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JUDGEMENT UPDATE

HSA Advocates Successfully Represents ReNew SPVs Before the Supreme Court in Landmark Ruling on GBI and Tariff Determination

HSA Advocates successfully represented 14 Special Purpose Vehicles (SPVs) of ReNew Power before the Supreme Court of India in Southern Power Distribution Company of Andhra Pradesh Limited v. Green Infra Wind Solutions Limited, a landmark judgement on the regulatory treatment of Generation Based Incentive ("GBI") in tariff determination under the Electricity Act, 2003. The dispute arose from orders passed by the Andhra Pradesh Electricity Regulatory Commission permitting deduction of GBI, an incentive granted by the Ministry of New and Renewable Energy ("MNRE") to promote wind energy generation, from the tariff payable to renewable energy generators, which was subsequently set aside by the Appellate Tribunal for Electricity. The principal issues before the Supreme Court included the scope and ambit of the State Electricity Regulatory Commission's power to determine tariff, and whether such power extended to factoring in and deducting Central Government incentives like GBI from the tariff payable to generators.

ReNew Power, one of India's leading renewable energy companies with a significant portfolio of wind and solar assets, was directly impacted by the dispute through its SPVs operating wind power projects across Andhra Pradesh. In its judgement dated March 25, 2026, the Supreme Court reaffirmed that tariff determination is the exclusive and plenary domain of Electricity Regulatory Commissions under the Electricity Act, 2003, and that such commissions are empowered to consider any incentive or subsidy availed by generating companies, including GBI, while determining tariff. However, the Court clarified that the statutory requirement to "take into consideration" such incentives does not mandate their automatic or mechanical deduction from tariff. The Court rejected the contention that considering GBI would amount to diversion or subversion of a Parliamentary grant, holding that the incentive continues to be disbursed directly to the generators and remains unaffected in its character as a Union Government grant. At the same time, the Court emphasized that regulatory powers must be exercised in a purposive and contextual manner, aligned with the underlying objectives of policy instruments such as the GBI scheme, which was specifically designed to incentivize renewable energy generation, attract investment in the wind sector, and advance India's energy transition goals.

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The Supreme Court further underscored that the electricity sector operates through a coordinated framework involving multiple stakeholders, including the Union Government, State Governments, regulatory commissions, and sectoral bodies, and that regulatory authorities must function as part of a "collaborative enterprise" rather than in isolation. In this context, while recognizing the wide and autonomous powers of regulatory commissions, the Court held that such powers cannot be exercised in a manner that defeats or undermines the intent of Central Government incentive schemes aimed at promoting renewable energy. Applying these principles, the Court concluded that the approach adopted by APERC in deducting GBI from tariff was inconsistent with the purpose of the scheme and the broader statutory objective of promoting renewable energy under Section 61(h) of the Electricity Act. Accordingly, the Supreme Court upheld the APTEL judgement and held that GBI is to be treated as a generator-focused incentive payable over and above the tariff, with any amounts deducted on account of GBI liable to be refunded to the generating companies.

This judgement constitutes a significant development in India's renewable energy regulatory framework, as it strikes a balance between the plenary tariff determination powers of regulatory commissions and the need to preserve the integrity of policy-driven incentives designed to promote clean energy. It reinforces investor confidence by ensuring that fiscal incentives intended to support renewable energy projects are not diluted through tariff adjustments, while also providing clarity on the interplay between regulatory jurisdiction and governmental policy measures. The decision is expected to have wide-ranging implications for the treatment of subsidies and incentives in tariff determination across jurisdictions, and strengthens the legal and regulatory foundation for India's transition towards sustainable and renewable sources of energy. The outcome reflects HSA's in-depth expertise in the infrastructure and energy sectors, and its market acknowledged track record of successfully advising and representing some of the biggest companies in complex and high-stakes regulatory disputes.

HSA represented ReNew's SPVs throughout the proceedings, including advising on legal strategy, drafting of pleadings, and appearing before the Supreme Court. The matter was led by Hemant Sahai (Founding Partner), along with Molshree Bhatnagar (Partner), Nipun Sharma (Associate Partner), and Rishabh Sehgal (Principal Associate).