amount of electricity bill for that month under the head “Energy Charges” for every 1% rise or part thereof in the average power factor during the month above 95%.	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above 1.0%
2016	If the power factor of the consumer’s installation in any month is above 95%, the consumer will be entitled to a rebate at the rate of 0.5% (half percent) in excess of 95% power factor on the total amount of electricity bill for that month under the head “Energy Charges”, arrived at using tariff as per para 13.2 of this schedule, for every 1% rise or part thereof in the average power factor during the month above 95%.	If supply is availed at 33/66 KV 0.5%	If supply is availed at 132 KV and above 1.0%

The above provisions provide tariff schedule of erstwhile GEB/GoG and the tariff schedule approved by GERC time to time.

- 4.9. From the above provisions, it is clear that PF rebate/penalty on an energy consumed by the consumer is applicable only on the electricity units which are supplied by the Respondent (PGVCL). The same is not extended to the electricity units which are generated and injected into the Grid by the Appellant which are having WTGs as the same is not supplied electricity. Therefore, any PF rebate or EHV rebate given on energy units generated, injected and wheeled from WTGs and consumed as captive consumption by the Appellant (generator) is not qualified for PF rebate as well as EHV rebate. Hence any PF rebate or EHV rebate given by the DISCOM/licensee i.e. erstwhile GEB/PGVCL to the Appellant is illegal and contrary to the decision of Hon'ble GERC in tariff order/Government policy etc., and if any such benefit is passed on to the captive consumer on captive consumption of energy is recoverable from the consumer. In the present case as stated above, the PF rebate and EHV rebate was granted illegally and in contravention of the provisions of Government Wind Power Policy, tariff orders of the GERC etc. Hence the same is recoverable from the consumer who received such benefit illegally and arbitrarily.
- 4.10. The Appellant has raised the issue that dues which were demanded having the period of more than two years. Hence the same is not recoverable from the consumer.

It is necessary to refer Section 56 of the Electricity Act,2003, which is reproduced as under:

56. Disconnection of supply in default of payment.- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of

electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

PROVIDED that the supply of electricity shall not be cut off if such person deposits, under protest,

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

According to aforesaid Section the dues which become payable by the consumer and shown in the energy bill as due amount for the continuous period of two years from the first energy bill, the consumer is not liable to pay such dues which having period of more than two years. While in this case, the claim of PF rebate and EHV rebate granted by erstwhile GEB/PGVCL is not shown continuously in the bill for the period of two years as a pending dues of Licensee.

From the Section 56 of Electricity Act,2003, it clear that the amount become dues payable by the consumer is if not recovered within a period of two years from the first bill issued by Respondent and shown as continuous pending dues in the energy bill for the period of two years, it is not recoverable.

It is, therefore, necessary to verify that as to whether there is any dues payable by Appellant or not? In the present case as mentioned above, Appellant was granted PF rebate and EHV rebate in the energy bill which the Appellant was not eligible to receive the same by Appellant. In fact, dues is an amount payable by the person within stipulated time period. However, the same is differed from the payment scheduled date specified in the energy bill by Respondent, is called as dues.

4.11. From the above, it is clear that there are no dues occurred which was required to pay by the Appellant. The Appellant has contended that the PF rebate and EHV rebate which was earlier granted during the period from February,2003 to June,2013 is not a dues which is payable by the Appellant but is an amount which was wrongly paid to the Appellant by the Respondent is not shown as dues payable for two years continuously by the Respondent. Thus, dues which are not payable by him is not correct on the following grounds:

- 1) The recovery of PF rebate & EHV rebate granted by the respondent is an amount which is payable as decided in earlier Para of this order of the Electricity Ombudsman.
- 2) The PF rebate as well as EHV rebate were granted by the respondent for the period 2003 to 2013 is in violation of provisions of the GoG, Wind Power policies & tariff order passed by Hon'ble GERC for the distribution licensee.
- 3) The dues are an amount which is payable by consumer needs to show in energy bill issued by the distribution licensee & it must be shown as dues amount payable by the appellant as a consumer from the date on which dues occurred & also shown continuously for a period of 2 years from which these dues become payable in the energy bills.

In the present case, there is no evidence on records that proves that aforesaid aspect which attract to address the applicability of Sec.56(2) of Electricity Act 2003.

4.12. Dues is an amount which is legally payable by person on specific date as per statutory provisions or as per contract or as per legal provisions on

which date the person failed to pay the said amount to the other person. In the present case PF rebate as well as EHV rebate was granted in violation of GoG Wind Power policies/Tariff order issued for the distribution licensee by GERC or the tariff schedule of erstwhile GEB. Therefore, Respondent licensee which is a public utility is eligible to recover the said rebate amount as there is no bar in the Electricity Act 2003 to recover the said amount.

4.13. The Appellant has filed the appeal & taken a ground that principle of promissory estoppel is applicable in present case & on that ground appellant is not liable to pay the amount claimed by the respondent is not legal & valid because neither the wind power policy nor tariff order for distribution licensee of GERC provides that consumer who has set up Wind Turbine Generator(WTG) as a captive use are eligible PF rebate & EHV rebate for energy generated and injected in to the grid and captive use the same, therefore Appellant is not eligible for above rebates. Moreover, there is no provisions in the either GERC tariff order, GEB tariff schedule or GoG Wind Power Policies that the captive use of energy generated from WTGs are eligible for PF rebate as well as EHV rebate. Hence there is neither promise by the government nor erstwhile GEB of unbundle entity of GEB i.e. Respondent PGVCL. Hence, the plea of appellant that principle of promissory estoppel is devoid on merits and same is rejected.

4.14. I order accordingly.

4.15. No order as to costs.

4.16. With this order, representation/Application stands disposed of.

(Dilip Raval)
Electricity Ombudsman
Gujarat State

Ahmedabad.

Date: 02.06.2016.