

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 28/MP/2018**

**Coram:  
Shri P.K. Pujari, Chairperson  
Shri A.K. Singhal, Member  
Dr. M.K. Iyer, Member**

**Date of Order: .19<sup>th</sup> of September, 2018**

**In the matter of**

Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with the statutory framework and Article 12 of the Transmission Service Agreement dated 10.8.2009 executed between East North Inter-connection Company Limited and its Long Term Transmission Customers for claiming compensation due to Change in Law.

**And  
In the matter of**

East North Interconnection Company Limited,  
F-1, Mira Corporate Suits  
1& 2, Mathura Road, Ishwar Nagar,  
New Delhi – 110065

**.....Petitioner**

1. The Managing Director,  
Jodhpur Vidyut Vitran Nigam Ltd.,  
New Power House, Industrial Area, Jodhpur – 342 003

2. The Managing Director,  
Jaipur Vidyut Vitran Nigam Ltd.,  
Vidyut Bhawan, Janpath, Jaipur – 302 005

3. The Managing Director,  
Ajmer Vidyut Vitran Nigam Ltd., Old Power House,  
Hathi Bhatta, Jaipur Road, Ajmer

4. The Chief Executive Officer,  
BSES Yamuna Power Ltd.,  
Shakti Kiran Building, Karkardooma,  
New Delhi – 110 092

5. The Chief Executive Officer,

BSES Rajdhani Power Ltd.,  
BSES Bhawan, Nehru Place,  
New Delhi – 110 019

6. CEO and Chief Executive Officer,  
North Delhi Power Ltd., (Now known as Tata Power Delhi Distribution Limited)  
Sub Station Building, Hudson Lines,  
Kingsway Camp, New Delhi – 110 0097.

7. The Director,  
New Delhi Municipal Corporation,  
Palika Kendra Building, Opp. Jantar Mantar Building,  
Parliament Street, New Delhi – 110 001

8. The Managing Director,  
Uttarakhand Power Corporation Ltd.,  
Urja Bhawan, Kanwali Road,  
Dehradun, 248 001

9. The Managing Director,  
Paschimanchal Vidyut Vitran Nigam Ltd.,  
Victoria Park, Meerut – 250 001

10. The Managing Director,  
Poorvanchal Vidyut Vitran Nigam Ltd.,  
Hydel Colony, Bhikharipur,  
Post: DLW, Varanasi – 221 004

11. The Managing Director,  
Dakshinanchal Vidyut Vitran Nigam Ltd.,  
220 kV Vidyut Sub-Station, Mathura Agra by pass road,  
Sikandra, Agra – 282 007

12. The Managing Director,  
Madhyanchal Vidyut Vitran Nigam Ltd.,  
4-A, Gokhle Marg, Lucknow-226 001

13. The Managing Director,  
Uttar Haryana Bijli Vitran Nigam Ltd.,  
Vidyut Sadan, Plot No. 16-C,  
Sector-6, Panchkula- 134 109

14. The Managing Director,  
Dakshin Haryana Bijli Nigam Ltd.,  
Vidyut Sadan, Vidyut Nagar,  
Hissar – 125 005

15. The Chairman,  
Punjab State Power Corporation Limited  
(Erstwhile Punjab State Electricity Board),  
The Mall, Patiala – 147 001

16. The Commissioner,  
Power Development Department,  
J & K Power Development Department,  
Mini Secretariat, Govt. of Jammu & Kashmir  
Jammu – 180 001

17. Chairman,  
Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Shimla– 171 004

18. Chief Electric Distribution Engineer,  
North Central Railway, Subedarganj,  
Allahabad – 211 033

19. Chief Engineer, UT Chandigarh,  
Chandigarh Administration, Sector-9, Chandigarh

.....Respondents

**Parties Present:**

**For Petitioner:**

Shri Sitesh Mukherjee, Advocate,  
Shri Deep Rao Palepu, Advocate  
Shri Divyanshu Bhatt, Advocate  
Shri TAN Reddey  
Ms. Anisha Chopra

