



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No.: 6/RP/2020 along with
I.A. No. 11 of 2020

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

आदेश दिनांक/ Date of Order: 24th of January, 2021

IN THE MATTER OF:

Petition filed under Section 94(1)(f) of the Electricity Act read with Order 47 Rule 1 of CPC and regulations 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the Order dated 09.10.2018 passed by the Commission in Petition No. 33/MP/2018.

AND IN THE MATTER OF:

Acme Jaipur Solar Power Private Limited,
Plot No. 152, Sector- 44,
Gurugram, Haryana- 122002

... Review Petitioner

VERSUS

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur, Madhya Pradesh-482001
2. Delhi Metro Rail Corporation (DMRC),
Metro Bhawan, Fire Brigade Lane,

New Delhi- 110001

3. Madhya Pradesh Poorv Kshetra Vidyut Vitran Company Limited,
Registered Office: Block No. 7, Shakti Bhavan,
Rampur, Jabalpur (M.P.) - 482 008
4. Madhya Pradesh Paschim Kshetra Vidyut Vitran Company Limited,
GPH Compound, Polo Ground,
Indore (M.P.) – 452003
5. Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited,
Nishtha Parisar, Bijli Nagar Colony,
Bhopal (M.P.) - 462023

... Respondents

Parties Present: Shri Hemant Sahai, Advocate, AJSPPPL
Shri Shreshth Sharma, Advocate, AJSPPPL
Ms. Anukriti Jain, Advocate, AJSPPPL
Shri G. Umamathy, Advocate, MPPMCL
Shri V. Bharadwaj, MPPMCL
Shri Tarun Johri, Advocate, DMRC
Shri S. V. Kute, DMRC
Shri Harsh Arya, DMRC

आदेश/ ORDER

M/s Acme Jaipur Solar Power Private Limited has filed the instant review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of CPC and Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the Order dated 09.10.2018 passed in Petition No. 33/MP/2018 (hereinafter referred to as “the Impugned Order”).

2. The Review Petitioner has made the following prayers:

In Petition No. 6/RP/2020

- (a) Allow the present Review Petition in terms of the grounds and submissions made hereinabove;
- (b) Modify and/ or correct the error on the face of record in the Order dated 09.10.2018 in Petition No. 33/MP/2018 to the extent pleaded by the Review Petitioner as per the

applicable GST Law and rectify the GST rate applicable on the “General and Civil works contract” from 9% to 18%.

(c) Pass such other Order/(s) as deem fit in the interest of justice and equity by this Commission.

In IA No. 11/IA/2020

(a) Condone the delay of 408 days which has occurred in filing of the Review Petition.

(b) Pass such further order(s) as deemed fit and proper.

Submissions of the Review Petitioner

3. The Review Petitioner has submitted that in the Impugned Order, the Commission held as under:

“375.

...b. Issue No. 2: The enactment of “GST laws” is covered as “Change in Law” under Article 12 of the PPA.

c. Issue No. 3 & 4: “GST Laws” are applicable on all cases except in case of the generating company where the “actual date of Commissioning” is prior to 01.07.2017 As regards its claim (subject to threshold limit in case of Petition No. 33/MP/2018) during construction period, the Petitioners have to exhibit clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services backed by auditor certificate. In respect of PV Modules post enactment of “GST Laws” 5% will be applicable on intra state procurement as well as import by EPC or SPV. The amount as determined by Petitioners shall be on “back to back” basis to be paid by DISCOMS to Petitioners under the respective “Power Sales Agreements”. The claim of the Petitioners on account of additional tax burden on “O&M” expenses (if any), is not maintainable.

d. Issue No. 5: The relief for “Change in Law” is allowed as a separate element on one time basis in a time bound manner. The Claim based on discussions in paragraph 338 & 348 of this Order shall be paid within sixty days of the date of this Order failing which it will attract late payment surcharge as provided under PPA.”

