

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 176/MP/2019**

Subject : Petition under Section 79 of the Electricity Act, 2003 and Article 12 read with Article 16.3.1 of the Power Purchase Agreement dated 7.2.2018 between the Petitioner and NTPC Limited seeking relief on account of Change in Law events viz. the imposition of Safeguard Duty by Notification No. 1/2018 Customs (SG) dated 30.7.2018 issued by the Department of Revenue, Ministry of Finance, Government of India.

Petitioner : Solairepro Urja Private Limited

Respondents : NTPC Limited & Ors.

Date of Hearing : 25.11.2019

Coram : Shri P. K. Pujari, Chairperson  
Dr. M. K. Iyer, Member  
Shri I.S. Jha, Member

Parties present : Shri Jafar Alam, Advocate, Solairepro Urja  
Shri Saahil Kaul, Advocate, Solairepro Urja  
Shri Venkatesh, Advocate, NTPC  
Shri Suhael Buttan, Advocate, NTPL

**Record of Proceedings**

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking declaration that the issuance of Notification No. 1 of 2018-Customs (SG) dated 30.7.2019 by Department of Revenue, Ministry of Finance is Change in Law event in terms of Article 12 of the Power Purchase Agreement.

2. Learned counsel for the Respondent, NTPC Limited submitted that the Commission in its order dated 2.5.2019 in Petition Nos. 342/MP/2018 and 343/MP/2018, has observed that Safeguard Duty is Change in Law event in terms of Article 12 of the PPA. However, unlike the said matters, the Petitioner in the present case has not placed on record its procurement contract/EPC contract to demonstrate whether it is obligated under the said Agreement to discharge the obligation of Safeguard Duty Notification and procurement schedule in the EPC contract to ascertain whether there has been any delay in procurement causing the import of solar modules to take place beyond 30.7.2018 i.e. the date upon which the Safeguard Duty Notification became effective. Learned counsel submitted that the Petitioner is not entitled to claim carrying cost as the PPA does not provide for reimbursement of such costs.



3. In rebuttal, learned counsel for the Petitioner submitted that in the instant case, the Petitioner itself is the importer of the solar modules. Learned counsel submitted that Petitioner has placed on record the bills of entry submitted to the customs authority for obtaining clearance which clearly mention the name of the Petitioner as the 'importer' of solar modules and accordingly, the Petitioner has paid the applicable Safeguard Duty. Learned counsel further submitted that the module supply schedule is also irrelevant in the instant case as Power Purchase Agreement executed with NTPC on 7.2.2016 with effective date as 10.1.2018 and Schedule Commissioning Date as 9.2.2019 i.e. after the issuance of Notification of Safeguard Duty dated 30.7.2018. With regard to carrying cost, learned counsel submitted that Article 12 of the PPA provides for relief for any additional expenditure incurred by the Petitioner on account of change in law event.

4. After hearing the learned counsels for the Petitioner and the Respondent, NTPC Limited, the Commission reserved order in the Petition.

**By order of the Commission**

**Sd/-  
(T.D. Pant)  
Deputy Chief (Legal)**