**For Respondents:**

Ms. Swapna Seshadri, Advocate, PSPCL  
Shri R.B. Sharma, Advocate, BRPL & BYPL  
Shri Mohit Mudgal, Advocate, BRPL & BYPL  
Shri S.K. Agarwal, Advocate, Rajasthan Discoms

## **ORDER**

The Petitioner, East North Interconnection Company Limited, has filed the present Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with the statutory framework for tariff-based competitive bidding for transmission service and Article 12 of the Transmission Service Agreement dated 10.8.2009 for seeking compensation due to Change in Law events with the following prayers:

“(a) Admit and allow the present petition;

(b) Declare that change in excise duty and service tax (Central) subsequent to the bid deadline by Notification No. DOF No. 334/1/2010-TRU, DOF No. 334/3/2012-TRU and DOF. No. 334/1/2012-TRU dated 16.3.2012 constitute a Change in Law in accordance with Article 12 of the TSA; and

(c) Grant an appropriate increase in transmission tariff to the Petitioner so as to offset the adverse impact of the Change in Law events.”

### **Background of the case:**

2. The Petitioner, East North Interconnection Company Limited (ENCIL) a fully owned subsidiary of Sterlite Technology Limited, is a an inter-State transmission licensee selected through the international tariff based competitive bidding under Section 63 of the Act to establish the following transmission systems on Build, Own, Operate and Maintain basis and to provide transmission service to the Long Term Transmission Customers (LTTCs) of the transmission systems:

(a) Bongaigaon-Siliguri 400 kV Quad D/C transmission line (BS Line)

(b) Purnea-Biharsharif 400 kV Quad D/C transmission line (PB Line)

3. In the present Petition, the Petitioner has claimed compensation for Change in Law affecting the transmission systems during the construction period on account of (a) increase in the rate of Excise Duty and (b) increase in Service Tax. The Petitioner has claimed the compensation as under:

<b>Particulars</b>	<b>At the time of bidding (15.9.2009)</b>	<b>1.4.2012</b>	<b>Additional payment/costs (Rs. in crore)</b>
Excise Duty	8%	12%	12.21
VAT on Excise Duty	-	-	0.46
Service Tax	10%	12%	0.90
<b>Total</b>			<b>13.57</b>

4. The Petition was admitted on 19.4.2018 and notices were issued to the LTTCs who are respondents in the petition. Replies to the Petition have been filed by Punjab State Power Corporation Limited (PSPCL), Uttar Pradesh Power Corporation Limited (UPPCL) and BSES Rajdhani Power Limited (BRPL). The replies are briefly discussed as under:

(a) UPPCL in its reply dated 14.6.2018 has submitted that the Petitioner has requested to determine tariff for additional costs incurred due to change in law events. Since, there are no guidelines in this regard, the Commission may exercise its regulatory function under Section 79 of the Act subject to prudence check of the Petitioner's claim In the light of the judgment of the Hon`ble Supreme Court in Energy Watchdog Vs. Central Electricity Regulatory Commission. UPPCL has submitted that for evolving a mechanism for grant of an appropriate adjustment/compensation to offset financial/commercial impact of change in law during the construction period, the Commission should approve the TSA dated

10.8.2009 executed between the Petitioner and the Respondents and subsequently, exercise its regulatory powers under Section 79 of the Act.

(b) PSPCL vide its reply dated 12.6.2018 has submitted that in terms of last bullet of Article 12.1, every change in tax or introduction of any tax is not covered under Change in Law, but only such taxes that are imposed for transmission services after the declaration of commercial operation of the project and not during the construction period. Therefore, the taxes and duties which are not applicable in “transmission services” cannot be allowed as a pass through under the Change in Law clause. The Petitioner cannot make a claim *de-hors* of the agreement. Further, both the taxes i.e. Service Tax and Excise Duty which have been increased vide notification dated 1.4.2012 have now been subsumed under the GST. Therefore, the impact of change in the rate of these taxes cannot be seen as Change in Law under the TSA and consequently no relief for change in taxes can be claimed for the same. Moreover, the Petitioner has not identified the taxable services in respect of which the excise duty and service tax is payable.

