

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.175MP/2016

Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding and Article 13.2 (b) of the PPA dated 7.8.2007 executed between Sasan Power Ltd. and the procurers for compensation due to Change in Law impacting revenues and costs during the operating period

Date of Hearing : 11.1.2018

Coram : Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Sasan Power Limited.

Respondents : MP Power Management Co. Ltd. & Others

Parties present : Shri Vishrov Mukerjee, Advocate, SPL
Ms. Raveena Dhamija, Advocate, SPL
Shri Yashwavi Kant, Advocate, SPL
Shri G. Umapathy, Advocate, MPPMCL
Shri Aditya Singh, Advocate, MPPMCL
Shri Naveen Kohli, MPPMCL
Ms. Ranjitha Ramachandran, Advocate, Prayas, Rajasthan Discoms and HPPC.
Ms. Anushree Bardhan, Advocate, Prayas, Rajasthan Discoms and HPPC.
Shri Rajeev Srivastava, Advocate, UP Discoms
Ms. Gargi Srivastava, Advocate, UP Discoms
Ms. Garima Srivastava, Advocate, UP Discoms
Shri Pratyush, TPDDL
Vashudha Sen, TPDDL
Sreevita Ghosh, TPDDL

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that the present petition has been filed seeking compensation on account of the change in law events during the operating period. Learned counsel for the petitioner further submitted as under:

a) As on cut off date, there was no service tax on the services provided by the government. With effect from 1.4.2016, service tax is being levied on services being provided by Government and local authorities to business entities including the petitioner in terms of the Ministry of Finance Notification dated 18.2.2016. Therefore, the petitioner is liable to pay the service tax on various services rendered by the Government and local authorities such as Coal, Forest Department, Police, MPGATVSA, etc, and the same amounts to change in law.

b) The Commission vide order dated 19.12.2017 in Petition No. 101/MP/2017 and 229/MP/2017 (DB Power Limited vs PTC India Limited) has allowed additional cost towards fly ash transportation as a change in law event. In conformity with the said order, the petitioner has undertaken competitive bidding for transportation of fly ash. Therefore, imposition of service tax and additional obligation imposed on bearing transportation costs of fly ash be declared as change in law event.

2. Learned counsel for Prayas Energy, HPPC and Rajasthan Discoms submitted as under :

a) The list of services as submitted by the petitioner except Royalty is exempted from the payment of service tax. For certain services, the petitioner has not provided the detail regarding MPGATVSA, Mine Closure charges, Salary paid to the police, etc. Further, the support services provided by the Government were already under the ambit of Service Tax and therefore there cannot be any change in law for the imposition of service tax on the support services.

b) Royalty is not a fee for the service provided by the Government and therefore, is not subject to service tax. In the case of Mineral Area Development Authority v Steel Authority of India & Ors [(2011) 4 SCC], the Hon'ble Supreme Court has referred the matter to the Nine Judge Bench to consider whether Royalty determined under Mines and Minerals Act is in the nature of tax. Therefore, service tax is not payable on Royalty.

c) The Commission's order dated 19.12.2017 in Petition No. 101/MP/2017 and 229/MP/2017 (DB Power Case) is not applicable in the present case as the petitioner was required to submit an action plan for 100% ash utilization of fly ash under Environmental clearance given to it. Therefore, the petitioner was already under the obligation to ensure utilization of the fly ash and there is no additional impact of change in law.

3. Learned counsel for Punjab State Power Corporation Limited (PSPCL) adopted the submissions made by the learned counsel for HPPC, Rajasthan Discoms and Prayas and submitted that in the list of services provided by the petitioner, the petitioner has also included the item which are exempted from the payment of service tax. The petitioner is also availing CENVAT credit in certain services which have not been disclosed by it.

4. In his rebuttal, learned counsel for the petitioner submitted that prior to Ministry of Environment and Forest (MoEF) Notification dated 25.1.2016, there was no obligation upon the petitioner for the disposal of fly ash generated from the project and to bear the cost of transportation of fly ash. However, in terms of the said notification dated 25.1.2016, the petitioner is required to bear the costs for transporting fly ash to its users as applicable and the same amounts to change in law. It is beyond understanding as to how the procurers and the consumer representative share the same ground of objections.

5. After hearing the learned counsels for the parties, the Commission directed the parties to file their written submissions on or before 29.1.2018, with an advance copy to each other.

6. Subject to the above, the Commission reserved the order in the petition.

By order of the Commission

Sd/-

(T. Rout)

Chief (Legal)