

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.308/MP/2022

Subject : Petition under Section 79 of Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 8.6.2020 seeking declaration that change in Goods and Services Tax from 5% to 12% w.e.f. 1.10.2021 on account of amendment to Notification Nos. 1/2017- Central Tax (Rate), 1/2017- Integrated Tax (Rate) dated 28.6.2017 and Finance Department (Govt. of Rajasthan) Notification No. F.12(56)FD/Tax/2017-Pt- I-40 dated 29.6.2017 by way of Notification No. 8/2021- Central Tax (Rate), Notification No. 8/2021- Integrated Tax (Rate) dated 30.9.2021 and Finance Department (Govt. of Rajasthan) Notification No. F.12(1)FD/Tax/2021-60 dated 30.9.2021 as a Change in Law event and to direct Solar Energy Corporation of India Limited to compensate along with applicable carrying cost towards additional expenditure incurred on account of increase in rate of Goods and Services tax, paid by the Petitioner and to restitute Avaada Sustainable RJ Project Private Limited to the same economic position as it would have been prior to the Notifications dated 30.9.2021.

Date of Hearing : **22.9.2023**

Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Avaada Sustainable RJ Project Private Ltd. (ASRJPPPL)

Respondents : Solar Energy Corporation of India Limited (SECI) and 3 Ors.

Parties Present : Shri Abhishek Kumar, Advocate, ASRJPPPL
Shri Shubham Mudgil, Advocate, ASRJPPPL
Ms. Elwin Ruth, Advocate, ASRJPPPL
Shri Amit Ojha, ASRJPPPL
Ms. Srishti Khindaria, Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking a declaration that the change/increase in the rate of Goods and Services Tax ("GST") from 5% to 12% w.e.f. 1.10.2021 on account of amendments to Notification Nos. 1/2017- Central Tax (Rate) dated 28.6.2017, 01/2017- Integrated Tax (Rate) dated 28.6.2017 and Finance Department (Government of Rajasthan) Notification No.F.12(56)FD/Tax/2017-Pt-I-40 dated 29.6.2017 by way of Notification No. 8/2021- Central Tax (Rate), Notification No. 8/2021- Integrated Tax (Rate) dated 30.9.2021 and Finance Department (Government of Rajasthan) Notification No. F.12(1)FD/Tax/2021-60 dated 30.9.2021

('GST Amendment Notifications'), as a 'Change in Law' event under Article 12 of the Power Purchase Agreement dated 8.6.2020 executed between the Petitioner and SECI and consequently to direct the SECI to pay the compensation along with the applicable carrying cost towards additional expenditure on account of the change/increase in the rate of GST, paid by Petitioner pursuant to the GST Amendment Notifications. Learned counsel submitted that the above aspect has already been considered by the Commission in its various orders including the order dated 17.5.2023 in Petition No. 174/MP/2022 [Clean Solar Power (Jodhpur) Pvt. Ltd. v. SECI and Ors.].

2. The Learned counsel for the Respondent, SECI, submitted that SECI has already filed its reply in the matter. Learned counsel submitted that in terms of the Hon'ble Supreme Court's order dated 12.12.2022 in Civil Appeal No. 8880 of 2022 and order dated 23.1.2023 in Civil Appeal No. 505-510 of 2023, the enforceability of the Commission's order(s) to be passed in pursuance of the APTEL's decision dated 15.9.2021 in Parampujya Case has stayed with regard to the issues of the carrying cost, compensation on account of the impact of the Change in Law for the period post-Commercial Operation Date of the Projects, and towards O&M. The Learned counsel further submitted that, insofar as the methodology for payment of the claim amount is concerned, SECI shall be permitted to pay the reconciled claim on a monthly annuity basis unless the distribution licensees/buying entities specifically agree to make the lump-sum payment and duly make such payment in discharge of their obligations.

3. In response, learned counsel for the Petitioner submitted that SECI's agreement with the distribution licensees/ buying entities on the payment methodology cannot be pre-cursor to the payment methodology between the Petitioner and SECI, and the Petitioner has as such prayed for a direction to SECI to make the payment towards Change in Law compensation either as a one-time lump-sum or by way of annuity method.

4. Considering the request of the learned counsel for the parties, the Commission permitted the Respondent, SECI, to file its written submissions within two weeks, and the Petitioner may file its written submissions within two weeks thereafter.

5. Subject to the above, the Commission reserved that matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**