(c) BRPL in its reply dated 28.6.2018 has submitted that under Article 16.2.1 of the TSA, a notice is required to be given to other party which shall furnish its counter claim regarding the disputes within 30 days from the issue of notice. However, if the other party does not furnish its counter claims, then both the parties shall meet to settle such dispute amicably and if still the parties fail to resolve the dispute amicably, the dispute shall be referred to Appropriate Commission. Therefore, the Petitioner cannot approach the Commission without

following the procedure prescribed by the TSA to resolve the dispute. The notices dated 31.7.2012 and 23.12.2013 to LTTCs and lead LTTC respectively, could not be taken to its logical conclusion in accordance with the “Governing Law and Dispute Resolution” covered under Article 16 within the time-frame prescribed in the TSA. The notices are vague and the Petitioner has no inclination to claim any relief under the Change in Law events under Article 12 of the TSA. Further, the copy of the Auditor’s certificate dated 27.11.2017 clearly shows that the Petitioner has no idea of loss and it shows that the cost incurred is supported by invoices which are not enclosed with the petition.

5. The Petitioner, vide its rejoinder dated 30.5.2018, to the reply of PSPCL, has submitted that the Appellate Tribunal for Electricity and the Commission vide their various judgments and orders have held that since the changes in Service Tax and Excise Duty are pursuant to Acts of the Parliament, they constitute a Change in Law event and the Petitioner ought to be granted relief for the additional unanticipated expenditure incurred by the Petitioner on account of such Change in Law events. As regards subsuming of the Excise Duty and Service Tax under GST Laws, the Petitioner has clarified that the additional expenditure on account of change in rates of Excise Duty and Service Tax from 16.3.2012 has taken place prior to the coming into effect of the GST Laws on 1.7.2017 and therefore, the Petitioner’s claim is not affected by GST laws.

**Analysis and Decision:**

6. After going through the pleadings on record and during the hearing, the following issues arise for our consideration:

- (a) Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission?
- (b) Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?
- (c) Relief to be granted to the Petitioner?

The above issues have been dealt with in the succeeding paragraphs.

**Issue No. (a) : Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission?**

7. The Petitioner has claimed relief under Article 12 (Change in Law) of the TSA.

Article 12.3.1 of the TSA provides as under:

**12.3 Notification of Change in Law Event**

12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Lead Long Term Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.

12.3.2 The TSP shall also be obliged to serve a notice to Lead Long Term Transmission Customer even when it is beneficially affected by a Change in Law.

12.3.3 Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the TSP.”

8. Under Article 12.3 of the TSA, if the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law, it shall give notice to the Lead Long Transmission Customers of any event of Change in Law as soon as reasonably practicable after becoming aware of the same. It further provides that any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide amongst other things, precise details of the Change in Law and its effect on the TSP. Such notice shall be a pre-condition to the affected party's entitlement to claim relief under the TSA.



9. BRPL has submitted that the Petitioner has failed to comply with the requirements of Article 16.2 of the TSA to resolve the dispute through amicable settlement which is a must before approaching the Commission for dispute resolution. BRPL has further submitted that none of the notices dated 31.7.2012 and dated 23.12.2013 served to the Lead LTTC i.e. Punjab State Power Corporation Limited was taken to their logical conclusions.

10. The Petitioner has submitted that on 31.7.2012 and 23.12.2013, it has sent notices to the LTTCs including Lead LTTC. According to the Petitioner, the present petition was filed on 18.1.2018 and it had sufficient opportunity to put forth its objections to its claims. If any inadequacies were noticed by BRPL, it should have brought its concerns to the notice of the Petitioner. However, no response has been received from BRPL for last five years. In the absence of any objection, BRPL is not entitled to raise its objection at this stage when there is a clear failure on its own part to communicate its objections, if any, or act in order to resolve such disputes.