4. The Review Petitioner has submitted that pursuant to the Impugned Order, it submitted its GST claim amounting to Rs. 51,48,00,000/- (Rupees Fifty-One Crores Forty-Eight Lacs only) to Respondent No. 1 (Madhya Pradesh Power Management Company Limited/ MPPMCL) and Respondent 2 (Delhi Metro Rail Corporation/ DMRC) vide its letter dated 16.11.2018. As per provision of the PPAs dated 17.04.2017 with MPPMCL and DMRC separately, there is a provision for Guaranteed Energy Off-take obligation of 411 MU for every contracted year for MPPMCL and 115 MU for every contracted year for DMRC.

Accordingly, the Review Petitioner bifurcated this claim between MPPMCL and DMRC in the ratio of Guaranteed Energy Off-take and submitted a Supplementary Invoice amounting to Rs 40.15 Crores to MPPMCL vide letter dated 09.04.2019. However, MPPMCL on 28.12.2019 refused the claims of the Review Petitioner to the tune of Rs.7,74,95,926 (Rupees Seven Crores Seventy-Four Lakhs Ninety-Five Thousand Nine Hundred and Twenty Six) on account of incorrect interpretation of the Impugned Order stating that the Commission has held that GST applicable on 'construction works/ services contract' is 9%.

5. The Review Petitioner has submitted that Entry 9954 at S.No. 3 of GST Notification No. 11 dated 28.06.2017 issued by the Department of Revenue, Ministry of Finance, Government of India specifies that the GST rate applicable on the "Construction Services/ Works Contract" is 9% CGST and 9% SGST whereas, the Commission in a 'Table' given at paragraph 348 of the Impugned Order inadvertently recorded the GST rate applicable on "Civil and General Works" as 9%. Therefore, there is an error apparent on the face of the record in the Impugned Order and it is therefore imperative that the same may be rectified.
6. The Review Petitioner has submitted that the cause of action for filing the present Review Petition has crystallised on 28.12.2019 when MPPMCL refused the rightful/ lawful claims towards GST @18% (for "Construction Works/ Service Contracts" by incorrectly applying GST Rate @ 9% instead of 18% by relying on the GST Order).
7. The Review Petitioner has also filed I.A. No. 11 of 2020 through which it sought leave of the Commission to file present Review Petition with a delay of almost 408 days and has prayed to condone the delay in filing the review petition.

Submissions of the Respondent No.1 - MPPMCL

8. MPPMCL has submitted that the instant review petition is devoid of merits and deserves to be rejected at the outset due to following reasons:
 - a. The 'GST Order' was passed by the Commission on 09.10.2018 and according to law, the review petition should have been preferred within the stipulated time of 45 days. However, the review petition was filed in 2020 i.e. after delay of 408 days. The Review

Petitioner on being aware of the “error apparent” should have exercised due care and avoided the delay by filing a Review Petition before the expiry of the limitation period.

- b. The delay in filing the review petition cannot be condoned since the review petition is grossly time barred.
 - c. According to the Review Petitioner, if there was an error apparent on the face of the record, nothing prevented it from filing the review petition in time.
 - d. Further, there is no justification for condoning the delay.
 - e. Reliance is placed on the Supreme Court Order in the matter of *Brijesh Kumar & Others V State of Haryana [2014 (3) CCC 470 (SC)]* where, while rejecting the prayer for condonation of delay in filing appeals before the Hon’ble High Court, it had observed that the delay due to inaction and negligence cannot be condoned. Other relevant judgments include APTEL Order dated 31.10.2014 in IA No. 380 of 2104 in DFR No. 2355 of 2014 (APL Vs CERC &ors.); and order of the Commission dated 05.02.2019 in Review Petition No. 17/RP/2018 in Petition No.89/MP/2016 titled *BSES Yamuna Power Limited & Anr. v. Pragati Power Corporation Ltd. & Ors.*
9. MPPMCL has submitted that the contention of the Review Petitioner that it has paid partial GST claims of Petitioner and has refused to make payments towards the Review Petitioner’s claim for Rs.7.75 crore on account of incorrect interpretation of the order of the Commission dated 09.10.2018 and application of the GST rate applicable on the “construction work/ contract services” is wrong and is a misrepresentation of the factual position. MPPMCL has allowed the GST at the rate of 9% is in consonance with the Impugned Order of the Commission and is in accordance with paragraphs 348, 363 and 375 of the Impugned Order.

