



**28-09-2021; 16-11-2021; 30-11-2021;  
21-12-2021; 11-01-2022; 01-02-2022;  
15-02-2022; 01-03-2022 and 15-03-2022**

**Date of order : 05-05-2022**

The D.R.P.No.11 of 2016 came up for final hearing before the Commission on 15-03-2022 and the Commission upon perusing the petition and connected records and after hearing the submissions of both sides passes the following:-

**ORDER**

**1. Prayer in D.R.P. No. 11 of 2016:-**

The prayer of the petitioner in this D.R.P.No.11 of 2016 is to quash the 1<sup>st</sup> Respondent's demand notice dated 29-07-2015 and consequently direct the 2<sup>nd</sup> Respondent to give adjustment for the unutilized banked wind energy of 537310 Units generated from the appellant's wind mill for the period from July 2010 to October 2010 or encashment of RS.14,77,602 1- With a simple Interest of Rs.9,16,113/- (from April 2011 to May 2016 Rs.14,77,602X.62) thus making a total of Rs.23,93,716/- only.

**2. Facts of the Case:-**

This petition has been filed to quash the 1<sup>st</sup> Respondent's demand notice dated 29-07-2015 and consequently direct the 2<sup>nd</sup> Respondent to give adjustment for the unutilized banked wind energy of 537310 Units generated from the appellant's wind mill for the period from July 2010 to October 2010 or encashment of Rs.14,77,602.50 and a simple Interest of Rs.9,16,113/- (from April 2011 to May 2016 Rs.14,77,602 x 62) thus making a total of Rs.23,93,716/- only.

### **3. Contentions of the Petitioner:-**

3.1. The petitioner unit is an industry involved in the manufacture of pharmaceutical products having Extra High Tension Electricity Supply in H.T.SC.No. 562 (CEDC) and the 2<sup>nd</sup> Respondent has sanctioned the said HT supply with a sanctioned demand of 10500 KVA to run the said industry.

3.2. The Petitioner has installed wind mills for generating wind energy to meet out their energy requirements for their captive consumption bearing WEG HTSC No.133, 237 and 276 coming under 1<sup>st</sup> Respondent. The Petitioner has entered into an Energy Wheeling Agreement for the purpose of captive consumption with banking provision to their erstwhile industry bearing HTSC No.402 coming under the 2<sup>nd</sup> Respondent till June 2010. It is respectfully submitted that the Petitioner has sold their concern bearing HTSC No.402 coming under the 2<sup>nd</sup> Respondent to one M/s.Hospira India Ltd., the Petitioner has immediately intimated the same to the Chief Engineer/NCES/TNEB vide their representation dated 10.03.2010 and requested for wheeling of the wind power generated in the Petitioner's wind mill to the above mentioned HTSC No.562.

3.3. The Chief Engineer/NCES/TNEB vide his letter dated 28.05.2010 directed the Petitioner to pay the application registration fees and the Petitioner has also paid the same on 29.05.2010. Consequently the CE/NCES vide his letter dated 14.06.2010 has granted permission for wheeling the wind energy generated in the Petitioner's wind mills in HTSC No.562 coming under the 2<sup>nd</sup> Respondent with permission to bank the surplus wind energy, under HT tariff III. The Petitioner paid

the agreement fees of Rs.10,000/- vide receipt vide DD dated 27.07.2010 even though the receipt for same was given only on dated 11-08-2010 and the petitioner took all steps to execute the fresh Energy wheeling agreement with the 1<sup>st</sup> Respondent. But the 1<sup>st</sup> Respondent has kept the issue pending for more than 6 months causing huge loss to the Petitioner industry.

3.4. After substantial delay the fresh energy wheeling agreement was executed between the Petitioner and the 1<sup>st</sup> Respondent only on 15.08.2010 for WEG No.237, 16.08.2010 for WEG No.133 and 20.11.2010 for WEG 276. Even after executing the EWAs the same was not given effect till December/2010 and only vide the letter dated 02.12.2010, the EWA agreements were accepted and forwarded by the 1<sup>st</sup> Respondent for change In utility as approved by the Chief Engineer/NCES/TNEB in his letter dated 14.06.2010. From July, 2010 to December, 2010, the petitioner's WEG has generated 565981 units in their wind mills which was not adjusted in any of the petitioner's service connection.

3.5. The petitioner vied his letter dated 21-03-2011 has requested the 2<sup>nd</sup> Respondent to give adjustment of wind energy generated from July 2010 to December 2010 to a tune of 565981 Units in the Petitioner's HTSC NO.562 before 31.03.2011. The Petitioner has repeatedly approached the 2nd Respondents and tried explaining to them that such refusal is without jurisdiction and has the effect of denying right to open access guaranteed under the Electricity Act,2003. However, this did not evoke any positive response from them and they refused to reconsider their decision.

3.6. Since the Respondents refused to consider the request of the Petitioner to give adjustment of the wind energy generated from July, 2010 to December, 2010 to a tune of 565981 Units in the Petitioner's HTSC No.562 before 31.03.2011 the energy was treated as utilized wind energy banked as on 31.03.2011 to a tune of 537310 Units in the account of the Petitioner. This has also been confirmed vide the letter dated 22.06.2011 issued by the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent intimating the unutilized wind energy banked units as on 31.03.2011.

3.7. Having failed to evoke any positive response nor reply from the 2<sup>nd</sup> Respondent for getting adjustment of the wind energy generated from July, 2010 to December, 2010 the Petitioner has raised invoice 16-08-2011 seeking payment for the total unutilized banked units to the tune of 537310 Units at Rs.2.75 per unit to a total sum of Rs.14,77,602.50/-.

3.8. While the facts being so, to the shock surprise of the Petitioner, the 1<sup>st</sup> Respondent has issued the letter dated 02-11-2021 that the Petitioner is not eligible for selling the unutilized banked energy available as on 31.03.2011 and rejecting the claim of the Petitioner for encashment of the total unutilized banked units to the tune of 537310 Units on the ground that the Petitioner has not executed the EWA in respect of the WEG for the relevant period, viz., July, 2010 to December, 2010. Based on the letter dated 14.06.2010 issued by the Chief Engineer/NCESITNEB the Petitioner took all steps to execute the fresh Energy wheeling agreement with the 1<sup>st</sup> Respondent. But the 1<sup>st</sup> Respondent has kept the issue pending for more than 6 months. It is unlawful where the consumer is

prevented from consuming their own generated/injected energy during the period from July,2010 to December, 2010, due to delay cause by the 1<sup>st</sup>Respondent and on the other hand treating the energy generated and banked as lapsed.

