

Gujarat Urja Vikas Nigam Limited v. Green Infra Corporate Wind Private Limited and Others etc.

Civil Appeal Nos. 14098-14101 of 2015

2025 INSC 922; [2025] 8 SCR 345 | 2025-08-04

Whether wind generators that signed PPAs at an accelerated-depreciation-based tariff, without committing to elect that depreciation, could seek separate tariff determination when they did not avail the benefit; and whether the earlier PPA could cut short the statutory election timing.

32(1) | 139(1)

Two-judge bench | Sanjay Kumar, J. | Satish Chandra Sharma, J.

Assessment years: See the source-scope notes; no year inferred.

Electricity tariff decision applying a historical tax-option scheme

The Court decided access to separate tariff determination, not a quantified income-tax allowance. Its 80% depreciation reference belongs to the historical scheme discussed. The option remains subject to the rule's due-date and finality conditions; current rates and later implementation are not certified.

01 FACTS OF THE CASE

GUVNL challenged APTEL's confirmation of GERC orders allowing four wind-power companies to seek project-specific tariffs. GERC's 30 January 2010 tariff order applied for a three-year control period beginning 11 August 2009. It fixed ₹3.56 per kWh for projects availing accelerated depreciation and expressly allowed separate petitions for projects not availing that benefit (paragraphs 1-5).

The four companies signed PPAs between June 2010 and March 2012 and commissioned their projects within that control period. The PPAs included the ₹3.56 tariff for the project life. The companies later sought project-wise determination, and it was undisputed that they had not availed accelerated depreciation. GUVNL said that signing the PPAs bound them regardless of their later tax election. It had not obtained written commitments that they would elect accelerated depreciation (paragraphs 15-16 and 24).

The Supreme Court initially deferred tariff proceedings, then on 3 February 2023 permitted hearings but prohibited final orders without its leave. At judgment, the hearings had concluded but final tariffs had not been pronounced. The issue before the Court was entitlement to seek determination, not a completed challenge to a newly fixed tariff or a tax assessment (paragraphs 2-3).

Source: [reported judgment / paragraphs 1-5 / PDF pages 3, 4, 5 / judgment](#); [reported judgment / paragraphs 15-16;24 / PDF pages 11, 12, 15, 16 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court set out section 32 and Rule 5's alternative depreciation scheme. The quoted rule permits an eligible power undertaking to choose the Appendix I method instead of Appendix IA, with election before the section 139(1) return due date for the relevant first-generation year; once exercised, the option is final for subsequent years. Its discussion of 80% depreciation describes the historical renewable-energy rate used in this dispute, not a current rate finding (paragraphs 6-7).

The statutory tariff scheme also mattered. The Appropriate Commission determines the tariff under the Electricity Act; a PPA records that determination but does not give GUVNL a unilateral power to impose a price contrary to the governing tariff order. The renewable-energy policies and GUVNL's status as a State instrumentality required it to act consistently with those public objectives, rather than rely solely on private commercial advantage (paragraphs 8 and 17-21).

EMCO was distinguished in its factual setting. It concerned a solar project, two successive tariff orders and a specific contractual delayed-commissioning condition. It was not a universal prohibition on seeking tariff determination after entering a PPA. Tarini Infrastructure had recognised the Commission's statutory power to review tariff in an appropriate public-interest setting and had itself explained the limited EMCO result (paragraphs 9-14).

In this case the PPA preceded the stage at which the generator had to exercise its depreciation election. GUVNL could not use that earlier agreement to cut short the tax-law choice and bind a non-electing generator to a tariff reserved for projects that took the benefit. The Court expressly distinguished a case in which the generator had given an advance commitment at the PPA stage that it would elect accelerated depreciation; it did not hold such a commitment irrelevant (paragraphs 22-23).

There were no such written commitments here. The governing tariff order expressly separated projects availing accelerated depreciation from those that did not, and the four companies' non-availment was undisputed. Merely signing the standard fixed-tariff clause could not estop them from seeking the separate determination already contemplated by GERC. The Court rejected GUVNL's contrary position (paragraphs 24-25).

Source: [reported judgment / paragraphs 6-7 / PDF pages 6, 7 / judgment](#); [reported judgment / paragraphs 8-14 / PDF pages 7, 8, 9, 10, 11 / judgment](#); [reported judgment / paragraphs 17-21 / PDF pages 12, 13, 14, 15 / judgment](#); [reported judgment / paragraphs 22-25 / PDF pages 15, 16, 17 / judgment](#)

03 JUDICIAL DECISION

The Court dismissed all four GUVNL appeals and left the GERC/APTEL rulings permitting project-specific tariff determination undisturbed. It vacated its 3 February 2023 order restricting the pronouncement of final tariff orders and dismissed pending applications. It did not itself prescribe the replacement tariffs or grant any income-tax deduction or refund. There is no separate costs direction (paragraph 25 and terminal disposition).