Submissions of the Respondent No.2 – DMRC

10. DMRC has submitted that the allegations and averments made by the Review Petitioner are mainly against MPPMCL. However, since, MPPMCL and DMRC have reconciled the Review Petitioner’s GST claim jointly. Therefore, DMRC is in agreement with methodology adopted by MPPMCL.
11. DMRC has submitted that the instant Review Petition is not maintainable and the same is liable to be dismissed, in as much as, the same is barred by limitation.

12. DMRC has submitted that the Review Petitioner cannot be allowed to challenge the literal interpretation of the Impugned Order. A perusal of the Review Petition would itself evidence that the Review Petitioner had claimed the GST rate against Civil and General works @9%, which was granted to the Review Petitioner by the Commission. The Review Petitioner, therefore, cannot be allowed to allege that there was an inadvertent mistake or an error apparent on the face of record in the Impugned Order.

Rejoinder by the Petitioner to the reply of Respondents

13. The Review Petitioner has reiterated its submissions already made in the Petition and I.A. and, therefore, these are not reproduced for the sake of brevity. Additionally, the Review Petitioner has submitted as under:
- a. DMRC has paid partial GST claims of Petitioner and has inter alia refused to make payments towards the Review Petitioner's claim for approximately Rs. 1,69,43,026/- on account of inadvertent/ incorrect specification of applicable GST rate in the GST Order qua 'Civil and General Works'.
 - b. Since, as per RoP dated 04.06.2020, the Commission has already taken cognizance of the submissions pleaded vide IA No.11 of 2020 and instructed the Respondents to file reply on merits, there is no occasion for the Respondents to allege delay at this stage.
 - c. The Commission through its Order dated 28.01.2020 in Petition No. 67/MP/2019 and Petition No. 68/MP/2019 clarified that the table mentioned at paragraph 348 in Order dated 09.10.2019 in Petition No. 188/MP/2017 and connected petitions is only illustrative in nature. However, when informed by the Petitioner through letter dated 30.01.2020 of the same, the Respondents issued letter dated 20.02.2020 stating that "... . Therefore, it is advised to seek specific speaking order from CERC on interpretation of applicable rates of Tax at point no. 348 in Petition No. 33/MP/2018 for clarity on the issue." Therefore, without prejudice to the grounds as raised and approved by the Commission qua condonation of delay, the Respondents after having advised the Petitioner to approach the Commission are barred from taking any adverse position in this regard.