3.9. In the present case where there is undue delay of 6 months on the part of the 1<sup>st</sup> Respondent in entering into the revised EWA, the petitioner is prevented from consuming their own energy, it is not fair on the part of the Respondent to treat the energy as lapsed for no fault of the petitioner.

3.10. The petitioner being aggrieved by the above filed complaints on 14.03.2013 in writing under Regulation 6 (2) of the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004 before the 1<sup>st</sup>Respondent praying encashment for the unutilized banked wind energy of 537310 Units generated from the Petitioner's wind mill for the period from July 2010 to Dec 2010. Forum has not at all redressed the grievance of the Petitioner but whereas by letter dated 15.07.2013 has directed the officers coming under the 1<sup>st</sup>Respondent to verify and intimate the same to the Petitioner.

3.11. To the shock and surprise of the Petitioner, the 1<sup>st</sup>Respondent vide his letter dated 19.09.2013 has intimated that the Petitioner for the period of 2010-2011 has utilized only 28.57% of the total wind energy generated in the Petitioner wind mill and hence the energy adjusted from the Petitioner wind is treated as third party sale and the Petitioner is liable to pay the cross subsidy surcharge and other related charges.

3.12. The 1<sup>st</sup> Respondent vide the letter dated 19.09.2013 has alleged that on verifying the norms of the Captive Generating plant for the year 2010-2011, the captive user i.e., the Petitioner, has not fulfilled the condition of consumption of not less than 51 % of the aggregate electricity generated in their wind energy generators during the said period without any basis and against the illegal, arbitrary, without jurisdiction and authority of law and in violation of principles of natural justice.

3.13. As per Rule 3 of the Electricity Rule 2005 issued by the Ministry of Power Specifies the requirements of Captive Generating Plant as follows:

*"Requirements of Captive Generating Plant.-*

- (1) No power plant shall qualify as a 'captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless:-*
  - (a) in case of a power plant :-*
    - (i) not less than twenty six percent of the ownership is held by the captive users), and*
    - (ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:*
- (2) It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company".*

3.14. On the perusal of the letter dated 19.09.2013, it could be seen that the 1<sup>st</sup> Respondent alleged that the Petitioner has not fulfilled the condition

of consumption of not less than 51 % of the aggregate electricity generated in their wind energy generators during the period 04/2010 to 03/2011 and threatened to levy. Cross Subsidy Surcharge. It is alleged that the percentage of wind energy utilized by the Petitioner during the period 04/2010 to 03/2011 is only 28.57% where the norms prescribe for 51%. As said earlier, the 1<sup>st</sup> Respondent has very conveniently and deliberately not considered the undue delay of 6 months on the part of the 1<sup>st</sup> Respondent in entering into the revised EWA thereby preventing the Petitioner from consuming their own energy from July, 2010 to December, 2010 and on the other hand it is not fair on the part of the Respondent to allege that the Petitioner has not fulfilled the condition of consumption of not less than 51% of the aggregate electricity generated in their wind energy generators. Hence it would not be correct to apply the above norms of 51% in view of the delay of the 1<sup>st</sup> Respondent where the consumer is prevented from consuming their own generated/injected energy.

3.15. The Petitioner from July, 2010 to December, 2010 has generated 565981 Units in their wind mills which was not adjusted in any of the Petitioner service connection before 31.03.2011. It is clear that the 1<sup>st</sup> Respondent has caused a delay of 6 months in executing a revised EWA thereby preventing the Petitioner from consuming their entire energy available at their credit. The above norms is applicable and proper in the normal circumstances. But in the case where there is delay on the part of the 1<sup>st</sup> Respondent in executing a revised EWA, the Petitioner is prevented from consuming their own energy generated and injected to the grid by their wind mills, it is not fair on the part of the Respondent to allege that the

Petitioner has not fulfilled the condition of consumption of not less than 51% of the aggregate electricity generated in their wind energy generators and consequently threaten levy cross subsidy surcharge. The conduct and actions of the 1<sup>st</sup>Respondent is thus illegal and in excess of his jurisdiction.

3.16. Before making an analysis whether the captive consumer has consumed at least 51% of the energy generated by his own CGP, the undue delay of 6 months on the part of the 1<sup>st</sup>Respondent in entering into the revised EWA thereby preventing the Petitioner from consuming their own energy from July,2010 to December, 2010, should also be taken into consideration and accordingly to that extent, the minimum percentage prescribed for eligibility for captive consumption needs to be discounted. Therefore preventing the captive consumer from consuming his own energy and on the other side to conclude that the consumer has not consume 51% of the annual generation is totally unfair and unsustainable in law.

3.17. By issuing the letter dated 19.09.2013, the 1<sup>st</sup>Respondent is seeking to thwart the Petitioner's fundamental and constitutional rights. The 1<sup>st</sup>Respondent has issued the above communication with a view to threaten, arm twist the Petitioner and deny the benefit of the Petitioner which he is legally entitled due to the delay of 6 months on the part of the 1<sup>st</sup>Respondent.

3.18. The stand adopted by the 1<sup>st</sup>Respondent is wholly unreasonable and not in any way aimed at development of the industry. Such a stand adopted by the

1<sup>st</sup>Respondent is to cover their own fault and very harsh to consumers like the Petitioner.

3.19. By order dated 15.07.2013 the CGRF, disposed the complaint of the Petitioner directing the Accounts office coming under the 1<sup>st</sup>Respondent to verify the fulfilment norms of 51% consumption for the year 2010-2011 and intimate the same to the Petitioner only with a view to threaten, arm twist the Petitioner and deny the benefit which the Petitioner is legally entitled due to the delay of 6 months on the part of the 1<sup>st</sup>Respondent.

3.20. Being aggrieved by the above order, the Petitioner had preferred an appeal before the Electricity Ombudsman and the Hon'ble Ombudsman by his order dated 09.07.2014 dismissed the Petitioner's Appeal on the ground that the issue of making payment for the unutilized banked energy of a wind generator is a dispute between the generator and licensee and the Petitioner has to approach the Commission as per Electricity, Act, 2003.

3.21. Based on repeated representation given by the Petitioner, the 1<sup>st</sup>vide his letter dated 08.05.2015 has sought clarification from the Chief Financial Controller on the claims made by the Petitioner. In the said communication 1<sup>st</sup>Respondent himself has admitted that the reason for delay on executing the fresh energy wheeling agreement is the delay in fixing 5 slot meter. Without considering the specific admission of the 1<sup>st</sup>Respondent that the reason for delay on executing the fresh energy wheeling agreement is the delay in fixing 5 slot meter the Chief

Financial Controller called by the Petitioner for personal discussion and vide the meetings of meeting dated 09.09.2015 dismissed the claim of the Petitioner. Such action is illegal, arbitrary and against the provision of law.

