



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

VALUE ADDED TAX APPEAL No. 48 of 2021

*M/S UJJAS ENERGY LTD. THRU. AUTHORIZED OFFICER SHRI
ANURAG MUNDRA*

Versus

THE COMMISSIONER OF COMMERCIAL TAX AND OTHERS

WITH

VALUE ADDED TAX APPEAL No. 49 of 2021

M/S UJJAS ENERGY LTD. THRU. AUTHORIZED OFFICER

Versus

THE COMMISSIONER OF COMMERCIAL TAX AND OTHERS

Appearance:

Shri Rounak Choukse, learned counsel for the appellant.

*Shri Sudeep Bhargava, learned Deputy Advocate General for the respondents /
State.*

Reserved on : 22nd July, 2025

Delivered on : 12th August, 2025

O R D E R

Per : Justice Vivek Rusia

Value Added Tax Appeal No.48 of 2021

The appellant has filed this appeal under Section 53 of the Madhya Pradesh Value Added Tax Act, 2002 against the order dated 25.06.2020 passed by the Madhya Pradesh Commercial Tax Appellate Board Bench at Indore, whereby the appeal has been dismissed and the order dated 30.09.2016 passed by the Appellate Authority / Additional



Commissioner, Commercial Tax, Indore Division has been affirmed relating to Financial Year – 2013 – 14.

Value Added Tax Appeal No.49 of 2021

The appellant has filed this appeal under Section 53 of the Madhya Pradesh Value Added Tax Act, 2002 against the order dated 28.01.2020 passed by the Madhya Pradesh Commercial Tax Appellate Board Bench at Indore, whereby the appeal has been dismissed and the order dated 13.04.2016 passed by the Appellate Authority / Additional Commissioner, Commercial Tax, Indore Division has been affirmed relating to Financial Year – 2012 – 13.

02. Since the issues involved in both the appeals are identical in nature, with the consent of the parties, these appeals are heard finally and are being decided analogously.

FACTS OF THE CASE

03. The appellant is a limited company duly incorporated under the provisions of the Companies Act, 1956 (now 2013). The appellant is also registered under the provisions of the Madhya Pradesh Value Added Tax Act, 2002 (in short 'the VAT Act'), having TIN No.23351104700. The appellant is engaged in the business of manufacturing transformers, setting up solar plants, and the generation and sale of solar energy produced in its own generation plants.

04. The appellant set up two solar plants at Rajgarh and Barod and sells and transmits the energy across the grid by an open access system. The appellant and other Renewable Energy Generators may sale the energy to obligated entities (Captive Power Plants / Open Access Consumers, DISCOMs), which are under Renewable Purchase Obligation. Secondly, sale of Renewable Energy Certificates, i.e. REC



mechanism to local DISCOMs at average power purchase cost or to Open Access Consumer at mutually agreed rates or through Power Exchange that is also under Renewable Purchase Obligation.

05. Sub-section (1)(e) of Section 86 of the Electricity Act, 2003 mandates the promotion of electricity from renewable source of energy by providing suitable measures for connectivity with the grid. It is the function of the State Regulatory Commission to fix the percentage of total consumption of electricity in the area of a distribution licensee for the purchase of electricity generated from renewable sources. Section 86 of the Electricity Act is reproduced below:-

"86. Functions of State Commission: – (1) The State Commission shall discharge the following functions, namely: –

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State;

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

(f) adjudicate upon the disputes between the licensees,



and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary; and

(k) discharge such other functions as may be assigned to it under this Act.

(2) The State Commission shall advise the State Government on all or any of the following matters, namely :-.

(i) promotion of competition, efficiency and economy in activities of the electricity industry;

(ii) promotion of investment in electricity industry;

(iii) reorganization and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government.

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3."