11. We have considered the submissions of the Petitioner and the Respondents. The Petitioner gave the following notices to the LTTCs including lead LTTC:

- (a) Notice dated 31.7.2012 to the LTTCs and to the CEA stating that there has been an increase in the service tax rate and excise duty post bid deadline which is change in law in terms of Article 12 of the TSA and its financial impact due to change in taxes would be intimated accordingly.

(b) Notice dated 23.12.2013 to the Lead LTTC i.e. PSPCL in respect of notification of Change in Law explaining that due to the increase in taxes and duties, the project has become commercially unviable as it is very difficult for the Petitioner to implement the Project as per the tariff adopted by the Commission unless the situation is redressed in view of the principles of restitution as recognized by TSA.

From the above narration of facts, it is evident that the Petitioner has informed the LTTCs including lead LTTC of the events that occurred after cut-off date which according to the Petitioner, were the Change in Law events during the construction period. However, no response was received by the Petitioner from the LTTCs in this regard. Further, the Petitioner has also intimated the CEA and LTTCs through monthly progress reports from time to time. Thereafter, the Petitioner has approached the Commission by filing the present petition. In our view, the Petitioner has complied with the requirements of notices under Article 12.3 of the TSA before approaching the Commission.

**Issue No. (b) : Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?**

12. The Petitioner has submitted that changes in Excise Duty and Service tax fall within the definition of Change in Law events as they are covered under first bullet under Article 12.2.1 of the TSA, namely, “the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal in India, of any law, including rules and regulations framed pursuant to such Law”. The Petitioner vide its affidavit dated 2.7.2018 has submitted that the definitions of ‘Project’ and ‘Transmission Service’ in Article 1 of the TSA makes it abundantly clear that the transmission elements being built by the Petitioner

is for providing transmission service to the LTTCs and therefore, even under last bullet of the Article 12.1.1, the compensation on account of imposition of new tax or change in rate of tax which go into the cost of providing transmission service would be admissible as change in law.

13. PSPCL has submitted that every new imposition of tax or change in tax cannot be recognized as Change in Law. Last bullet of Article 12.1.1 provides for “any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement” and therefore, only such taxes that are imposed for transmission services is permissible. PSPCL has contended that any other interpretation to include any imposition of taxes and duties apart from that related to transmission services would render the last bullet meaningless, which is against the basic principles of interpretation. PSPCL has further submitted that both the excise duty and the service tax that have been increased vide notification dated 1.4.2012 have now been subsumed under the GST and therefore, the Petitioner is in fact required to give the details of tax structure post implementation of GST to claim the relief.

14. We have considered the submissions of the Petitioner and the Respondents. The Petitioner has claimed compensation under Change in Law provisions of the TSA. Article 12.1.1 of the TSA reads as under:

**“12.1 Change in law**

12.1.1 Change in Law means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP:

- The enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- A change in the interpretation or application of any Law by Indian Governmental Instrumentality having the legal power to interpret or apply such Law, on any Competent Court of Law;
- The imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier:
- A change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents Clearances and Permits;
- Any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP:
- any change in the Acquisition Price; or
- any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.

Law has been defined in the TSA as under:

“Law or Laws in relation to this Agreement shall mean all laws including electricity laws in force in India and any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any of them by an Indian Government Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Appropriate Commission.”

15. Law means all laws including electricity laws in force in India. Therefore, laws enacted by the Parliament or State Legislature shall be covered under the definition of law. Change in Law has been defined in Article 12.1.1 as “the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP”. Thus, any of the occurrences specified in the bullets under Article 12.1.1 which have occurred after the date which is seven days prior to the bid deadline and which result into

any additional recurring or non-recurring expenditure to the TSP or income to the TSP shall be covered under Change in Law.