3.22. While the facts being so, to the shock and surprise of the Petitioner, the 1<sup>st</sup> Respondent has issued the impugned demand notice dated 29.07.2015 to refund the 25% of the amount from out of the 100% of the amount already paid to the petitioner with respect to the period 2010-2011 quoting few audit objections as raised by the BOAB which were either communicated to the Petitioner. The impugned demand notice dated 29.07.2015 to pay the 25% of the amount states as follows:-

- “1. BOAB-Audit Slip No.10 dated 14.03.2012.
2. BOAB-Audit Slip No.14 dated 20.03.2012.
3. BOAB-Audit Slip No.22 dated 24.03.2012
4. BOAB-Audit Slip No.20 dated 18.06.2015
5. BOAB-Audit Slip No.21 dated 18.06.2015
6. BOAB-Audit Slip No.26 dated 25.06.2015
7. BOAB-Audit Slip NO.27 dated 25.06.2015

*While reviewing the payment made on unutilized banked units the board office audit party has raised objections on payment made at the rate of 100% of tariff rate and quoted only 75% of tariff rate is eligible and the excess payment of 25% made already should have been recovered as per ref. cited 1 to 7.*

<i>Banking Period</i>	<i>Audit Slip No. &amp; Date</i>	<i>Name of the customer</i>	<i>WEG HT SC No.</i>	<i>User HT SC No.</i>	<i>User HT Circle</i>	<i>25% Excess payment in Rs.</i>
2010-11	22 dated 24-03-2012	Orchid Chemicals and Pharmaceuticals	133, 237, 276	Not claimed		369401

*Hence it is requested that the excess payment made on unutilized banked energy of RS.369401/- to be remitted to the under signed within 15 days' time of receipt otherwise, it is hereby informed that the same shall be included in your next wheeling statement without further notice. "*

3.23. The Petitioner has not been provided with the copies of BOAB Audit Slips as referred by the 1<sup>st</sup> Respondents and simply issued impugned notice without assigning any reason. Without even making payment for the unutilized wind energy of 537310 Units generated for the period from July 2010 to Dec 2010 the 1<sup>st</sup> Respondent has issued the impugned demand notice seeking refund of the excess amount paid. The Petitioner has given objection vide his mail-dated 02.09.2015 and the 1<sup>st</sup> Respondent has not replied till date. Such action of the 1<sup>st</sup> Respondent is illegal arbitrary and liable to be set aside on this ground alone.

3.24 The Petitioner is left with no other alternative, effective and efficacious remedy except approaching the Commission under Regulation 16(1) of the Tamil Nadu Electricity Regulatory Commission (Conduct of Business Regulations, 2004 seeking to quash the 1<sup>st</sup> Respondent's demand notice dated 29.07.2015 and consequently direct the 2<sup>nd</sup> Respondent to give adjustment 537310 Units generated in the Petitioner's wind mill for the period from July 2010 to December 2010 against

the Petitioner's HTSC No.562. The Petitioner has been made to run from pillar to post by the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent. The conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are without jurisdiction, contumacious and amounts to arm twisting the Petitioner.

3.25. Due to recession and poor market condition the Petitioner industry has suffered huge financial loss. With the view to revive the industry activity the Petitioner industry has undergone CDR process and hence the entire management of the industry is controlled by the CDR Lenders. The Petitioner is under CDR process from 2014. Hence there was delay on the part of the Petitioner in approaching the Commission after seeking approval from the CDR Lenders. The Petitioner very humbly submits before the Commission that the delay was due to a genuine reason as stated above.

3.26. In view of the above, it is most humbly prayed that the Commission may quash the 1<sup>st</sup> Respondent's demand notice dated 29-07-2015 and consequently direct the 2<sup>nd</sup> Respondent to give adjustment for the unutilized banked wind energy of 537310 Units generated from the appellant's wind mill for the period from July 2010 to December 2010 or encashment of Rs.14,77,602 1- With a simple Interest of Rs.9,16,113/- (from April 2011 to May 2016 Rs.14,77,602X.62) thus making a total of Rs.23,93,716/- only.

#### **4. Contentions of the Respondents:-**

4.1. The petitioner has filed this dispute resolution petition praying the commission may be pleased to quash the 1<sup>st</sup> respondent demand notice dated

29.07.2015 and consequently direct the 2nd respondent to give adjustment for the unutilized banked wind energy of 5,37,310 units generated from the petitioners wind mill for the period from July 2010 to December 2010 or encashment of Rs.14,77,602/- with & simple interest of Rs.9,16,113/- (from April 2011 to May 2016 Rs.14,77,602 x .62 ) thus making a total of Rs.23,93,716/- only.

4.2. The petitioner had owned three wind mills bearing WEG HT Service 133, 237 and 276 in Tirunelveli Electricity Distribution Circle. The petitioner had executed energy wheeling agreements to the above WEG's with the 1<sup>st</sup> respondent / TANGEDCO and subsequently had executed supplemental agreement to the original agreement on 17-06-2004 to wheel the energy generated from their wind energy generation to their HT SC No: 402 located in Chengalpattu Electricity Distribution Circle, under captive category as per the Commission's orders in force. Accordingly the wind energy had been wheeled and adjusted up to June 2010.

4.3. As per the conditions of supplemental agreement dated 17.06.2004, the petitioner can bank the surplus energy, if any, after adjustment for the period of one year commencing from 1<sup>st</sup> April to 31st March of next year. The unutilized banking energy at the end of the banking period will be treated as lapsed.

4.4. The provisions of Order No.3 dated 15.05.2006 shall applicable only on and from the date of execution of revised energy wheeling agreement as per the format approved by the Commission. The same was clarified by the Commission in M.P Nos.6,11,12 and 16 of 2008 and M.P No. 15 of 2008, dt 22.05.2008. Further it is

submitted that the EWA executed for the 3 WEG dt 17.06.04 to wheel the energy generated to HT SC No. 402 stands cancelled during July 2010 due to the reason that HT.Sc. No. 402 has been transferred to M/s Hospira Health Care Pvt Ltd and RTR (Revised Test Report) has been taken to the same.

4.5. The petitioner had sold their HT SC No. 402 located in Chengalpattu Electricity Distribution Circle, to M/s. Hospira Health Care Pvt. Ltd. and the same had been intimated by the petitioner letter dated 10.03.2010 addressed to the Chief Engineer / NCES with a request to permit to wheel the wind power generated in the petitioner's wind mill to their another HT SC No. 562 located in Chengalpattu Electricity Distribution Circle.

4.6. The Chief Engineer/NCES had granted approval vide Lr.No.CE/NCES/EE/WPP/AEE2/F.M/s.Orchid Chemicals & Pharmaceuticals Ltd./D.2114/10,dated 14.06.2010 to wheel the wind energy to their another HT SC No: 562 located in Chengalpattu Electricity Distribution Circle with banking for surplus energy after adjustment.

