

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No.26/RP/2021**

in

**Petition No.560/MP/2020**

**Coram:**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri P.K. Singh, Member**

**Date of order: 4<sup>th</sup> July, 2022**

**In the matter of**

Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of order dated 24.10.2021 passed by the Central Electricity Regulatory Commission in Petition No. 560/MP/2020 titled as Jindal Power Limited v. Tamil Nadu Generation and Distribution Corporation Limited.

**And**

**In the matter of**

Jindal Power Limited,  
Tamnar Road, Tamnar-496 111,  
Chhattisgarh

**...Review Petitioner**

**Vs.**

Tamil Nadu Generation and Distribution Corporation Limited,  
6<sup>th</sup> Floor, TANTRANSCO Building,  
144, Anna Salai, Chennai-600 002,  
Tamil Nadu.

**...Respondent**

**Parties Present:**

Shri Venkatesh, Advocate, JPL  
Shri Ashutosh K Srivastava, Advocate, JPL  
Shri Abhishek Nangia, Advocate, JPL  
Ms. Anusha Nagarajan, Advocate, TANGEDCO  
Shri Rahul Ranjan, Advocate, TANGEDCO  
Shri Souvik Khamrui, JPL

**ORDER**

The Review Petitioner, Jindal Power Limited ('JPL'), has filed the present Petition seeking review of the Commission's order dated 24.10.2021 in Petition No.

560/MP/2020 ('impugned order') under Section 94 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as 'the Conduct of Business Regulations').

### **Background**

2. JPL had filed Petition No. 189/MP/2016 before the Commission seeking certain relief under Change in Law events during the operating period in respect of its generating station in terms of Power Purchase Agreements dated 29.6.2012 and 23.8.2013. The Commission in its order dated 13.12.2017 had allowed the Change in Law events. However, Change in Law events with respect to levy of excise duty on coal, levy of entry tax on coal, levy of service tax including Swachh Bharat cess on coal transportation and levy of vat were disallowed in absence of relevant documents. JPL was granted liberty to approach the Commission with relevant documents. Pursuant to liberty granted, JPL filed Petition No. 560/MP/2020 seeking the Change in Law events, namely, (i) levy of excise duty on coal, (ii) levy of entry tax, (iii) Value Added Tax, and (iv) Service tax including Swachh Bharat Cess on coal transportation along with carrying on the aforesaid claims. The Commission after considering the submissions of the parties, in its order dated 24.10.2021 allowed the above Change in Law events. As regards levy of entry tax, the Commission observed that on the cut-off date, i.e. 27.2.2013, entry tax levied was 1% on the coal. At the time of submission of bid, the Petitioner was expected to factor the above levy in the bid. However, the Petitioner has not placed on record any documentary proof to show that entry tax has been increased by promulgation/ amendment of any statute or any government instrumentality. Accordingly, claim in this regard was disallowed. Relevant portion of the said order dated 24.12.2021 is extracted as under:

**“(B) Levy of Entry Tax**

.....36. We have considered the submissions of the Petitioner. It is noticed that as on the cut-off date, 27.2.2013, Entry Tax levied was 1% on the coal. At the time of submission of bid, the Petitioner was expected to factor the above levy in the bid. The Petitioner has not placed on record any documentary proof to show that Entry Tax has been increased by promulgation/ amendment of any statute or any government instrumentality. Therefore, we are not inclined to treat the claim of the Petitioner as change in law as per Article 10.1.1 of the PPA and accordingly, the claim of the Petitioner in this regard is disallowed.”

3. Aggrieved with the aforesaid finding of the Commission disallowing the entry tax as Change in Law event, the Review Petitioner has filed the present Review Petition with the following prayers:

“(a) Admit the present Review Petition;

(b) Review the order dated 24.10.2021 in Petition No. 560/MP/2020, in terms of the submissions made in the present Review Petition;

(c) Hold and declare that increase in the total amount of entry tax payable is an event of Change in Law. Allowance of compensation on account of overall increase in entry tax on coal, as a result of consequential increase in the change in law components on which the said tax is levied; and

(d) Direct the Respondent to pay carrying cost from the date of applicability of the change in law event claimed.”