16. The Respondents have submitted that in view of specific provision in the last bullet regarding changes in taxes and duties, the provisions of first bullet will not be applicable. Further, since the last bullet pertains to taxes made applicable for providing transmission service, the taxes paid by the Petitioner during construction period will not be applicable. This issue was considered by the Appellate Tribunal in its judgment dated 14.8.2018 in Appeal No. 119 of 2016 (M/s. Adani Power Rajasthan Ltd. Vs. Rajasthan Rajya Vidyut Vitran Nigam Limited) where a similar issue arose for interpretation in the context of PPA for generation and sale of electricity by a generating company to distribution companies.

The relevant portion of the said judgment is extracted as under:

“11. (c) Before discussing the issues there is a need to address a common issue raised by the Discoms related to allowance of tax under Change in Law in terms of the PPA. According to the Discoms that as per the 5th bullet of the Article 10.1.1 of the PPA change in tax or introduction of any new tax is only applicable to supply of power which also means sale of power if definition of supply is taken in terms of the Act. The Discoms have contended that if there is specific provision dealing with the tax under Change in Law then other provisions of Change in Law Article are not allowed to deal with the tax and as such no other tax implications are allowed to be covered under Change in Law under the PPA. The Discoms have also relied on some judgements of Hon'ble Supreme Court on this issue. We have gone through the said judgements and we observe that according to the judgements relied by the Discoms, the taxes nce dealt in a particular clause of a contract then there is no scope for considering taxes under other clauses of a contract.

(d) APRL has submitted that the generator undertakes many activities to ensure supply of power to the Discoms. APRL has relied on the judgement of Hon'ble Supreme Court in case of State of A.P. v. NTPC (2002) 5 SCC 203 wherein it has been held that the production (generation), transmission, delivery and consumption are simultaneous, almost instantaneous. According to the said judgement, the applicable taxes on inputs for generation of power can be construed to be taxes on supply of power. APRL has further contended that if the contention of the Discoms is accepted then the Change in Law provision would be applicable during the Operating Period and the applicability of the said provision will become redundant during Construction Period. There is some strength in the contention of APRL as there will be no applicability of Change in Law provisions if there

are changes in tax/duties/levies etc. rates or imposition of new tax/duties/levies etc. during Construction Period and on input costs related to power generation.

(e) APRL has further contended that the reliance of the Discoms on the maxim 'expressumfacitcessaretactium' meaning when express inclusions are specified, anything which is not mentioned explicitly is excluded is misplaced as the Hon'ble Supreme Court in case of Assistant Collector of Central Excise Calcutta Division v. National Tobacco Company of India Ltd. (1972) 2 SCC 560 has held that the rule of prohibition by necessary implication could be applied only where a specified procedure is laid down for performance of duty or where there is an express prohibition.

(f) The Discoms have also reproduced the definition of Change in Law under different PPAs under Section 63 of the Act. We have gone through the said provisions and we find that the other provisions of the PPA are similar to that in the other PPAs under Section 63 of the Act except the fifth bullet which is additional specifically covering tax on supply of power. The judgements of the Hon'ble Supreme Court relied upon by the Discoms were under different context and could not be equated to the scheme of power procurement by Discoms under Section 63 of the Act which is based on guidelines issued by Gol under different scenarios wherein the treatment of taxes depends upon the specific conditions of the RFP and tariff quotes by the bidders.

(g) In view of our discussions as above and after duly considering the earlier judgements of this Tribunal, we are of the considered opinion that any change in tax/levies/ duties etc. or application of new tax/levies/ duties etc. on supply of power covers the taxes on inputs required for such generation and supply of power to the Discoms."