4.7. The revised energy wheeling agreement was executed on 15.08.2010, 16.08.2010 and 20.11.2010 in respect of WEG HT SC Nos 237, 133 and 276 respectively and the copy of energy wheeling agreement forwarded to the consumer on 02.12.2010 for change of utility. Therefore the request of the petitioner that to encash the unutilized wind energy can be considered from the date of execution energy wheeling agreement of each wind energy generators

since the approval was granted June 2010 and the petitioner had executed the agreements 15.08.2010, 16.08.2010 and 20.11.2010 in respect of WEG HT SC Nos. 237, 133 and 276 respectively. Further, the wind energy generated from the date of execution of energy wheeling agreement to December 2010 was not adjusted against the HT service connection due to non-fixing of TOD meter in the WEGs.

4.8. The petitioner had raised invoice for an amount of Rs.14,77,602/- on 16.08.2011 for the energy generated from July 2010 to December 2010 treating as unutilized units to the tune of 5,37,310 units at the rate of Rs.2.75/- per unit.

4.9. As per the conditions of the revised energy wheeling agreements executed on 15.08.2010, 16.08.2010 and 20.11.2010 in respect of WEG HT SC Nos 237, 133 and 276 respectively, the petitioner request can be considered from the date of execution of revised energy wheeling agreements and prior to the date of execution of revised energy wheeling agreements stated supra, the unutilized energy remains at the end of the financial year shall be treated as lapsed.

4.10. In view of the facts and circumstances of the case as stated above, the petitioners have entitled to claim encashment for the unutilized wind energy only from the date of execution of revised energy wheeling agreements.

## **5. Written Submission filed by the Petitioner:-**

5.1. The petitioner has made the same averment as was made in the petition in the present Written Submission also and hence it is not necessary to reproduce them.

The Petitioner unit is an industry involved in the manufacture of pharmaceutical products having Extra High Tension Electricity Supply in H.T.Sc.No.562 and 402 both coming under the 2<sup>nd</sup> Respondent. The Petitioner has installed windmills for generating wind energy to meet out their energy requirements for their captive consumption bearing WEG HTSC No.133, 237 and 276 coming under 1<sup>st</sup> Respondent. The Petitioner has entered into an Energy Wheeling Agreement for the purpose of captive consumption with banking provision to their industry bearing HTSC No.402. It is respectfully submitted that the Petitioner has sold their concern bearing HTSC No.402 coming under the 2<sup>nd</sup> Respondent to one M/s. Hospira India Ltd. The Petitioner has immediately intimated the same to the Chief Engineer/NCES/TNEB vide their representation dated 10.03.2010 and requested for wheeling of the wind power generated in the Petitioner's wind mill WEG No.133, 237 & 276 in HTSC No.562 instead of HTSC No.402 since HTSC No.402 is sold to another concern.

5.2. The 2<sup>nd</sup> Respondent vide letter dated 23.04.2010 name transferred HTSC No.402 to the name of M/s. Hospira India Ltd due to the business transfer of the unit.

5.3. The Chief Engineer/NCES/TNEB vide his letter dated 28.05.2010 directed the Petitioner to pay the application registration fees and the Petitioner has also paid the same on 29.05.2010. Consequently the CE/NCES vide his letter dated 14.06.2010 accorded approval for change in usage of the Petitioner's WEG Nos.133, 237 & 276 from HTSC No.402 to HTSC No.562 with banking of surplus energy after adjustment.

5.4. The CE/NCES vide this approval dated 14.06.2010 the CE/NCES accorded approval to wheel energy generated by the Petitioner's WEG No.133, 237 & 276 to their HTSC No.562 coming under the 2<sup>nd</sup> Respondent with permission to bank the surplus energy instead of wheeling & banking with Petitioner's erstwhile HTSC No.402.

5.5. The CE/NCES vide this approval dated 14.06.2010 has clearly stated that *"the banked energy available from 01.04.2010 from the generation of 01.04.2010, has to be adjusted in HTSC No.402 coming under the 2<sup>nd</sup> Respondent upto the end of the banking period i.e., 31.03.2011"*

5.6. From the above it is clear that, since the Petitioner's erstwhile HTSC No.402 was name transferred to another concern due to business transfer and since the Petitioner has sought for change of usage their WEG Nos.133, 237 & 276 from erstwhile HTSC No.402 to Petitioner's another HTSC no.562, the CE/NCES vide his approval letter dated 14.06.2010 has directed the 2<sup>nd</sup> Respondent to adjust the banked energy in the Petitioner's WEG Nos.133, 237 & 276 from 01.04.2010 against the consumption on HTSC No.402 coming under the 2<sup>nd</sup> Respondent upto the end of the banking period i.e., 31.03.2011.

5.7. Further, the CE/NCES vide this approval dated 14.06.2010 has directed as follows:-

*"You are requested to contact the Superintending Engineer/Tirunelveli EDC (generator end ) for executing the Energy Wheeling Agreement on payment*

*of RS.2000/- per MW towards long term open access agreement fees and for installation of TOD meter in the above wind farm service if not provided already within 3 months from the date of receipt of this letter”*

5.8. From above it is clear that the CE/NCES has directed the Petitioner to contact 2<sup>nd</sup> Respondent for payment of LTOA agreement fess of Rs.2000/- per MW and consequently execute the EWA for captive consumption in Petitioner's HTSC No.562 and for installation of TOD meter in the above wind farm service if not provided within 3 months from the date of receipt of this letter.

5.9. Further the note at the end of the CE/NCES's approval dated 14.06.2010 read as follows:-

*“(\*) The Superintending Engineer/Tirunelveli EDC is requested to execute the energy wheeling agreement for the revised arrangement after installation of the TOD meter with 5 slot recording (if not provided already) in the above WF.HT .SC.No: HT SC No.133, 237 & 276 of the Tirunelveli EDC and it may be ensured that necessary agreement fees subject to variation per Wing Farm HT Service may be collected from WEG towards Long Term Open Access Agreement fee for executing Energy Wheeling Agreement*

...