- d. The Respondent's letter dated 20.02.2020 was replied by the Petitioner and it was comprehensively explained that the Order dated 28.01.2020 in Petition No. 67/MP/2019 and Petition No. 68/MP/2019 clearly held that Change in Law claims are required to be paid in terms of actual claims supported with auditor's certificate and not in terms of the illustrative 'Table' at paragraph 348 of the Impugned Order. However, even these explanations have been of no avail. The Petitioner has submitted that the cause of action for filing the present Review Petition has been continuing since it first arose on 06.05.2019 and the chain of events which led to the delay are in itself a sufficient cause for condonation of delay.
- e. It is the case of the Petitioner that it has raised valid grounds qua "sufficient cause" and the objections raised by the Respondents are devoid of any merit whatsoever. Further, reliance is placed on APTEL's Order dated 21.12.2018 passed in I.A. No. 762 of 2018 in DFR No. 1540 of 2018 in the case titled *Uttarakhand Power Corporation Limited vs. M/s Greenko Budhil Hydro Power Pvt. Ltd. and Ors.* whereby delay of 472 days was condoned on the issue of "sufficient cause". There being "sufficient cause", no inaction or negligence attributable to the Petitioner and the facts and circumstances of the present case being distinguishable, the decisions of Supreme Court titled *Brijesh Kumar & Others vs. State of Haryana [2014 (11) SCC 351]* as relied upon by the Respondents are not applicable to the Review Petition. Further, reliance has been placed by the Respondents on the decision of APTEL in *APL vs. CERC & Ors. (IA No. 380 of 2014 in DFR No. 2355 of 2014)*, but the said Judgment itself in paragraphs 33 and 35 observes that the Courts should not adopt an injustice-oriented approach in rejecting the Application for condonation of delay and should look into the fact if there is any inaction or negligence (which is clearly not the case of the Review Petitioner).
- f. SECI was also a respondent in Petition No. 203/MP/2017, 204/MP/2017, 188/MP/2017, 190/MP/2017, 201/MP/2017, 189/MP/2017 and 202/MP/2017 decided by the Commission vide the Impugned Order. In terms of paragraph 348 of the Impugned Order, SECI had initially only considered GST @9% on 'Civil and General Works' among other such objections arising from the said paragraph 348. Pursuant to issuance of Order dated 28.01.2020 in Petition No 67/MP/2019 and 68/MP/2019, SECI corrected its understanding and processed the amounts on actual invoices towards 'Civil and General Works'

(supported with auditor's certificate dated 24.10.2019) at 18% GST (9% CGST + 9% SGST). Like SECI, another government agency, taking note of the Commission's Order dated 28.01.2020 has complied with the directives, the Respondents are burdening the Commission with the present proceedings.

Analysis and Decision

14. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.
15. During the hearing held on 16.07.2020, the Respondents objected to maintainability of the Review Petition on the ground of considerable delay of 408 days in filing the Review Petition. In response to a specific query of the Commission as to whether the Respondent, MPPMCL, has any submissions on merits of the case, the Respondents submitted that besides MPPMCL's letters dated 20.02.2020 already on record, the Respondents have nothing further to add on merits.
16. We are of the view that before going into the merit of the case it is necessary to decide the issue of condonation of delay of 408 days in filing the Review Petition.
17. Section 94(1)(f) of the Electricity Act, 2003 stipulates as under:

“Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

 - (a) summoning and enforcing the attendance of any person and examining him on oath;*
 - (b) discovery and production of any document or other material object producible as evidence;*
 - (c) receiving evidence on affidavits;*
 - (d) requisitioning of any public record;*
 - (e) issuing commission for the examination of witnesses;*
 - (f) reviewing its decisions, directions and orders;*
 - (g) any other matter which may be prescribed.*

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.”

18. Order 47 Rule 1 of Code of Civil Procedure, 1908 stipulates as under:

“ORDER XLVII- REVIEW

1. Application for review of judgment—

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

19. Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as ‘the CBR Regulations’) stipulates as under:

“Review of Decisions, Directions and orders

103. (1) The Commission may, on an application of any of the persons or parties concerned made within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit.

(2) An application for such review shall be filed in the same manner as a Petition under Chapter II of these Regulations.

(3) An application for review shall be listed before the Commission within a period of 15 days from the date of filing such application.

(4) The Review applications shall be disposed of within 15 days from the date of hearing if the review is not admitted and within a period of two months from the date of admission if the application is admitted;

Provided that where the review applications cannot be disposed of within the period as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the review applications.

Amendment of orders

103A. Clerical or arithmetical mistakes in the orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Commission either of its own motion or on the application of any of the parties.”

20. From the above quoted provisions of the Electricity Act, 2003, Code of Civil Procedure and the CBR Regulations, a review petition can be filed in following circumstances:

- a. At the time of discovery of and important matter or evidence which was not within his knowledge or could not be produced by him at the time when the Order was made –

after exercise of due diligence, the aggrieved person can approach the Commission as soon as the new fact is discovered.

- b. On account of some mistake or error apparent on the face of the record – within the period of 45 days specifically given.
- c. For any other sufficient reason – the aggrieved person has to justify the reason before the Commission.
- d. For clerical or arithmetical mistakes – at any time on its own motion by the Commission or on the application of any of the parties.