17. Therefore, as per the above judgment, "any change in tax/levies/ duties etc. or application of new tax/levies/ duties etc. on supply of power covers the taxes on inputs required for such generation and supply of power to the Discoms". Similarly, any change in taxes, duties or cess or imposition of new taxes, duties or cess covers the inputs required for providing transmission services. The transmission Project has been built by the Petitioner for the purposes of providing the "Transmission Service" to the various LTTCs with whom the Petitioner has entered into the TSA. The Petitioner cannot provide the transmission service without establishing the transmission project that in turn requires paying statutory taxes and duties on the material, equipment and services during the construction period. Therefore, all expenditures incurred for establishing the transmission project go towards

providing the transmission services to the LTTCs. If recurring or non-recurring expenditure is required to be incurred by the Petitioner on account of occurrences of the events covered under Article 12.1.1 of the TSA, then such expenditure will be admissible under change in law to the Petitioner as they are necessary input costs for providing transmission services. One of the events covered under change in law is 'any change in tax or introduction of tax made applicable for providing transmission service by the TSP as per the terms of this Agreement'. In our view, last bullet under Article 12.1.1 which provides for "the change in tax or introduction of any tax made applicable for providing transmission service by the TSP as per the terms of the Agreement" cannot be read in isolation and has to be read harmoniously with the provision that such occurrences should have the effect of "resulting into any recurring or non-recurring expenditure by the TSP or any income to the TSP". The Petitioner has incurred expenditure on Excise Duty and Service Tax during the construction period on account of increase in these rates by Government of India through Notification of Ministry of Finance. We are, therefore, of the view that said expenditure shall be admissible under Change in Law in terms of Article 12.1.1 of the TSA.

18. Next we proceed to consider the claims of the Petitioner for compensation on account of Excise Duty and Service Tax.

**(i) Increase in Excise Duty:**

18.1. The Petitioner has submitted that at the time of submission of bid, i.e. on 15.9.2009 and even seven days prior to the bid deadline i.e. on 8.9.2009, the applicable excise duty was 8%. Subsequently, the Ministry of Finance, Government of India vide its Notification dated 17.3.2012 increased the rate of excise duty from 8% to 12% on material, towers,

conductors, insulators and hardware, etc. The Petitioner has submitted that the Commission in its orders dated 1.2.2017, 8.5.2017, 3.4.2018 and 26.6.2018 in Petition Nos. 8/MP/2014, 310/MP/2015, 110/MP/2016 and 216/MP/2016 respectively has considered the increase in excise duty as change in law events. The Petitioner has also relied upon the judgment dated 19.4.2017 of the APTEL passed in Appeal No. 161 of 2015 wherein Change in rates of Excise Duty and Service Tax has been allowed as Change in Law event.

18.2. Article 12.1.1 of the TSA provides that the events should have occurred after the date which is seven days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP. Bid Deadline has been defined as “the last date and time for submission of the Bid in response to the RFP”. In terms of TSA, bid submission deadline was 15.9.2009 and therefore, seven days prior to bid deadline is 8.9.2009. The applicable rate of excise duty on materials and equipment as on 8.9.2009 was 8% as per the Ministry of Finance Notification No. 29/2004-Central Excise dated 9.7.2004 notified as GSR 420 (E) dated 9.7.2004. In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944, Ministry of Finance issued Notification No.6/2010 increasing the excise duty from 8% to 10% and vide Notification No.18/2012 dated 16.3.2012, excise duty has been increased to 12%. The said changes from 8% to 10% and from 10% to 12% claimed by the Petitioner have occurred after the cut-off date and have an impact on the cost during construction period. Since, the changes in rates of excise duty have occurred after 8.9.2009, the same is covered under Change in Law. The relief for change in rates of



excise duty shall be admissible on the capital expenditure incurred as on the commercial operation of the project within the original scope of work. The Petitioner vide its affidavit dated 31.5.2018 has placed on record the detailed calculation of impact of change in rate of excise duty, as certified by the Petitioner`s Chartered Accountant dated 30.5.2018 and the receipts of the actual taxes paid. The Petitioner is directed to produce the invoices for excise duty paid duly supported by a statutory auditor to the LTTCs for claiming the compensation. PSPCL has submitted that since the excise duty has been subsumed under GST laws, the Petitioner is not entitled to claim any relief for Change in Law events. It is clarified that since the GST Acts came into force with effect from 1.7.2017 which subsumed the excise duty, relief for change in the rates of excise duty shall be admissible in respect of expenditure incurred till 30.6.2017 or the date of commercial operation of the transmission assets whichever is earlier.