*(\*\*) The Superintending Engineer/Chengalpet EDC is requested to provide the TOD Facilities in the existing TOD meter with 5 slot recording before permitting the wheeling arrangement. Ensure payment of wheeling charges,*

*system operation charges for every calendar month for the capacity installed before permitting that wheeling*

*If the entire allocated energy has not been adjusted at the wheeling end from each Wind Farm HT services in a month, the balance energy may be taken as surplus power for each Wind Farm HT services and intimate to generating end”*

5.10. From the above it is clear that the Superintending Engineer/Tirunelveli EDC, the 1<sup>st</sup> Respondent herein, is directed to execute the energy wheeling agreement for the revised arrangement for captive consumption in HTSC No.562 after installation of the TOD meter with 5 slot recording in the above WF.HT SC.No: HT SC No.133, 237 & 276 of the Tirunelveli EDC and to ensure that necessary agreement fees are collected from the Petitioner towards Long Term Open Access Agreement fee for executing Energy Wheeling Agreement. Further, the Superintending Engineer/Chengalpet EDC, the 2<sup>nd</sup> Respondent herein is directed to provide the TOD Facilities in the existing TOD meter with 5 slot recording before permitting the wheeling arrangement

5.11. As per the direction of the 1<sup>st</sup> Respondent the Petitioner purchased the TOD meter with 5 slot recording on 02.07.2010 vide invoice No.270 dated 02.07.2010 for a sum of Rs.34,320/- and handed to the officers of the 1<sup>st</sup> Respondent in order to install the same on the Petitioner's WEGs. The Petitioner also paid the inspection fees and testing charges on 03.07.2010 towards installation of the said meters. The

TOD Meters with 5 slot as supplied by the Petitioner was installed in the Petitioner's WEGs on 05.07.2010 which has been confirmed by the Assistant Executive Engineer/MRT/Wind Farm vide his letter dated 05.07.2010.

5.12. The Petitioner paid the agreement fees of Rs.10,000/- vide receipt vide DD dated 27.07.2010 even though the receipt for same was given only on dated 11.08.2010 and evidently the Petitioner took all steps to execute the fresh Energy wheeling agreement with the 1<sup>st</sup> Respondent for the purpose of captive consumption HTSC No.562. But the 1<sup>st</sup> Respondent has kept the issue pending for more than 6 months causing huge loss to the Petitioner industry.

5.13. After substantial delay the fresh energy wheeling agreement was executed by the 1<sup>st</sup> Respondent only on 15.08.2010 for WEG No.237, 16.08.2010 for WEG No.133 and 20.11.2010 for WEG 276 for the purpose of captive consumption with banking of surplus energy. Even after executing the EWAs the same was not given effect till December/2010 and only vide the letter dated 02.12.2010. The EWA agreements were given effect and forwarded by the 1<sup>st</sup> Respondent i.e., after 6 months delay from the date of approved given by the Chief Engineer/NCES/TNEB in his letter dated 14.06.2010.

5.14. From July, 2010 to December 2010 the Petitioner's WEG has generated 565981 Units in their wind mills which was not adjusted in any of the Petitioner's service connection. The 2<sup>nd</sup> Respondent ought to have adjusted the energy generated and banked in the Petitioner's WEGs from July, 2010 to December 2010

to a tune of 565981 Units against the Petitioner's HTSC No.402 as per the approval dated 14.06.2010 or in HTSC No.562 as per the EWAs before the end of the banking period i.e., 31.03.2011 The 2<sup>nd</sup> Respondent admittedly failed to do so causing hardship to the Petitioners. In line with the approval accorded by the CE/NCES vide his approval dated 14.06.2010 the Petitioner supplied the TOD meters and the same was installed as early as 05.07.2010 itself and all required charges were also paid by the Petitioner. The 1<sup>st</sup> Respondent ought to have executed the EWA immediately and there was a delay of 6 months in giving effect to the EWAs and only vide letter dated 02.12.2010 the 1<sup>st</sup> Respondent started accounting the wind energy generated in the Petitioner's WEGs

5.15. The Petitioner vide his letter dated 21.03.2011 has requested the 2<sup>nd</sup> Respondent herein to give adjustment of the wind energy generated from July, 2010 to December, 2010 to a tune of 565981 Units in the Petitioner's HTSC No.402 or at least in HTSC No.562 before 31.03.2011.

5.16. While so, the SE/NCES coming under the CE/NCES vide his letter dated 06.04.2010 has replied to the Petitioner's above representations by directing the Petitioner to approach the generating end EDC i.e., the 1<sup>st</sup> Respondent with relevant documents for adjustment of the banked units of 565981 Units in Petitioners HTSC No.402 or 562 before 31.03.2011. The Petitioner have repeatedly approached the 2<sup>nd</sup> Respondents and tried explaining to them that such refusal is without jurisdiction and has the effect of denying right to open access guaranteed under the Electricity Act,2003 and is in violation of the directions issued by the

higher official i.e., CE/NCES vide his approval dated 14.06.2010. However, this did not evoke any positive response from them and they refused to reconsider their decision.

5.17. Since the Respondents refused to consider the request of the Petitioner to give adjustment of the wind energy generated from July, 2010 to December, 2010 to a tune of 565981 Units in the Petitioner's HTSC No.402 or 562 before 31.03.2011 the energy was treated as utilized wind energy banked as on 31.03.2011 to a tune of 537310 Units in the account of the Petitioner.

5.18. The 2<sup>nd</sup> Respondent vide his letter dated 22.06.2011 to the 1<sup>st</sup> Respondent has stated the unutilized banked energy generated from the Petitioner's WEG Nos.133, 237 & 256 to a tune of 5,37,310Units is available in the Petitioner's account for the period from 01.04.2010 to 31.03.2011.

5.19. As per the EWA dated 15.08.2010 for WEG No.237, 16.08.2010 for WEG No.133 and 20.11.2010 for WEG 276 at clause 5 (b) the unutilized portion of the banked energy if any shall be purchased by the licensee at the rate of 75% of the normal purchase rate.

5.20. In the meantime, being aggrieved by the inaction of the Respondent in refusing to adjust the wind energy generated from July,2010 to December,2010 to the tune of 537310 Units against the Petitioner's HTSC No.402 of 562, the Petitioner repeatedly approached the CGRF on 21.06.2011, 08.07.2011 and

14.03.2011. The grievance of the Petitioner was not even considered by the CGRF headed by the 1st and 2<sup>nd</sup> Respondent themselves. Finally CGRF under the 2<sup>nd</sup> Respondent took up the Petitioner's application dated 14.03.2011 and passed orders dated 18.07.2013. Instead of passing order on the merits of the submission made by the Petitioner, the CGRF passed orders directing the 2<sup>nd</sup> Respondent to consider the claim of the Petitioner for adjustment of the wind energy generated from July'2010 to December'2010 to the tune of 537310 Units against the Petitioner's HTSC No.402 or 562.

5.21. Being aggrieved by the order passed by CGRF the Petitioner file an appeal before the Hon'ble Electricity Ombudsman in Appeal No.20 of 2021 and by the final order dated 09.07.2014 the Hon'ble Ombudsman directed the Petitioner to approach the Commission. Hence the present petition was filed before the Commission.

