



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No.214/MP/2021

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 17th of December, 2021

IN THE MATTER OF:

A petition under section 79 of the Electricity Act 2003 before the Central Electricity Regulatory Commission for (i) approval of “Change in Law” and (ii) seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law event on account of rescission of Notification No. 1/2011 – Customs dated 06.01.2011 vide Notification No. 7/2021 – Customs dated 01.02.2021, which has resulted in increase in rate of basic customs duty on import of solar inverters, increase in quantum of social welfare surcharge and IGST in terms of Article 12 of the Power Purchase Agreement dated 10.08.2020 between M/s ReNew Solar Urja Private Limited and Solar Energy Corporation of India Limited.

AND IN THE MATTER OF:

M/s ReNew Solar Urja Private Limited,
138, Ansal Chambers II, Bhikaji Cama Place,
Delhi – 110066

...Petitioner

Versus

Solar Energy Corporation of India Limited,
1st Floor, A Wing, D-3, District Centre,
Saket, New Delhi – 110017, Delhi

...Respondent

Parties Present: Mr.Sujit Ghosh, Advocate, RSUPL
Ms. Mannat Waraich, Advocate, RSUPL
Ms.Pratiksha Chaturvedi, Advocate RSUPL
Ms.Tanya Sareen, Advocate, SECI
Ms Poorva Saigal, Advocate, SECI
Mr. Ravi Nair, Advocate, SECI
Ms. Neha Singh, SECI

आदेश/ ORDER

The Petitioner, M/s ReNew Solar Urja Private Limited is engaged in the business of development, building, owning, operating, and maintaining utility scale grid connected solar power projects, for generation of solar power. The Petitioner has filed the petition for approval of ‘Change in Law’ and is seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law event on account of rescission of Notification No. 1/2011 – Customs dated 06.01.2011 vide Notification No. 7/2021 – Customs dated 01.02.2021, which has resulted in increase in the rate of basic customs duty on import of solar inverters, increase in the quantum of social welfare surcharge and IGST in terms of Article 12 of the Power Purchase Agreement dated 10.08.2020. The Petitioner has made the following prayers:

- (a) *Declare the imposition of increased rate of basic customs duty and subsequent increase in quantum of social welfare surcharge and IGST on account of rescission of Notification No. 1/2011-Customs dated 06.01.2011 vide Notification No. 07/2021-Customs dated 01.02.2021 issued by Central Government as Change in Law in terms of the PPA which have led to an increase in the expenditure for the Project;*
- (b) *Evolve a suitable mechanism to compensate the Petitioner for the increase in expenditure incurred by the Petitioner on account of Change in Law;*
- (c) *Direct Respondent to compensate the Petitioner towards Customs duty and*

consequent increase in social welfare surcharge and IGST as one time lump sum amount or mechanism devised by this commission in prayer (b)

(d) Grant interest/carrying cost from the date of incurring of the cost by the Petitioner till the date of order by this Commission;

(e) If the event this Hon'ble Commission is not inclined to grant the relief prayed at (d) then in the alternate it is prayed, that this Hon'ble Commission grants interest/carrying cost from the date of the cost by the Petitioner till the date of order by this Commission restoring the Petitioner to the same economic position as before the occurrence of the Change in Law events;

(f) Allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition; and

(g) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.

2. The Petition was filed on 25.10.2021 and was listed on 18.11.2021 for admitting the same.
3. The case was called out for admission through virtual hearing on 18.11.2021.
4. During the course of hearing, the learned counsel for the Petitioner submitted that the present petition has been filed seeking approval of the Change in Law event that has resulted in increase in the rate of Basic Custom Duty on solar inverters being imported into India, on account of rescission of Notification No. 1/2011- Customs dated 06.01.2011 vide Notification No.7/2021-Customs dated 01.02.2021 issued by the Department of Revenue, Ministry of Finance, Government of India. The Petitioner has also prayed for evolving a suitable mechanism for grant of an appropriate adjustment/ compensation to offset financial/commercial impact of the aforesaid Change in Law event.
5. In response to the Commission's observation regarding the Ministry of Power, Government of India having notified *the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021* (hereinafter referred to as 'the Change in Law Rules') and the Petitioner,

therefore, being required to follow the process specified thereunder, the learned counsel submitted that the Petitioner has in fact filed the present petition prior to the notification of the Rules on Change in Law.