**Submissions of the Review Petitioner**

4. The Review Petitioner has urged the following grounds for review of the impugned order:

(a) The impugned order does not take into account that JPL had not claimed compensation towards increase in rate of entry tax rather it had claimed compensation on account of consequent impact on entry tax due to increase in component on which entry tax is levied.

(b) It was never the case of JPL that entry tax on coal has increased due to change in the rate of entry tax. The increase in entry tax was not claimed as a direct increase, and was rather claimed as an overall increase, due to increase in the components of the said tax.

(c) The impugned order erroneously ignores the fact that entry tax was payable, *inter alia*, on District Mineral Fund (DMF), National Mineral Exploration Trust (NMET), Excise Duty, Clean Energy Cess and Chhattisgarh Paryavaran Evam Vikas Upkar and that after the cut-off date, there has been increase in Excise Duty, DMF, NMET, Clean Energy Cess and Chhattisgarh Paryavaran Evam Vikas Upkar. Entry tax is not an independent component and is rather a summation of various components. Any change in any or all of the above components will have a direct impact on the overall entry tax. The increase in the components of the entry tax is bound to change the entry tax, and the same cannot remain constant. Hence, the total increase in entry tax on coal, qualifies as Change in Law, in terms of Article 10.1.1 of the PPA.

(d) While passing the impugned order, the Commission has taken different approach regarding various claims raised by JPL, though being similar in nature. The compensation claimed on account of Excise Duty, Value Added Tax (VAT)/CST, Service Tax has been allowed by the Commission on account of their overall change, due to change in their components. However, in case of entry tax, which has been disallowed vide the impugned order, this Commission has adopted a different approach.

(e) Entry tax is payable on DMF, NMET, Forest Transit Fee and Chhattisgarh Paryavaram Evam Vikas Upkar. Excise duty is levied on these same components, while VAT is levied on three of these components. Therefore, allowing relief in issues with the same components, while disallowing entry tax is erroneous. Disallowed claim of entry tax on coal was also raised on a similar premise. The concept of assessable value for a levy and its increase even though interest rate remains the same is now no more res-integra as this Commission itself in the impugned order for items such as excise duty, VAT and service tax has allowed Change in Law compensation on account of increase in the assessable value of taxes.

(f) While rejecting the contention of TANGEDCO regarding escalation index and acknowledging the overall impact due to increase in components, the Commission had no reason to deny the recovery of entry tax, which is computed on the same components as excise duty. By doing so, this Commission has rendered Article 10 of the PPA nugatory, which unequivocally mandates that

the affected party on account of Change in Law is to be restored to the same economic position as if the Change in Law event had not occurred.

5. The matter was listed for admission on 20.1.2022 through video conference. In response to observation of the Commission regarding computation of entry tax and changes in assessable value on which of entry tax has been calculated in the invoice exhibited, learned counsel for JPL sought liberty to place on record the said invoice along with brief submission on the aspects of computation of entry tax and impact therein due to changes in the base components upon which it is levied upon due to Change in Law events. Considering the request of the learned counsel, the Commission permitted the Review Petitioner to file a copy of invoice along with its brief submission.

6. JPL vide its affidavit dated 2.2.2022 has placed on record the invoices dated 4.10.2016, 14.6.2017 and 15.6.2017. JPL has also placed on record a calculation of entry tax along with tabulation of details of coal price break up of the said invoices. With reference to the invoice dated 4.10.2016, JPL has submitted that entry tax of Rs. 2,55,912.67/- for 17891.34 metric ton of coal is 1% of the sub-total of Rs. 2,55,91,267.46/-, which comprises of basic price of coal, Royalty, National Mineral Exploration Trust, District Mineral Fund, Sizing Charge, Stowing Excise Duty, Paryavaran Upkar, Vikas Upkar, Forest Fee, Excise Duty & Clean Energy Cess. Thus, due to introduction/increase in approved Change in Law components viz. NMET, DMF, Paryavaran Upkar, Vikas Upkar, Excise Duty & Clean Energy Cess, the consequential increase in entry tax amount is Rs 69,433.16/-. Similar explanations have also been given by JPL for the invoices dated 14.6.2017 and 15.6.2017.

