

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
UNIT-VIII, BHUBANESWAR - 751 012  
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**Case No.36/2013**

**Present : Shri S. P. Nanda, Chairperson  
Shri B. K. Misra, Member  
Shri S. P. Swain, Member**

**M/s GRIDCO Ltd.**

**.....Petitioner**

**Vrs.**

**M/s. Abacus Holdings Pvt.Ltd. &Others**

**.....Respondents**

**In the matter of: An application seeking direction of the Commission to the Solar PV Developers under RPSSGP Scheme who have commissioned their Rooftop projects in the State with the benefit of Accelerated Depreciation presently not being availed in conformity with order dated 09.07.2010 in Case No.105 of 2010.**

**For the petitioner: Shri U. N. Mishra, Sr. GM (PP), GRIDCO,  
Shri L. R. Dash, DGM, GRIDCO.**

**For the respondent: Shri RajivYadav, Advocate appeared on behalf of the Solar PV Developers,  
Ms. Sujata Dash, Verifier, OREDA**

**ORDER**

**Date of hearing: 10.12.2013**

**Date of order:06.02.2014**

1. In the present petition the Petitioner GRIDCO seeks a direction from this Commission to Solar Developers who have come under RPSSGP scheme of Govt. of India to avail accelerated depreciation so that their tariff of procurement of power from those developers will be reduced from Rs.18.52 per unit to Rs.15.39 per unit. In addition to that GRIDCO also seeks inclusion of a provision for penalty for shortfall in generation of solar power by the Developers. In this regard GRIDCO brings to our notice the direction issued by this Commission in multiple Case nos. dtd. 09.07.2010 wherein the Commission in Para 31 had directed as follows:

*“31. Subsidy or incentive by the Central/State Government: The Commission shall take into consideration any incentive or subsidy offered by the Central or State Government, including accelerated depreciation benefit if availed by the project*

*developers. Any developer availing accelerated depreciation, the same shall be internalized in the tariff and accordingly the tariff per kWh shall be reduced to the extent of Rs.3.13 per kWh. This means the effective tariff for developers availing accelerated depreciation shall be Rs.18.52 minus Rs.3.13 which equals to Rs.15.39 per kWh on a levellised basis.”*

2. Further, GRIDCO brings to our notice another Order of the Commission in Case No. 17/2012 dtd. 05.12.2012 wherein vide para 14 the Commission had directed as follows: *“the accelerated depreciation benefit has been taken into consideration while fixing generic tariff because of the fact that whatever benefit under the scheme is available to the developer should also be passed on to the consumer in the form of tariff. The said provision in the income tax Act promotes Renewable energy in the form of lower tariff vis-à-vis tariff of conventional sources. XXXXXX”*
3. The Learned Advocate for the respondent submitted that the Order dtd. 09.07.2010 was accepted by all the parties including GRIDCO and the same was acted upon by all concerned. Therefore, this order has attained its finality and the same can't be reopened under the guise of present petition. The relief prayed for by the Petitioner would result in altering the nature of the order dtd. 09.07.2010 and can be undertaken through an appropriate appellate and /or review proceeding. The present petition is nothing but a prayer to review the order of the Commission which is time barred.
4. The Learned Advocate further pointed out that there is no requirement under the order dtd. 09.07.2010 to opt for accelerated depreciation by the solar developers. From the said order it is clear that the Commission had left the issue of availing accelerated depreciation the discretion and choice of individual developer. He brought to our notice that since the Company does not have any other existing profit to set off the additional depreciation they did not choose the option of claiming accelerated depreciation benefit while opting for tariff. This provision is enabling mechanism under the Income Tax Act, 1961 for those assesses who can beneficially avail of it for reducing their book profits and consequent tax liability. In case the Respondent Company had existing profit then as a prudent business decision the they would have definitely availed accelerated depreciation benefit irrespective of being prodded by GRIDCO. JNNSM Scheme has given option to the developer in this regard.
5. Regarding shortfall in generation the learned Advocate for the Respondent stated that there is no “supply or pay” obligation caste upon the project developer in our Order dtd. 09.07. 2010. Similarly, PPAs signed by the parties don't impose any obligation

on the solar developer to generate a minimum quantum of solar power for being considered eligible for the tariff of Rs.18.52 / Kwh. There are various factors such as grid availability, climatic conditions etc. which are responsible for modulating CUF of any solar photovoltaic generator. Therefore, fixing a CUF of 18.50% is unrealistic in view of Odisha condition. Unilateral incorporation of a penalty after execution of contract is impermissible under law. GRIDCO can't include any penalty clause under the RPSSGP scheme for its commercial interest which should be governed under relevant Central Govt. notification.

6. We carefully went through the submission of both GRIDCO and the respondents in this case. Through the present petition, in fact, GRIDCO seeks to review of our order dtd. 09.07.2010 which is not only time barred but also does not meet any ground through which review can be undertaken. In our both the orders dtd. 09.07.2010 and 05.12.2012 we have liberally allowed the project developers to opt for accelerated depreciation basing on their business proposition and nowhere have made it mandatory. Only in case of availing that benefit this should be passed on to the consumers in the form of tariff to GRIDCO. Since the present solar developers have not availed it there is no question of factoring the same in the tariff. The present petition can't also be said to be arising out of any fresh cause of action since there is no *lis* between parties.
7. Therefore, considering the above we are not inclined to accept the petition of GRIDCO.
8. Accordingly, the case is disposed of as dismissed.

Sd/-  
**S. P. Swain**  
(Member)

Sd/-  
**B. K. Misra**  
(Member)

Sd/-  
**S. P. Nanda**  
Chairperson