6. The Respondent SECI pointed out SCoD (scheduled date of commercial operation) of the project is in February 2022 and as such the petition is premature. Further, the impact can be determined only on achieving CoD (date of commercial operation).
7. We have considered the submissions made by the learned counsels for the Petitioner and the Respondent. Relevant portion of the Change in Law Rules notified by the Ministry of Power, Government of India, are extracted as under (emphasis is by us):

*“2(c) “change in law”, in relation to tariff, **unless otherwise defined in the agreement**, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —*

(i) -----

(ii) -----

(iii) -----

3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -

(a) where the agreement lays down any formula, in accordance with such formula; or

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be —

(a) in case of generation project, within a period of one-hundred eighty months; or

(b) in case of recurring impact, until the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”

8. As per the above-quoted provisions, on occurrence of a Change in Law, the affected party, in the present case the Petitioner, and other parties, in the present case the Respondent SECI, are to settle the Change in Law claims among themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.
9. We observe that plain reading of the definition of Change in Law as given in Rule 2(1)(c) of the Change in Law Rules, it becomes amply clear that the said definition of Change in Law shall come into play unless otherwise defined in the agreement and cannot, in any manner, be

construed to mean that the Change in Law Rules shall apply only to those agreements which do not have the Change in Law provisions. The phrase “*unless otherwise defined in the agreement*” has been used in the context of the definition of Change in Law and not in the context of applicability of the Change in Law Rules.

10. It is a settled law that as a general rule, no law operates retrospectively unless it has been provided differently in the law itself, or with exceptions as have been delineated by Hon`ble Supreme Court. Hon`ble Supreme Court in the case of T. Kaliamurthi and Anr. v. Five Gori Thaikal Wakf and Ors. [2008 (9) SCC 306], dealing with law of limitation has succinctly laid down the principle as under (emphasis by us):

*"22. It is well settled that no statute shall be construed to have a **retrospective** operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with **procedure**. This would mean that the **law** of limitation, being a **procedural law**, is **retrospective** in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the **law** of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right."*

11. It is also a settled principle of law that where a particular provision operates in a future, it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included. In this regard, it would be relevant extract the decision of the Hon`ble Supreme Court in the case of Trimbak Damodhar Raipurkar v. Assaram Hiranman Patil, [(162) Supp. (1) SCR 700]:

"9. In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included."

12. We observe that the Petitioner has not pointed out any specific provision in the Change in Law Rules which prevents it from recovery of safeguard duty under Change in Law.

13. It is evident that the Change in Law Rules has been framed to facilitate timely recovery of costs due to Change in Law events and provide a process and methodology to be followed. Accordingly, the Petitioner needs to first approach SECI/ procurers in terms of the Change in Law Rules for adjustment of tariff on account of such Change in Law.
14. We note that the compensation for Change in Law shall be computed in terms of Rule 3(5) of the Rules on Change in Law, which provides that where the agreement lays down any formula, the same shall be in accordance with such formula; or where the agreement does not lay down any formula, it would be in accordance with the formula given in the Schedule to the Rules on Change in Law.
15. In view of the above, the Petitioner may approach SECI for settlement of Change in Law claims in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.
16. Accordingly, Petition No. 214/MP/2021 is disposed of.

Sd/-
(पी. के. सिंह)
सदस्य

Sd/-
(अरुण गोयल)
सदस्य

Sd/-
(आई. एस. झा)
सदस्य

Sd/-
(पी. के. पुजारी)
अध्यक्ष