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Case Update

Supreme Court Affirms the Primacy of Power of Regulation of Tariff Over PPA; Wind Generators Entitled to Case Specific Tariffs Despite Signed PPA



In a significant ruling delivered on August 4, 2025, the Hon'ble Supreme Court dismissed the appeals filed by Gujarat Urja Vikas Nigam Limited (**GUVNL**) challenging orders of the Gujarat Electricity Regulatory Commission (**GERC**) and the Appellate Tribunal for Electricity (**APTEL**) that had allowed four wind energy generators, including Vaayu (India) Power Corporation Limited to seek project-specific tariff determination under the Electricity Act, 2003, despite signing Power Purchase Agreements (**PPAs**).

The central issue before the Court was whether a power generator, having signed a PPA under the GERC vide Generic Tariff Order No. 1 of 2010 dated 30.01.2010 (**Generic Tariff Order**), could later seek a case-specific tariff on the ground of not having availed the benefit of accelerated depreciation under the Income Tax Act, 1961. GUVNL argued that the PPAs were binding and estopped the generators from seeking such redetermination.

Rejecting these contentions, the Supreme Court held that tariff determination is a statutory & regulatory function of the State Commission and cannot be overridden by a private contractual arrangement. It ruled that a PPA entered into pursuant to a generic tariff order must still conform to the regulatory scheme, especially where the generator does not avail of accelerated depreciation. The Supreme Court also took note of the fact that the option regarding accelerated depreciation could only be exercised at the time of filing income tax returns, after execution of the PPA.

Importantly, the Court observed that GUVNL, being a State-instrumentality, could not act solely on commercial considerations, nor in contravention of the Government's policy to promote renewable energy. It described GUVNL's conduct of binding the generators to a tariff inapplicable to them as "akin to a Shylock", patently unfair and contrary to the objectives of the Electricity Act and the GERC's Tariff Order.

The Court firmly reiterated that the statutory tariff determined by the Commission prevails over the terms of a commercial agreement. It observed:

"The price at which power is to be procured by a distribution licensee from a generating company is not a matter of consensus and private agreement between the parties as it is to be fixed statutorily by the Appropriate Commission." Finding no error in the decisions of the GERC and APTEL, the Court held that GUVNL could not compel the respondent generators to supply power at the generic tariff when they had not availed accelerated depreciation."

The judgment thus clarifies that a distribution licensee cannot dictate the terms of power procurement in a manner inconsistent with regulatory framework. If the regulator prescribes a mechanism, it must be followed by the DISCOM.

Click [here](#) to read the judgement

*Mr. C.A. Sundaram, Senior Advocate argued for the Appellants (GUVNL).
Mr. Shyam Diwan, Senior Advocate argued for Tadas Wind Energy Private Limited.
Mr. Sanjay Sen, Sr. Adv., argued for Green Infra Corporate Wind Power Limited. Mr. Shri Venkatesh argued for Vaayu (India) Power Corporation Limited.*

Vaayu (India) Power Corporation Limited was represented by Mr. Shri Venkatesh (Founding Partner), Mr. Ashutosh Srivastava (Partner), Mr. Siddharth Nigotia, (Senior Associate), and Mr. Harsh Vardhan Jha (Associate)