7. The Review Petition was admitted on 29.3.2022 and parties were directed to file their reply and rejoinder. Pursuant to the above direction, reply and rejoinder has

been filed by TANGEDCO and JPL respectively.

8. The Respondent, TANGEDCO vide its reply dated 28.4.2022, has submitted as under:

(a) The Petitioner has not made of a case of review of impugned order. The Commission has correctly disallowed the Petitioner's claim for entry tax and there exists no mistake apparent on the face of record, no discovery of new evidence or any sufficient cause of the like nature constituting a ground for review of the impugned order.

(b) Under the garb of agitating that there is some error apparent on the face of the record, the Petitioner is essentially seeking to cover up its failure of not having placed all relevant documents including invoices on record, which ought to have been placed along with the Petition.

(c) The Petition No. 560/MP/2020 was the second round of litigation for the same Change in Law compensation claims that were made in the Petition No. 189/MP/2016. In fact, while disposing of the Petition No. 189/MP/2016, this Commission had not granted compensation under the heads claimed in the Petition No.560/MP/2020 (including entry tax) for the precise reason that the Petitioner had not furnished relevant documents in support of its claims. Having already secured one additional opportunity to place all relevant documents, the Petitioner still chose not to annex any material along with the Petition No. 560/MP/2020, except for an auditor's certificate in support of its claim for increase in entry tax. Whereas, for its claim under other heads, the Petitioner had placed invoices and other relevant material. The Petitioner is now seeking to place additional material in an attempt to prove its claim for compensation on account of increase in entry tax, which effectively amounts to the Petitioner making a third attempt to prove the same claim.

(d) The Petitioner has sought to re-agitate the same arguments it had made in the Petition No. 560/MP/2020, which have already been decided by this Commission, and has in effect sought to convert the review proceedings into appellate proceedings by seeking to change the view of this Commission based on already overruled contentions. Even assuming that the Commission erred in

rejecting the Petitioner's claim with respect to entry tax, the Petitioner's remedy lies in appeal and not in review. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in the case of Kamlesh Verma v. Mayawati, [(2013) 8 SCC 320].

(e) When the present matter was listed on 20.1.2022, the Petitioner relied upon an invoice dated 4.10.2016 to indicate the computation of entry tax and the impact thereon due to the changes in the assessable value. This invoice, along with invoices dated 14.6.2017 and dated 15.6.2017, has also been filed by the Petitioner for the first time, in support of its claim by way of an additional affidavit dated 2.2.2022. These invoices are not new or subsequent facts. It is not the Petitioner's case that it has discovered or come into possession of these invoices only subsequent to the impugned order. Evidently, the Petitioner has always been in possession of these invoices, as they were issued to the Petitioner by South Eastern Coalfields Ltd. regularly in the course of its business. However, they have only been brought on record for the very first time, and evidently with a view to overcome the Petitioner's deficiency in placing relevant documents and material. The Petitioner has not given any reason as to its failure to produce these invoices before the Commission in the proceedings leading up to the impugned order.

(f) Under the garb of filing a review petition, the Petitioner cannot seek to improve upon the evidence placed before the Commission in the course of the Petition No. 560/MP/2020. It is settled law that no new evidence can be relied upon by a person in review proceedings, unless it is an important fact which could not be discovered previously despite exercise of due diligence. In this regard, reliance has been placed on the decision of the Hon'ble Supreme Court in Puttagamma v. Varija, [(2010) 15 SCC 404] and in Haridas Das v. Usha Rani, [(2006) 4 SCC 78].

(g) Having failed to produce the invoices now sought to be placed by the Petitioner, the Petitioner cannot seek a review on the basis that there is an error apparent on the face of record in rejecting the Petitioner's claim with respect to alleged increase on account of entry tax. This material was not on record in the previous proceedings; by relying on this material in the revision proceedings, the Petitioner has admitted that the material before this Commission in the previous proceedings was insufficient to grant the relief that the Petitioner was seeking.

Therefore, it cannot be said that this Commission made any error apparent in the impugned order.

