

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 6/RP/2020 along with IA No.11/2020

Subject : Petition under Section 94(1)(f) of the Electricity Act read with Order 47 Rule 1 of Code of Civil Procedure. 1908 and Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeing review of the order dated 9.10.2018 passed by the Commission in Petition No. 33/MP/2018.

Petitioner : Acme Jaipur Solar Private Limited (AJSPL)

Respondents : Madhya Pradesh Power Management Company Limited (MPPMCL) and Anr.

Date of Hearing : 4.6.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Parties present : Shri Hemant Sahai, Advocate, AJSPL
Shri Shreshth, Advocate, AJSPL

Record of Proceedings

The matter was listed for hearing through video conferencing.

2. Learned counsel for the Review Petitioner submitted that the present Review Petition has been filed seeking review of the order dated 9.10.2018 in Petition No. 33/MP/2018 to the limited extent of GST rate leviable on 'Civil and General Works'. Learned counsel submitted as under:

(a) The Petitioner had filed Petition No. 33/MP/2018 seeking declaration that introduction of the GST Law is a Change in Law event in terms of the PPAs dated 17.4.2017 executed between the Petitioner and the Respondents and consequential compensation on account of additional capital/operation cost incurred by the Petitioner. The said Petition was allowed by the Commission vide its order dated 9.10.2018 (impugned order).

(b) In 'Table' given at para 348 of the impugned order, GST rate applicable on 'Civil and General Works' has been inadvertently recorded as 9% as opposed to 18% (combination of 9% Central GST and 9% State GST) under the Central Goods and Services Tax Act, 2017.

(c) Relying on the impugned order, the Respondent No. 1, MPPMCL has disallowed the amount of Rs. 7.75 crore from the total amount payable to the Petitioner by stating that the GST applicable on 'Construction Works Contract



Services' is 9%, despite the actual GST rate applicable thereon being 18% as per the GST Law.

(d) During the reconciliation process, the Review Petitioner tried to convince MPPMCL, that in terms of applicable GST Law, the correct rate is 18% and not 9%. However, despite several efforts, MPPMCL vide its letter dated 28.12.2019 informed the Petitioner that such application of GST rate at 9% on 'construction works contract services' is as per the Commission's order dated 9.10.2018 in Petition No. 33/MP/2018. Further, MPPMCL vide its letter dated 20.2.2020 advised the Petitioner to approach the Commission for clarification on interpretation of applicable rates of tax at para No. 348 of the impugned order.

(e) The Commission vide its order dated 28.1.2020 in Petition No. 67/MP/2019 has already clarified that the compensation on account of GST being Change in Law, shall be paid on exhibiting clear and one to one correlation between the project and supply of goods & services duly supported by relevant invoices and Auditor's Certificate and that the table indicated at para 348 of the order dated 9.10.2018 is only illustrative in nature.

3. Learned counsel for the Petitioner submitted that the Petitioner has filed IA No. 11/2020 for condonation of delay in filing of the present Review Petition. Learned counsel submitted that the cause of action for filing the Review Petition had first arisen on 6.5.2019 when MPPMCL objected to the correct GST rate of 18% on 'Construction Works and Services Contract'. The Review Petitioner, thereafter, on various instances and during various meeting tried to clarify the correct GST tax applicable thereon. However, on 28.12.2019, MPPMCL denied the Review Petitioner's claims towards GST @ 18% on 'Construction Works Service Contracts'. Accordingly, the Petitioner approached the Commission for Review of the impugned order.

4. After hearing the learned counsel for the Petitioner, the Commission admitted the Review Petition and directed to issue notice to the Respondents.

5. The Commission directed the Petitioner to serve copy of the Petition on the Respondents immediately, if not already served. The Respondents were directed to file their reply by 18.6.2020 with advance copy to the Review Petitioner who may file its rejoinder, if any, by 26.6.2020. The Commission directed that due date of filing of reply and/or rejoinder should be strictly complied with.

6. The Review Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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