21. It is observed that vide Order dated 09.10.2018 in Petition No. 188/MP/2017 and Batch (including Petition No. 33/MP/2018 in which this Review Petition has been filed), the Commission has decided a group of fifteen similar worded petitions. Vide Order dated 09.10.2018, it was, *inter-alia*, held by the Commission that:

“339. The Commission observes that in the instant petitions, the tariff has been discovered under transparent e-bidding process in accordance with the NSM guidelines issued by the Central Government. In the Competitive Bidding Scenario, the SPDs bid levellised tariff without disclosing the details of the calculations of the project cost including capital expenditure. The component wise details of the capital employed are not required to be declared by the bidders. The design of the bid levellised tariff is solely a decision of the SPDs.....

.....

348. With the above facts in mind, the Commission now proceeds to determine the impact of GST on the projects under consideration in the present petitions. As regards the component wise details of the project and respective percentage share of each such component in the overall capital cost, the Commission observes that in the absence of any related references in the projects selected through bidding, reliance could be placed on the Commission’s Order dated 23.03.2016 passed in Petition No. 17/SM/2015 for the purpose of determining ‘weightage of the Components of Capital cost’ and the percentage impact of the taxation due to enactment of ‘GST Laws’ on the various components may be calculated accordingly. It is pertinent to mention here that in respect of PV Modules VAT (pre-GST regime) of 0-5% was charged on intra state procurement. Further, in case of input by SPV or high sea sale by EPC, the effective rate also was 0%. Whereas post enactment of ‘GST Laws’ 5% will be applicable on intra state procurement as well as import by EPC or SPV. The calculations for the escalation as based on Petition no. 17/SM/2015 are tabulated as below:-

Particulars	Weightage of Component of Capital Cost as taken in Petition No.	GST		Comments
		As claimed by the Petitioners	As per “GST Laws” post 01.07.17	

	17/SM/2015			
PV Modules	61.96%	5%	5%	
Land Cost	4.72%	0%	0%	
Civil and General Works (Balance of Plant-Civil EPC-Civil; Roads & Drainage Fencing work)	6.60%	9%	9%	<u>GST at 18%;</u> <u>However, in</u> <u>Petitions the</u> <u>Petitioner has</u> <u>claimed 9%.</u>
Mounting Structures (Mounting Structure & Nut-Bolts; Clamp & Fasteners; Mounting Structure Foundation)	6.60%	18%	5%	The GST rate at 18% (SGST-9% + CGST-9%) in case of direct purchase. In case the structures are sold as part of Solar Power generating system then 5% GST is applicable
Power Conditioning Unit (Inverter Transformer; DC Battery & Battery Charger)	6.60%	28%	5%	The GST rate at 18% (SGST-9% + CGST-9%) in case of direct purchase. In case the structures are sold as part of Solar Power generating system then 5% GST is applicable
Evacuation Cost up to Interconnection Point (AC/DC Cables; Switchgears; PLC; SCADA; Connectors; Transmission line; AC/DC- Electrical Materials; Combiner Box;; Misc., Electricals)	8.30%	18%	5%	Post GST sold as part of Solar Power generating system hence 5% GST.
Preliminary and Pre-Operative Expenses including IDC and Contingency (Transmission & Logistic Services; Erection of MMS and Module; Electrical Erection; Pre-Op & other indirects; Safety;	5.21%	18%	5%	GST at 18%; However, in Petition No. the petitioners claimed 5%.