5.22. On repeated representation given by the Petitioner, the 1<sup>st</sup> Respondent vide his letter dated 08.05.2015 has sought clarification from the Chief Financial Controller on the claims made by the Petitioner. In the said communication 1<sup>st</sup> Respondent himself has admitted that the reason for delay on executing the fresh energy wheeling agreement is the delay in fixing 5 slot meter but as matter of fact on 05.07.2010 itself the meter was installed which has been confirmed by the Assistant Executive Engineer/MRT/Wind Farm vide his letter dated 05.07.2010. Without considering that 5 slot meter was installed as early as 05.07.2010, the Chief Financial Controller called upon the Petitioner for personal discussion on

04.08.2015 and vide the meetings of meeting dated 09.09.2015 dismissed the claim of the Petitioner. Such action is illegal, arbitrary and against the provision of law.

5.23. Till date the Respondents have neither adjusted the wind energy generated from July,2010 to December,2010 to a tune of 537310 Units against the Petitioner's consumption on HTSC No.402 as per the CE/NCES direction in letter dated 14.06.2010 or adjusted in HTSC No.562 as per the revised EWAs nor given payment at Rs.2.75 per unit to a total sum of Rs.14,77,602.50/- as per the EWAs. Such an action of the Respondents is illegal, arbitrary and liable to be punished under Section 145 of the Act.

5.24. Without even making payment for the unutilized wind energy of 537310 Units generated for the period from July 2010 to Dec 2010 the 1<sup>st</sup> Respondent has issued the impugned demand notice seeking refund of the excess amount paid. The Petitioner has given objection vide his mail dated 02.09.2015 and the 1<sup>st</sup> Respondent has not replied till date. Such action of the 1<sup>st</sup> Respondent is illegal arbitrary and liable to be set aside on this ground alone.

5.25. The Petitioner has immediately intimated the business transfer of the WEGs to the Chief Engineer/NCES/TNEB vide their representation dated 10.03.2010 and requested for wheeling of the wind power generated in the Petitioner's wind mill WEG No.133, 237 & 276 in HTSC No.562 instead of HTSC No.402 since HTSC No.402 is sold to another concern.

5.26. The 2<sup>nd</sup> Respondent vide letter dated 23.04.2010 name transferred HTSC No.402 to the name of M/s.Hospira India Ltd due to the business transfer of the unit.The Chief Engineer/NCES/TNEB vide his letter dated 28.05.2010 directed the Petitioner to pay the application registration fees and the Petitioner has also paid the same on 29.05.2010. Consequently the CE/NCES vide his letter dated 14.06.2010 accorded approval for change in usage of the Petitioner's WEG Nos.133, 237 & 276 from HTSC No.402 to HTSC No.562 with banking of surplus energy after adjustment.

5.27. The CE/NCES vide this approval dated 14.06.2010 the CE/NCES accorded approval to wheel energy generated by the Petitioner's WEG No.133, 237 & 276 to their HTSC No.562 coming under the 2<sup>nd</sup> Respondent with permission to bank the surplus energy instead of wheeling & banking with Petitioner's erstwhile HTSC no.402. It is most important to mention the CE/NCES vide this approval dated 14.06.2010 has clearly stated that "the banked energy available from 01.04.2010 from the generation of 01.04.2010, has to be adjusted in"*HTSC No.402 coming under the 2<sup>nd</sup> Respondent upto the end of the banking period i.e., 31.03.2011*"

5.28. The CE/NCES has directed the Petitioner to contact 2<sup>nd</sup> Respondent for payment of LTOA agreement fess of Rs.2000/- per MW and consequently execute the EWA for captive adjustment in their HTSC No.562 and for installation of TOD meter in the above wind farm service if not provided within 3 months from the date of receipt of this letter.

5.29. The Superintending Engineer/Tirunelveli EDC, the 2<sup>nd</sup> Respondent herein, was directed by CE/NCES in the approval dated 14.06.2010 to execute the energy wheeling agreement for captive adjustment at HTSC No.562 after installation of the TOD meter with 5 slot recording in the above WF.HT .SC.No: HT SC No.133, 237 & 276 of the Tirunelveli EDC and to ensure that necessary agreement fees are collected from the Petitioner towards Long Term Open Access Agreement fee for executing Energy Wheeling Agreement. Further, the Superintending Engineer/Chengalpet EDC, the 2<sup>nd</sup> Respondent herein is directed to provide the TOD Facilities in the existing TOD meter with 5 slot recording before permitting the wheeling arrangement.

5.30. As per the direction of the 1<sup>st</sup> Respondent the Petitioner purchased the TOD meter with 5 slot recording on 02.07.2010 vide invoice No.270 dated 02.07.2010 for a sum of Rs.34,320/- and handed to the officers of the 1<sup>st</sup> Respondent in order to install the same on the Petitioner's WEGs. The Petitioner also paid the inspection fees and testing charges on 03.07.2010 towards installation of the said meters. The TOD Meters with 5 slot as supplied by the Petitioner was installed in the Petitioner's WEGs on 05.07.2010 which has been confirmed by the Assistant Executive Engineer/MRT/Wind Farm vide his letter dated 05.07.2010

5.31. The Petitioner paid the agreement fees of Rs.10,000/- vide receipt vide DD dated 27.07.2010 even though the receipt for same was given only on dated 11.08.2010 and evidently the Petitioner took all steps to execute the fresh Energy wheeling agreement with the 1<sup>st</sup> Respondent for captive adjustment in HTSC

No.562. But the 1<sup>st</sup> Respondent has kept the issue pending for more than 6 months causing huge loss to the Petitioner industry.

5.32. After substantial delay the energy wheeling agreement was executed by the 1<sup>st</sup> Respondent only on 15.08.2010 for WEG No.237, 16.08.2010 for WEG No.133 and 20.11.2010 for WEG 276 for the purpose of captive adjustment in petitioner's HTSC No.562. Even after executing the EWAs the same was not given effect till December/2010 and only vide the letter dated 02.12.2010 the EWA agreements were accepted and forwarded by the 1<sup>st</sup> Respondent i.e., after 6 months delay from the date of approved given by the Chief Engineer/NCES/TNEB in his letter dated 14.06.2010.

5.33. From July, 2010 to December 2010 the Petitioner's WEG has generated 565981 Units in their wind mills which was not adjusted in any of the Petitioner's service connection. The 2<sup>nd</sup> Respondent ought to have adjusted the energy generated and banked in the Petitioner's WEGs from July' 2010 to December' 2010 to a tune of 565981 Units against the Petitioner's HTSC No.402 as per the CE/NCES approval dated 14.06.2010 or in HTSC No.562 as per the EWAs before the end of the banking period i.e., 31.03.2011.