06. The Central Electricity Regulatory Commission, New Delhi, vide Notification dated 14.01.2010, published in the Gazette of India dated 18.01.2010, made a regulation called Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010 (in short 'the Central Regulation'). Regulation 3 provides the designation of Central Agency and for discharging functions of registration of eligible entities, issuance of certificates, maintaining and settling accounts, etc. Rule 4 provides for two categories of certificates, namely solar certificates issued to eligible entities for the generation of electricity based on solar and non-solar certificates issued to eligible entities for the generation of electricity



based on renewable energy sources other than solar. The solar certificates are liable to be sold to the obligated entities to enable them to meet their renewable purchase obligation for solar and non-solar. As per Regulation 5(1), a generating company engaged in the generation of electricity from renewable energy sources shall be eligible for registration for issuance of certificates, subject to the fulfilment of the condition. Rule 6 provides for **Revocation of Registration**. Regulation 7 deals with **Denomination and issuance of Certificates** and as per Regulation 7(7), the Commission shall determine through a separate order, the quantum of Certificate to be issued to the eligible entities being the solar generating companies registered under REC for one Megawatt hour of electricity generated and injected into the grid based on the formula provided therein. Rule 9 deals with the **Pricing of certificates**.

07. Likewise, the Madhya Pradesh Electricity Regulatory Commission also notified Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision – I) Regulations, 2010 (in short 'the State Regulation') on 09.11.2010, published in Gazette Notification dated 19.11.2010. Regulation 13 provides for "Renewable Purchase Obligation (RPO)". Under the aforesaid provision, the appellant was registered as an eligible entity as defined in Regulation 2(1)(e) of the Central Regulation. The appellant obtained RECs and sold them to various obligated entities as defined under Regulation 2(1)(i) of the Central Regulation to fulfil the renewable purchase obligation as mandated under Section 86(1)(e) of the Electricity Act.

08. The appellant applied to the Power System Operation



Corporation Limited, which is a Central Agency, NDLC, for the issuance of RECs. The Central Agency, after confirming the claims with regard to the eligible units with the energy injection report of the State Load Dispatch Centre (SLDC), issued RECs to the appellant. The RECs are issued in electronic form in the dematerialisation account (Demat Account) of the generator maintained with the Central Agency, and certificates are liable to be traded only in the Indian Energy Exchange maintained by the Central Agency. According to the appellant, the trading of RECs is literally the sale of solar energy and purchase of the same by way of obligated entities in order to fulfil their requirement under sub-section (1)(e) of Section 86 of the Electricity Act.

09. The appellant / Company was assessed for period from 01.04.2012 to 31.03.2013 by the Assessing Officer (Deputy Commissioner, Commercial Tax, Division – 2, Indore) and the sale of RECs was treated under Entry 3, Part – II, Schedule – II of the VAT Act instead of Entry 13 Schedule – I of the VAT Act and the order dated 27.02.2015 was passed.

10. The appellant challenged the aforesaid order before the Appellate Authority / Additional Commissioner, Commercial Tax, Indore and the same was dismissed. Thereafter, the appellant approached the Madhya Pradesh Commercial Tax Appellate Board by way of second appeal, which was dismissed vide impugned order dated 28.01.2020. Hence, the present VATA is before this Court.

11. The appellant has proposed the following substantial questions of law:-

(1) Whether the impugned order passed by the appellate Board is perverse being without application of mind as well as without considering the case law referred by the appellant at the time of



hearing ?

(2) Whether the Appellate Board has wrongly classified the RECs in the category provided in Entry 3 Part – II Schedule II of the M.P. VAT Act where they do not belong and has not considered correct nature of RECs and its classification under the M.P. VAT Act ?

(3) Whether the Appellate Board has failed to consider the correct position of law that RECs is to be deemed as purchase of renewable energy for the purpose of RPO compliance and therefore should have been classified in Entry 13 Schedule I of the M.P. VAT Act i.e. "Electrical Energy" and thus is exempted from tax ?

SUBMISSIONS OF APPELLANT

12. Shri Raunak Choukse, learned counsel appearing for the appellant submits that the learned Assessing Authority while assessing the appellant has wrongly classified the RECs under Entry – 3, Part – II, Schedule – II of the VAT Act and wrongly levied the tax @ 5% treating it to be a sale of intangible goods like copyright, patent, REC License. The REC, which represents one megawatt hour of renewable energy, cannot be classified as intangible goods like copyright, patent, or license. The sale of RECs is nothing but electrical energy, which is exempted in Entry – 13, Schedule – I of the VAT Act.