**(ii) Increase in Service Tax**

18.3. The Petitioner has submitted that as on 8.9.2009 (seven days prior to bid deadline), the applicable rate of service tax was 10%. Subsequently, Department of Revenue, Ministry of Finance vide its letter No. D.O.F. No 334/1/2012-TRU dated 16.3.2012 increased the rate of service tax from 10% to 12% on civil and erection works, tower earthing, stub installation, foundation, stringing, detailed survey, detail and check survey and pipe type earthing installation, which have had an additional financial burden on the Petitioner. The Petitioner has submitted that since the increase in rate of service tax has an impact on the input cost for transmission service, the Petitioner is entitled for compensation for the additional cost incurred on account of increase in service tax.

18.4. As on 8.9.2009, the applicable rates of service tax were 10%. Thereafter, after the Union Budget presented by Government of India, Ministry of Finance, Department of Revenue vide its notification dated 17.3.2012 increased the rates of service tax from 10% to 12% with effect from 1.4.2012 based on the provisions of the Finance Act, 2012. Since the enhanced rate of service tax is through an Act of Parliament after the cut-off date, i.e 8.9.2009, the same is covered under Change in Law. The relief for change in rates of service tax shall be admissible on the capital expenditure incurred as on the commercial operation of the project within the original scope of work. The Petitioner vide its affidavit dated 31.5.2018 has placed on record the detailed calculation of impact of change in rate of service tax, as certified by the Petitioner's Chartered Accountant dated 30.5.2018 and the receipts of the actual taxes paid. The Petitioner is directed to produce the invoices for service tax paid duly supported by a statutory auditor to the LTTCs for claiming the compensation.

18.5. The Petitioner was directed to clarify whether there is any reduction in rate of other taxes which results into reduction in capital cost during construction period. The Petitioner, vide its affidavit dated 31.5.2018 has submitted that there has been no reduction in the rates of any other taxes during the construction period of the project and consequently, there has been no reduction in the capital cost of the project during the construction period.

**Issue No. (c): Relief to be granted to the Petitioner**

19. Relief under Change in Law during the Construction Period is provided in Article 12.2 of the TSA. The relevant provisions are extracted as under:

“12.2 Relief for Change in Law

12.2.1 During Construction Period:

During the Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:

– For every cumulative increase/decrease of each Rupees Four Crores (Rs. 4,00,00,000/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non-escalable Transmission Charges shall be an amount equal to 0.32 percent (0.32%) of the Non-Escalable Transmission Charges.

12.2.3 For any claims made under Article 12.2.1 and 12.2.2 above, the TSP shall provide to the Long Term Transmission Customers and the Appropriate Commission documentary proof of such increase/decrease in cost of the Project/revenue for establishing the impact of such Change in Law.

12.2.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2., and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to the rights of appeal provided under applicable Law.

20. As per the above provisions, compensation for every Rs.4 crore of expenditure incurred under Change in Law during the Construction Period shall be compensated by increase of 0.32% of Non-Escalable Transmission Charges. After determination of exact amount of compensation for increase in the rates of excise duty and service tax in terms of our order, the Petitioner shall be entitled for compensation at the rate 0.32% of the Non-Escalable Transmission Charges for every Rs.4 crore.

21. The Petition No. 28/MP/2018 is disposed of in terms of the above.

Sd/-  
**(Dr. M. K. Iyer)**  
Member

sd/-  
**(A.K. Singhal)**  
Member

sd/-  
**(P. K. Pujari)**  
(Chairperson)