5.34. The 2<sup>nd</sup> Respondent vide his letter dated 22.06.2011 to the 1<sup>st</sup> Respondent has stated the unutilized banked energy generated from the Petitioner's WEG Nos.133, 237 & 256 to a tune of 5,37,310 Units is available in the Petitioner's account for the period from 01.04.2010 to 31.03.2011.

5.35. As per the EWA dated 15.08.2010 for WEG No.237, 16.08.2010 for WEG No.133 and 20.11.2010 for WEG 276 at clause 5 (b) the unutilized portion of the banked energy if any shall be purchased by the licensee at the rate of 75% of the normal purchase rate. The Petitioner has raised invoice 16.08.2011 seeking payment for the total unutilized banked units to the tune of 537310 Units at Rs.2.75 per unit to a total sum of Rs.14,77,602.50/-.

5.36. Based on CE/NCES approval dated 14.06.2010 the Petitioner took all steps to execute the fresh Energy wheeling agreement with the 1<sup>st</sup> Respondent. But the 1<sup>st</sup> Respondent has kept the issue pending for more than 6 months for the reason best know to him. It is unlawful where the consumer is prevented from consuming their own generated/injected energy during the period from July' 2010 to December' 2010, due to delay cause by the 1<sup>st</sup> Respondent and on the other hand treating the energy generated and banked as lapsed.

5.37. Till date the Respondents have neither adjusted the wind energy generated from July,2010 to December,2010 to a tune of 537310 Units against the Petitioner's consumption on HTSC No.402 as per the CE/NCES direction in letter dated 14.06.2010 nor given payment at Rs.2.75 per unit to a total sum of Rs.14,77,602.50/- as per the EWAs. Such an action of the Respondents is illegal, arbitrary and liable to be punished under Section 145 of the Act.

5.38. In view of the above, it is prayed that the Commission may-

- a) quash the 1<sup>st</sup> Respondent's demand notice dated 29.07.2015

- b) and consequently direct the 2<sup>nd</sup> Respondent to either give adjustment of the wind energy generated from the Petitioner's WEGs for the period from July 2010 to Dec 2010 to a tune of 537310 Units against their consumption in HTSC No.562
- c) or give encashment/payment for 537310 Units towards the unutilized banked energy as on 31.03.2011 in the Petitioner's WEGs as communicated by the 2<sup>nd</sup> Respondent in his letter dated 22.06.2011 with interest till the date of payment.

## **6. Findings of the Commission:-**

6.1. In this petition, the petitioner has prayed to quash the SE/Tirunelveli EDC (1<sup>st</sup> Respondent) demand notice dated 29.07.2015 and consequently to effect the adjustment of the unutilised banked wind energy of 5,37,310 units generated from the Petitioner's wind mill during the period from July'2010 to Dec'2010 or encashment of Rs.14,77,602 with a simple interest of Rs.9,16,113 (for the period from April'2011 to May'2016  $\text{Rs.14,77,602} \times 0.62$ ) totally an amount of Rs.23,93,716/-

6.2. The petitioner (M/s.OrchidPharma Limited) is an EHT consumer of TANGEDCO with EHT SC.No.562 in Chengalpattu EDC. The petitioner is having 3 WEG HT SC Nos.133, 237 & 276 in Tirunelveli EDC; the Wind energy generated from these Windmills were being adjusted in their erstwhile HT SC.No.402 in Chengalpattu EDC. As the petitioner, has sold its HT SC.No.402 to M/s.HospiraIndia Ltd., it sought the Respondent to adjust wheeling of the wind

energy generated from the above windmills in HT. SC.No.562 instead of HT SC.No.402.

6.3. It is seen that the petitioner has applied to the Chief Engineer / Non-Conventional Energy Sources / TANGEDCO for change in Wind energy wheeling adjustment from HT. SC No.402 to HT. SC No.562. In this connection, CE / NCES accorded its approval to the petitioner, in its letter dated 14.06.2010, to wheel the energy generated in 8 x 410 kW WEGs assigned with WF. HT.SC No.133, 237 & 276 of Tirunelveli EDC to HT SC. No.562 of Chengalpattu EDC instead of existing arrangement of wheeling & banking with HT SC N.402 in the same Circle and also stated that the said approval will come into effect from the date of execution of Energy Wheeling Agreement for the revised arrangement. Approval was issued with the condition that as per the TNERC Order No.3 dt.15.05.2006, the WEGs will be treated as Captive Generating Plant as per the Order No.3 and as per the Electricity Rules 2005, and these are subject to payment of Wheeling charges & Banking charges. The CE / NCES instructed the petitioner to execute the energy Wheeling Agreement with the Superintending Engineer / Tirunelveli on payment of Rs.2000 / per MW towards Long-term Open Access Agreement fees and for installation of TOD meter in the above wind farm service if not provided already within 3 months from the date of receipt of this letter.

6.4. Accordingly, it is found from the 1<sup>st</sup> Respondent's MRT Report issued by the Assistant Executive Engineer / MRT / Wind Farm / Muppandal – Aralvoimozhi vide Lr.No.AEE/MRT/WF/ MPDL / F4/D.298/10 dated 05-07-2010, new tested 5 slot

TOD meter installed on 05-07-2010 replacing the existing meter; and initial reading was taken in all the 5 slots. The 5 slot TOD meter seems that have been supplied by the Petitioner only. Subsequently, the petitioner paid the Long-term Open Access Agreement fees of Rs.10000/- @ Rs.2000/MW in respect of three WEG HT.SC. No.133, 237 and 276 on 27.07.2010.

6.5. In this connection, the petitioner vehemently argued that having installed the 5 slot TOD meter on 05.07.2010 itself, and also after collecting of Agreement fees on 27.07.2010, 1<sup>st</sup> Respondent has not taken any steps or has come forward to execute the Energy Wheeling Agreement. Finally, after a substantial delay on the part of 1<sup>st</sup> Respondent, fresh energy wheeling agreement was executed by the 1<sup>st</sup> Respondent as below –

Sl. No.	WEG HT SC No.	5 slot TOD meter fixed on	Agreement fees paid on	EWA executed on	EWA forwarded to Chengalpat EDC on
1	237	05-07-2010	27.07.2010	15.08.2010	02.12.2010
2	133		27.07.2010	16.08.2010	02.12.2010
3	276		27.07.2010	20.11.2010	02.12.2010

6.6. The energy generated from the above 3 WEGs during July'2010 to December'2010 to a quantum of 5,65,981 units was not adjusted in HT SC No.562 as prayed for by the petitioner, whereas declared as unutilised energy by the 2<sup>nd</sup> Respondent. In this regard, the invoice raised by the petitioner for unutilised banked energy was refused for payment by the 1<sup>st</sup> Respondent.