Security and IT Services; EPC-Services)				
	Weighted Avg. of Tax/GST	9.16%	5.55%	

349. Therefore, the Commission directs that the Petitioners have to exhibit clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services backed by auditor certificate. The certification should include 'Certified that all the norms as per 'GST Laws' have been complied with by the Petitioner and the claim of the amount being made by the Petitioner are correct as per the effective taxes in pre and post 'GST regime'. The Petitioners should then make available to the Respondents, the relevant documents along with the auditor certification who may reconcile the claim and then pay the amount so claimed to the SPD w.e.f. 01.07.2017 qua EPC cost on the basis of the auditor's certificate as per the methodology discussed in para no. 338 & 348 above. Further, as Government of India has appointed 'Nodal agencies' under JNNNSM scheme to act as an intermediary to facilitate the purchase and sale of electricity from solar power developer to DISCOMS. Accordingly, the amount determined as payable above by Petitioners shall on 'back to back' basis be paid by DISCOMS to intermediary nodal agency under the respective 'Power Sale Agreements.

....

375. To sum up the:

a. Issue No. 1: The Commission has jurisdiction to adjudicate in the matter.

b. Issue No. 2: The enactment of "GST laws" is covered as "Change in Law" under Article 12 of the PPA.

c. Issue No. 3 & 4: "GST Laws" are applicable on all cases except in case of the generating company where the "actual date of Commissioning" is prior to 01.07.2017 As regards its claim (subject to threshold limit in case of Petition No. 33/MP/2018) during construction period, the Petitioners have to exhibit clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services backed by auditor certificate. In respect of PV Modules post enactment of "GST Laws" 5% will be applicable on intra state procurement as well as import by EPC or SPV. The amount as determined by Petitioners shall be on "back to back" basis to be paid by DISCOMS to Petitioners under the respective "Power Sales Agreements". The claim of the Petitioners on account of additional tax burden on "O&M" expenses (if any), is not maintainable.

d. Issue No. 5: The relief for "Change in Law" is allowed as a separate element on one time basis in a time bound manner. The Claim based on discussions in paragraph 338 & 348 of this Order shall be paid within sixty days of the date of this Order failing which it will attract late payment surcharge as provided under PPA.

e. Issue No. 6: The claim is to be raised as one-time upfront lumpsum payment which becomes due on the sixtieth date from the date of this Order by the Commission and after that the "late payment surcharge" as provided under PPAs is to be levied. Therefore, the claim regarding separate "Carrying Cost" in the instant petitions is not attracted.

376. *Parties to bear their own legal and administrative costs. Accordingly, the Petition No. 188/MP/2017 alongwith I.A. No. 30/2018, Petition No. 189/MP/2017 alongwith I.A. No. 31/2018, Petition No. 190/MP/2017 alongwith I.A. No. 32/2018, Petition No. 201/MP/2017 alongwith I.A. No. 33/2018, Petition No. 202/MP/2017 alongwith I.A. No. 35/2018, Petition No. 203/MP/2017 alongwith I.A. No. 36/2018, Petition No. 204/MP/2017 alongwith I.A. No. 37/2018, Petition No. 230/MP/2017 alongwith I.A. No. 34/2018, Petition No. 231/MP/2017 alongwith I.A. No. 38/2018, Petition No. 232/MP/2017 alongwith I.A. No. 39/2018, Petition No. 233/MP/2017 alongwith I.A. No. 40/2018, Petition No. 13/MP/2018, Petition No. 33/MP/2018 alongwith I.A. No. 50/2018, Petition No. 34/MP/2018 and Petition No. 47/MP/2018 are disposed of.”*