Source: [reported judgment / paragraphs 25 and terminal disposition / PDF pages 16, 17 / judgment](#); [official signed judgment / paragraphs Terminal disposition / PDF pages 24 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Respondent wind generators on entitlement to seek separate tariff determination

GUVNL appeals dismissed; GERC/APTEL rulings retained; 3 February 2023 restriction vacated; pending applications dismissed

Tariff-entitlement and depreciation-election interaction decided; actual replacement tariffs and tax assessments not determined

No blanket escape from PPAs and no permission to change an already final tax option. The result depends on the governing tariff order, undisputed non-availment and absence of an advance election commitment.

Source: [official signed judgment / paragraphs Terminal disposition / PDF pages 24 / judgment](#)

05 AKHB REVIEW POINT

Read the tariff order, PPA, commissioning chronology and tax-option evidence together. Identify whether the agreed tariff expressly assumed accelerated depreciation and whether the generator separately committed to make that election. The Court protects the statutory choice in these circumstances; it does not say that a PPA can always be reopened or that an advance commitment is immaterial.

Preserve the return, option evidence and commissioning date, and distinguish an unexercised choice from an irrevocable choice already made. Paragraph 22's shorthand about choosing when filing the return must be read with the quoted rule's before-due-date requirement in paragraphs 6-7; it does not extend the deadline for a late return. Do not use the historical 80% figure as a present rate or import the regulator's 6%/2% tariff-accounting depreciation into the tax calculation.

The Court removed a bar to tariff determination; subsequent orders must be checked before stating the tariff payable or any financial recovery. A separate tax claim still requires the applicable statutory/rule version and assessment facts. Later treatment and automatic Income-tax Act, 2025 carryover are not certified.

Source: [reported judgment / paragraphs 6-7;22-25 / PDF pages 6, 7, 15, 16, 17 / judgment](#)

PROVISION-SPECIFIC SCOPE

1.

Act: Income-tax Act, 1961

Section: 32(1)(i);32(1)(ii)

Role: depreciation-option framework applied to tariff dispute

Basis: Paragraphs 6-7 and 22-24 use the statutory/rules-based option and its timing to reject premature contractual compulsion; no assessment deduction is quantified.

2.

Act: Income-tax Act, 1961

Section: 139(1)

Role: due-date reference through depreciation rule

Basis: Rule 5(1A) proviso as quoted requires election before the relevant return due date.

3.

Act: Income-tax Rules, 1962

Section: Rule 5(1);Rule 5(1A), second and third provisos;Appendices I and IA

Role: option, finality and historical rate scheme

Basis: Election timing and finality examined;80% rate is historical to the scheme discussed, not certified as a current rate.

4.

Act: Electricity Act, 2003

Section: 3;61;62;64;86

Role: operative tariff jurisdiction and policy duties

Basis: Commission's statutory determination, renewable-power promotion and State-instrumentality obligations underpin the actual remedy.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Sanjay Kumar, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(official signed judgment\)](#)

Identified source rendition: 24 PDF pages; SHA-256

535e398ce5668e2ca58dfb98391c3876c48ace7b9d97f8e5cec35c77ea896895. Original bytes preserved.

One reportable judgment, paragraphs 1-25 and terminal disposition on 24 physical pages; signatures/date on page 24.

Official identity, source-cited tax-option text, paragraphs 22-23 and final disposition checked against fully read reported judicial text. No independent full rereading of every official page is claimed.

[Open cited source rendition](#)

The signed original and reported cover both give 4 August 2025. The conflicting catalogue date is not used as the decision date.

Paragraph 22 refers to election when filing the return; paragraphs 6-7 quote and explain election before the relevant statutory due date, with subsequent finality. No extension for a late return is inferred.

The 80% tax rate and 6%/2% regulatory depreciation figures concern different historical purposes. Neither is certified as the present tax rate.

EMCO is distinguished and Tarini applied in the stated tariff/PPA setting; no unqualified overruling or general licence to escape a PPA is asserted.

The order vacates the prior restriction but does not itself fix new tariffs, quantify tax deductions or state that payment subsequently occurred.

Neutral citation, title and date checked on official cover and signature page; reported citation on SCR cover. The official signed 4 August date controls over conflicting catalogue metadata.

No individual assessment appeal or complete AY schedule for the four generators is decided. AY 1998-99 and AY 2006-07 appear in the historical rule/rate discussion and are not assigned as the respondents' assessment years.

STATUTORY SCOPE

Historical depreciation/tariff framework quoted and applied in the 2025 judgment; no complete later rules/rates audit.

No current 80% rate, actual final tariff or 2025 Act mapping certification.

LATER TREATMENT

Source checked 2026-10-04. Subsequent tariff determinations, compliance, later orders and statutory/rule amendments are not comprehensively verified. This is not a current depreciation-rate certificate.

IDENTIFIED SOURCE LINKS

[official signed judgment - PDF pages: 24](#)

SHA-256: 535e398ce5668e2ca58dfb98391c3876c48ace7b9d97f8e5cec35c77ea896895

[reported judgment - PDF pages: 17](#)

SHA-256: 58a423e82f2b011ef6e35877c48d837ed47136057a9a85974bcfd7b3ce87f9ae

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