

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 22/RP/2017
in Petition No. 157/MP/2015**

Subject : Petition for review of the order dated 17.3.2017 in Petition No. 157/MP/2015 under Section 94 of the Electricity Act, 2003 read with Order 47 Rule 1 of the CPC.

Date of hearing : 27.9.2017

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Gujarat Urja Vikas Nigam Limited (GUVNL)

Respondents : Coastal Gujarat Power Limited and Others

Parties present : Shri M.G. Ramachandran, Advocate, GUVNL
Ms. Ranjitha Ramachandran, Advocate, GUVNL
Ms. Anushree Bardhan, Advocate, GUVNL
Shri S.K. Nair, GUVNL
Shri Amit Kapur, Advocate, CGPL
Shri Apoorva Mishra, Advocate, CGPL
Shri Tushar Nagar, Advocate, CGPL
Ms. Swapna Seshadri, Advocate, PSPCL
Ms. Neha Garg, Advocate, PSPCL

Record of Proceedings

Learned counsel for the Review Petitioner submitted that the present Review Petition has been filed for seeking review of the order dated 17.3.2017 in Petition No. 157/MP/2015 for rectification of errors with regard to allowing Service Tax as Change in Law and computation of quantum of Coal for considering the compensation for Clean Energy Cess. Learned counsel for the Review Petitioner further submitted as under:

(a) The Commission vide order dated 17.3.2017 has allowed the Service Tax as Change in Law, on the basis that there was no service tax on Works Contract Service prior to the Notification No.32/2007-Service Tax dated 22.5.2007 and Notification No.7/2008-Service Tax dated 1.3.2008. However, CGPL in its rejoinder dated 14.10.2015 to the reply of MSEDCL, had clarified that the service tax was payable on works contract at the rate of 12% on service portion as on the cut-off date. Therefore, it is required to be reviewed.

(b) The Commission while allowing the imposition of Clean Energy Cess, has held that the quantum of coal to be considered as per the parameters decided in the para 82(d) in Petition No. 159/MP/2012. Reference to Para 82(d) was erroneous and

the reference should be to all the bid parameters as considered in para 84 of the order.

2. Learned counsel for CGPL submitted that the present Review Petition is not maintainable as the Petitioner is seeking re-opening/ re-hearing of the issues which was already decided by the Commission vide its order dated 17.3.2017 and has failed to demonstrate that there is an error apparent on the face of the record. Learned counsel for CGPL further submitted as under:

(a) On the cut-off date, Service Tax was payable on Works Contract at the rate of 12%. However, on 22.5.2017, the Ministry of Finance vide its notification gave an option to persons liable to pay Service Tax on Works Contract, to pay Service Tax at the rate of 2% of gross amount of the Works Contract instead of paying at the rate of 12% on the service component which was vide notification dated 1.3.2008, again increased from 2% to 4%. If the option is not exercised, then the status quo would be maintained and there would be no Change in Law in terms of Article 13 of the PPA. Therefore, the increase in expenditure, if any, is not due to Change in Law but due to exercise of option by the person liable to pay Service Tax.

(b) The Hon'ble Supreme Court in *Haridas V. Usha Rani Banik & Others* has held that if an order is appealable and the aggrieved party has adequate and efficacious remedy then the Court should exercise the power of review with the greatest circumspection.

(c) The Commission vide order dated 30.6.2016 in Review Petition No. 11/RP/2016 in Petition No.283/GT/2014 has held that review can lie only for patent error and the Petitioner cannot be permitted to raise new grounds in justification of its prayer for review.

(d) On 2.5.2017, CGPL filed an appeal before the Hon'ble Appellate Tribunal for Electricity (APTEL) challenging the issue of computation of impact of Change in Law with respect to levies on coal which was admitted by APTEL on 3.7.2017 which is pending before the APTEL.

(e) There is no merit in the present Review Petition. In terms of Article 13 of the PPA, the relief of Change in Law is to reconstitute the affected party to the same economic position as if Change in Law events had not occurred.

3. After hearing the learned counsels for the Review Petitioner and CGPL, the Commission reserved the order in the Review Petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**