13. It is further submitted by Shri Choukse, learned counsel that RECs are traded through the Indian Energy Exchange and once it is sold or purchased by obligated unit to meet the obligation for purchase of renewable energy, the certificate gets exhausted and cannot be treated further unlike the patent, copyright, license can be sold many times. One REC represents one megawatt-hour of electricity generated from renewable sources. Hence, the impugned orders are liable to be set aside, and the appellant be exempted from payment of taxes by treating RECs under Entry 13, Schedule I of the VAT Act.

CONTENTS OF THE REPLY



14. The respondents / State has filed a reply objecting the aforesaid submissions by submitting that the sale of RECs is not a sale of electrical energy of itself, it is a certificate covered under the category of goods and eligible for sale.

15. It is further submitted the learned Assessing Authority while assessing the case at the assessment level, first appeal as well as in the second appeal has classified the REC under Entry 3 Part – II Schedule – II of the VAT Act because the RECs are similarly traded as shares on a particular energy exchange and are intangible goods similar to that of the shares which are traded on the particular exchange. Hence, VATA is liable to be dismissed.

APPRICIATION & CONCLUSION

16. Sub-section (1)(e) of Section 86 of the Electricity Act mandates State Commission to promote cogeneration and generation of electricity from renewable sources of energy and its connectivity with the grid for sale to any person and prescribes the percentage of purchase of electricity from such sources. Therefore, in order to implement the aforesaid statutory provision, the Central as well as the State Electricity Regulatory Commission had issued the Regulations, 2010. Under these Regulations, the provisions have been made either to sell renewable energy or sale Renewable Energy Certificates (REC). The Certificate is defined under Regulation 2(1)(c) of the Central Regulations, which means a Renewable Energy Certificate issued by the Central Agency after following the procedure prescribed in the Regulations. Eligible entities mean eligible to receive the certificate under this Regulation to fulfil the obligation under Regulation 2(1)(e) of the Central Regulation to obligated entities.



17. Two categories of certificates are provided under Regulation 4 and Regulations 7 & 8 provide the denomination and issuance of certificates and dealing in the certificates for sale by eligible entities to obligated entities. Regulation 9 provides a procedure for determining the floor price and forbearance price of the certificate. Regulation 9 is reproduced below: -

9. Pricing of Certificate :

(1) The price of Certificate shall be as discovered in the Power Exchange:

Provided that the Commission may, in consultation with the Central Agency and Forum of Regulators from time to time provide for the floor price and forbearance price separately for solar and non-solar Certificates.

(2) The Commission while determining the floor price and forbearance price, shall be guided inter alia by the following principles:

(a) Variation in cost of generation of different renewable energy technologies falling under solar and non-solar category, across States in the country:

(b) Variation in the Pooled Cost of Purchase across States in the country;

(c) Expected electricity generation from renewable energy sources including:-

(i) expected renewable energy capacity under preferential tariff

(ii) expected renewable energy capacity under mechanism of certificates;

(d) Renewable purchase obligation targets set by various State Commissions.

18. Regulation 10 provides for **Validity and extinction of Certificates**. For registration and issuance of certificate, the Commission is eligible to charge fees from eligible entities. Therefore, it is purely a trade of Renewable Energy Certificates to promote the generation of renewable energy. The generator or eligible entities either may sale renewable energy through the grid under Open Access System or get a certificates from the Central Agency for sale to an obligated entity which is under an obligation to fulfill the purchase of renewable



energy under sub-section (1)(e) of Section 86 of the Electricity Act. Therefore, the learned Appellate Tribunal has wrongly come to the conclusion that it is a tangible good like copyright, patent, license.

19. Shri Raunak Choukse, learned counsel for the appellant, has rightly submitted that the tangible goods can be sold several times, but the RECs are saleable for one time to the eligible entities at the price fixed by the Agency or by way of mutual agreement.

20. In view of the above, the impugned orders dated 28.01.2020 & 25.06.2020 are hereby set aside. The questions of law are hereby answered in favour of the appellant.

21. With the aforesaid, both the Value Added Tax Appeals stand allowed.

Let a copy of this order be kept in the connected appeal also.

(VIVEK RUSIA)
J U D G E

(BINOD KUMAR DWIVEDI)
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