6.7. As the CE/NCES has accorded its approval on 14.06.2010 for change of utilisation of wind energy generated from 3 WEG HT SCs, the Energy Wheeling Agreement had to be executed by the 1<sup>st</sup> Respondent immediately after installation of 5 slot TOD meter. But in the petitioner's case, it was not done so, as approved by the TANGEDCO headquarters. The Respondent has caused a delay of 6 months for execution of EWA which has resulted in prevention of energy adjustment in succeeding captive user in HT. SC. No.562.

6.8. It is also argued by the petitioner that 1<sup>st</sup> Respondent has issued the impugned notice dated 29.07.2015 to refund the 25% of the amount out of the 100% of the amount already paid to the petitioner in respect of payment for unutilised banked energy in the above 3 WEGs for the period 2010-2011 (5,37,310 units). The Respondent raised a demand of Rs.3,69,401 (Rs.14,77,603 x 25%) vide its notice dated 29.07.2015 to remit the same within 15 days stating that the petitioner is eligible only at 75% of the purchase rate not for 100%, which is hereby contested by the petitioner to set aside the same. In this connection, it is the petitioner's argument that while no payment for the unutilised wind energy of 5,37,310 units in respect of July'2010 to December'2010 was made, the impugned demand notice is illegal and arbitrary and hence, to be set aside. From the submission of the petitioner, it is seen that the demand has been raised by the 1<sup>st</sup> respondent based on its Internal Audit Department's objections. In this connection, the 1<sup>st</sup> Respondent has stated that unutilised energy prior to the date of execution of revised energy wheeling agreement at the end of the year shall be have to be

lapsed, and returned the petitioner's invoice for an amount of Rs.14,77,602 (5,37,310 units x Rs.2.75) raised on 16.08.2011, vide Lr.No.SE/TANGEDCO/Tin/AO/Rev/HTS/ AS/F.WEG HT SC.No.133/D.2486/11, dated 02.11.2011. While it being so, we are of the considered view that, the recovery demand of 25%, as raised in impugned notice dated 29.07.2015, does not arise since the basic invoice for an amount of Rs.14,77,602 (100% claim) itself not admitted & paid by the 1<sup>st</sup> Respondent.

6.9. However, the question which is to be considered is whether payment for unutilised banked energy at the end of financial year 2010-2011 is to be paid at 100% or 75%. It can be answered with reference to an order of the Commission in D.R.P.48 of 2014 dated 19.4.2022

*" 6.12.4. Having stated under para 16(15) of order in SMP No.1 of 2009 to encash the unutilized energy at the end of the financial year at full value of relevant tariff, the Distribution Licensee cannot limit the applicability of T.O.1 of 2009 only to those generators who executed EWAs in accordance with the Tariff order dated 20.3.2009. As the SMP.No.1 of 2009 is applicable to all the Wind energy captive users, the encashment of unutilized banked energy at full value (100%) cannot be refused to other WE generators covered under other Tariff Orders of the Commission."*

The impugned demand cannot sustain in the light of the above order. If the petitioner makes claim for unutilised banked energy it is to be paid at 100% during the Restriction & Control period as held in SMP 1 of 2009 by the Commission.

6.10. In regard to the question as to, whether the energy generated during the period from July 2010 to December 2010 is to be considered for adjustment in HT.SC.562 or to be lapsed, we are of the considered view that –

6.10.1. The Respondent, the CE/NCES has accorded its approval for change of utilisation of power generated in WEGs No.133, 237 & 276 only on 14.06.2010 on the petitioner's request letter dated 10.03.2010 for such change in utility. Having agreed to execute the wheeling agreement after installation of 5 slot TOD meter in the said approval, the 1<sup>st</sup> Respondent executed the EWA on 15.08.2010, 16.08.2010 & 20.11.2010 only in respect of WEGs HT. SC.No.237, 133 and 276 respectively, though 5 slot TOD meters were said to be fixed on 05.07.2010. Having gone through the MRT report of AEE/MRT/Muppandal-Aralvoimozhi for installation of 5 slot TOD meter on 05.07.2010, the delay on the part of 1<sup>st</sup> Respondent can be said to be inexplicable. No convincing reason for the delay in execution of EWA has been stated by the 1<sup>st</sup> Respondent. But it is accepted by the 1<sup>st</sup> Respondent that the Wind energy generated from the date of execution of EWA to December'2010 was not adjusted against the HT service connection due to non-fixing of TOD Meter in the WEGs. Therefore, when the petitioner takes a stand that the energy generated from the date of installation of TOD meter shall have to be permitted for wheeling adjustment in HT.SC.562 since the TOD meter has already fixed on 05.07.2010, the same cannot be refused without any valid reason. Further, all the 3 EWAs in Non-judicial stamp papers were submitted to the 1<sup>st</sup> Respondent, which have been purchased on the same date i.e., 25.06.2010 by the petitioner and that the 1<sup>st</sup> Respondent executed and forwarded them only on 02.12.2010, is also

evident that the delay caused in this regard is only on the part of the 1<sup>st</sup> Respondent.

6.10.2. Further, we understand that the energy generation in all the 3 WEGs in HT.SC. 237, 133 and 276 was continuously allowed to be evacuated into the grid by the TANGEDCO officials and a Joint meter readings were taken, which are not refused by the Respondents too.

6.10.3. While the R&C measures were in force, the Government of Tamil Nadu instructed all the generators to generate the power at maximum level to tackle the power shortage in the State. In the petitioner's case, the Wind power generated by the petitioner was continuously evacuated into the Grid by the Respondent, but on the other side, the Respondent delayed around 6 months for mere 'Change in utility' to carry out the formalities, that too after provision of TOD meter by the petitioner, without allowing the petitioner to consume its power.

6.11.1. In view of all the above findings, having installed 5 slot TOD meter on 05.07.2010, the delay caused by the 1<sup>st</sup> Respondent in execution of EWA upto 20.11.2010, cannot be permitted. Aggrieved over the denial of accounting of 5,37,310 Units by the Respondents, we see merits in the claim of the Petitioner. As held by the Commission in Wind T.O.1 of 2009, dated 20.03.2009 and subsequent Commission's Order in D.R.P. No.48 of 2014 dated 19.04.2022, which were ordered taking into consideration of R&C measures in force on those days, we direct that, such unadjusted units generated from 15.08.2010 (i.e., the date of

execution of the EWA) for all the 3 Windmills services, may be allowed to be claimed @ 100 % purchase rate along with the interest rate agreed between the parties in the EWA.

6.11.2. Further, in respect of the impugned demand notice dated 29.07.2015, it stands set aside with the above findings. Hence this petition is partly allowed.

**(Sd.....)**  
**(K.Venkatasamy)**  
**Member (Legal)**

**(Sd.....)**  
**(M.Chandrasekar)**  
**Chairman**

/True Copy /

**Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**