22. Vide Impugned Order, the Commission had inter-alia decided that the enactment of “GST laws” was covered under “Change in Law” as per Article 12 of the PPA. As regards claim (subject to threshold limit in case of Petition No. 33/MP/2018) during construction period, the Petitioners had to exhibit clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services backed by auditor certificate. However, the Commission observes that the Respondents have refused to make the payment of Rs. 7,74,95,926/- (MPPMCL) and Rs. 1,69,43,026/- (DMRC) on account of specification of applicable GST rate mentioned in a ‘Table’ given at paragraph 348 in the ‘Impugned Order’ qua ‘Civil and General Works’.
23. The Commission further observes that the Review Petitioner approached the Respondents vide letter dated 30.01.2020 to release the balance payment towards GST Claim on basis of Order of the Commission in petition No. 67/MP/2019 and 68/MP/2019. However, vide letter No. 284 dated 20.02.2020, MPPMCL replied as under:
- “Regarding decision of CERC mentioned in point (A) of your letter, it is to state that CERC order dated 28.01.2020 in petition 67/MP/2019 and 68/MP/2019, is not specific on the rates of GST tax on component and also both MPPMCL and M/s ACME Jaipur solar Private Limited are not parties as Petitioner, respondent or intervenor in these petitions. Therefore, it is advised to seek specific order from CERC on interpretation of applicable rates of Tax at point number 348 in petition Number 33/MP/2018 for clarity on the issue.”*
24. In view of the above, the Commission observes that the Respondents refused to make the payment of Rs. 7,74,95,926/- (MPPMCL) and Rs. 1,69,43,026/- (DMRC) on account of what they claimed as lack of clarity on applicable GST rate in the ‘Impugned Order’ qua ‘Civil and General Works’. The Commission observes that the Impugned Order was passed on 09.10.2018 and the Respondents raised the objection and refused to pay vide their letter issued on 28.12.2019 i.e. after more than fourteen months. The Review Petitioner has filed the instant review petition on 09.01.2020 i.e. within 12 days of raising objection by the

Respondents. Furthermore, the Respondents have themselves advised the Review Petitioner on 20.02.2020 to seek clarification from the Commission. The Commission is, therefore, of the view that the Respondents cannot now contest that there was delay in filing the Review Petition. Therefore, the Commission allows the I.A. and the delay is condoned accordingly.

25. With respect to the merits of the instant review petition, the Commission observes that during the hearing held on 16.07.2020 in response to a specific query of the Commission as to whether the Respondents have any further submissions on merits of the case, the Respondents submitted that besides MPPMCL’s letter dated 20.02.2020 already on record, they had nothing further to add on merits.
26. The Commission observes that the petition No. 188/MP/2017 and Batch were a group of fifteen similarly worded petitions which were disposed of by a single Order dated 09.10.2018. Petition No. 33/MP/2018 was a part of the said batch petitions. The main Respondents in these fifteen petitions were SECI, NTPC, MPPMCL, DMRC and respective State Discoms. In terms of paragraph 348 of ‘Impugned Order’, SECI/NTPC in other batch petitions had also initially only considered GST @9% on ‘Civil and General Works’. However, pursuant to issuance of Order dated 28.01.2020 in Petition No 67/MP/2019 and 68/MP/2019, SECI/NTPC processed the amounts following the principle of reconciliation on the basis of exhibiting clear and one to one correlation between projects and supply of goods & services, duly supported by relevant invoices and Auditor’s Certificate by the Petitioners.
27. Based on submissions of the Review Petitioner in Petition No. 33/MP/2018 (the Petitioner therein), the Commission had observed as under:

“3.9 It is submitted that as per industry standards, the cost contribution of major three items, being modules, inverters and structures comprises majority of the project cost. In view of the above, it is necessary to point out the list of items which have been and will be impacted by the introduction of GST Law. The impact of GST Law on the capital cost of the equipment for setting up the Project, which the Petitioner has to import/ procure from domestic sources has been tabulated below:

<i>Sr. No</i>	<i>Items</i>	<i>Impact in %</i>
1.	<i>PV Modules</i>	5%
2.	<i>Land Cost</i>	0%
3.	<i>Civil and General Works</i>	9%
4.	<i>Mounting Structures</i>	18%
5.	<i>Power Conditioning Unit</i>	28%
6.	<i>Evacuation Cost up to Inter-Connection Point (Cables</i>	18%

	<i>and Transformers)</i>	
7.	<i>Preliminary and Pre-Operative Expenses including IDC and Contingency</i>	18%

28. From the above, it is apparent that the Review Petitioner had indicated an impact of 9% in the context of ‘civil and general works’. However, in paragraph 348 of the ‘Impugned Order’ , the Commission mentioned “impact claimed” as against “impact indicated”. To this extent, the Commission holds that in said paragraph 348 of the ‘Impugned Order’, the expression “impact claimed” be read as “impact indicated”.

29. The figures included in the table as contained in paragraph 348 of the Impugned Order were based on the data compiled from all the fifteen petitions and not based on a single petition. It is pertinent to mention here that the Commission has already clarified vide Order dated 28.01.2020 in Petition No. 67/MP/2019 & 68/MP/2019 titled ‘*Clean Sustainable Energy Private Limited Vs. SECI & Ors.*’, that the purpose of the table was purely illustrative in nature. The guiding principle for the contracting parties is to exhibit clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services backed by auditor certificate. The Petitioners were to then make available to the Respondents, the relevant documents along with the auditor certification, and the Respondents may reconcile the claim and then pay the amount so claimed to the Petitioners.

30. To clarify this issue, vide Order dated 28.01.2020 in Petition No. 67/MP/2019 & 68/MP/2019 case titled ‘*Clean Sustainable Energy Private Limited Vs. SECI & Ors*, the Commission held as under:

“99. From the above, the Commission notes that in the Competitive Bidding Scenario, the SPDs bid levellised tariff without disclosing the details of the calculations of the project cost including capital expenditure. The component wise details of the capital employed are not required to be declared by the bidders. The design of the bid levellised tariff is solely a decision of the SPDs. The Commission noted that neither the component wise details of the project and respective percentage share (of each such component in the overall capital cost) nor any related reference of the projects selected through bidding was available on records. Therefore, to understand the impact of GST Laws the Commission placed its reliance on its Order dated 23.03.2016 passed in Petition No. 17/SM/2015 for the purpose of determining ‘weightage of the Components of Capital cost’ and the percentage impact of the taxation due to enactment of ‘GST Laws’ on the various components. It is pertinent to mention here that the purpose of the table, in the various Orders referred above, was purely illustrative in nature to assess that there will be an incremental impact of the GST laws on the project cost. This observation is self-evident from the fact that the Commission instead of insisting the contracting parties on the

implementation of the table for the claims rather directed as follows: “the Petitioners have to exhibit clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services backed by auditor certificate. ... The Petitioners should then make available to the Respondents, the relevant documents along with the auditor certification who may reconcile the claim and then pay the amount so claimed to the SPD.”

100. The Commission, therefore reiterates that the table as contained in para 348 of the Order dated 09.10.2018 referred in Petition No. 188/MP/2017 & Ors. and other similar Orders, is only illustrative in nature and computation on account of GST being a Change in Law, shall be paid on exhibiting clear and one to one correlation between the projects and the supply of goods or services, duly supported by relevant invoices and Auditor’s Certificate by the Petitioners

Summary of decisions:

122. Our decisions in this Order are summed up as under:

...
bb. Based on submissions of Respondent No.1 SECI, the Commission clarifies that the tables referred to in para 348 of the Order dated 09.10.2018 in Petition No. 188/MP/2017 & connected Petitions, in Para 145 of the Order dated 19.09.2018 in Petition No. 50/MP/2018 and connected Petitions, in Para 85 of the Order dated 18.04.2019 in Petition No. 164/MP/2018 and connected Petitions and in Para 94 of the Order dated 12.04.2019 in Petition No. 206/MP/2018 and connected Petitions are only illustrative in nature and computation on account of GST, being change in law, shall be paid on exhibiting clear and one to one correlation between projects and supply of goods & services, duly supported by relevant invoices and Auditor’s Certificate by the Petitioners.”

31. In view of above, the Commission clarifies and holds that the ‘ratio of the decisions’ vide order dated 28.01.2020 in the Petition No. 67/MP/2019 & 68/MP/2019 are squarely applicable to the instant Review Petition.
32. With the above directions, Review Petition No. 06/RP/2020 along with IA No. 11/2020 stand disposed of.

Sd/-
अरुण गोयल
सदस्य

Sd/-
आई. एस. झा
सदस्य

Sd/-
पी. के. पुजारी
अध्यक्ष