(h) The Commission, in paragraph 35 of the impugned order has clearly appreciated the Petitioner's submission that compensation has been sought due to increase in the rate of components of entry tax. It was only after consideration of the above submission that the Commission reached the conclusion that the consequent impact on entry tax does not constitute Change in Law, as the Petitioner had failed to provide any documentary evidence relating to increase in entry tax.

(i) Thus, the Petitioner's claim that the Commission has made an inadvertent mistake by not appreciating the aforesaid submission of the Petitioner is erroneous. The Petitioner appears to have misinterpreted the observation of the Commission where it notes that the Petitioner had failed to provide any documentary evidence relating to increase in entry tax. The Petitioner has not appreciated the purport of the impugned order, which merely states that entry tax has not increased due to the promulgation/ amendment of any statute by any government instrumentality. Had the Commission only meant that there was no actual increase in the rate of entry tax alone, it would have referred specifically to the Chhattisgarh Entry Tax Act, 1967. Instead, the impugned order generally stipulates that there was no actual increase in entry tax under "any statute", thereby meaning that the Petitioner had failed to prove the impact on entry tax due to the increase in the rates of other components by other statutes.

(j) The Petitioner has incorrectly urged that this Commission has also made a mistake in the impugned order by allowing the other three claims on account of the consequential impact, but has taken a different approach with the claim of entry tax. The claim for compensation for effect on Central Excise Duty on Coal was allowed, as the number of components which were considered for assessing the Central Excise Duty had increased (paragraphs 30-33 of impugned order). The claim for compensation for impact on VAT was allowed on consideration of a sample invoice dated 6.4.2017 submitted by the Petitioner along with the 2020 Petition (paragraph 38 of impugned order). The claim for compensation on account of service tax including Swachh Bharat Cess on coal transportation was allowed due to an actual increase in the rate of the sales tax and the introduction



of the Swachh Bharat Cess by the Parliament (paragraph 42, 44-45 of impugned order).

(k) The Commission has only held that the claim for compensation on account of entry tax cannot be treated as Change in Law under the PPAs, in view of the fact that no documentary evidence in support of the impact on entry tax. Therefore, the other claims were allowed by the Commission in completely different circumstances. In the case of entry tax, there has neither been an actual increase in the rate of tax nor had the Petitioner provided sufficient material to the Commission to show the impact thereon. In such circumstances, the Petitioner cannot be allowed to say that this Commission has taken a different approach in a similar factual matrix.

(l) The Petitioner has not shown any error apparent in the impugned order and has attempted to re-argue its overruled arguments in the absence of a newly discovered fact. The Petitioner has also not shown any other sufficient reason of like nature, which must be analogous to a mistake apparent on the face of record or discovery of new fact (*Moran Mar Basselios Catholics v. Most Rev. Mar Poulouse Athanasius*, (1955) 1 SCR 520, Para 32) to demonstrate that the present Review Petition is maintainable.

9. The Review Petitioner, JPL vide rejoinder dated 2.5.2022 has submitted as under:

(a) The Commission has power to entertain a Review Petition if there is an infirmity in the order and the said infirmity is an error apparent on the face of record. Further, the scope of a review has been, time and again, defined by the Hon'ble Supreme Court through various judgments. It has been clarified therein that the scope of Review Petition is not only limited to the aforesaid grounds, but also extends to some mistake or any other sufficient reason necessitating review. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court in the case of *State of Maharashtra v. Ramdas Shrinivas Nayak*, [AIR (1982) 2 SCC 463].

(b) Since the Review Petition has already been admitted by the Commission challenging the maintainability is of no relevance. The Commission has already

decided to review the impugned order in regard to the issue of entry tax and TANGEDCO ought to have limited its reply on the aspect of entry tax and not made any submissions challenging the maintainability of the Review Petition.

(c) The Commission while passing the impugned order has erroneously misinterpreted JPL's claim for compensation on account of entry tax of coal. JPL's case was limited to consequential increase in entry tax due to increase in the components used for computation of assessable value. It was JPL's case that components of entry tax have been declared and accepted as Change in Law events by this Commission in its order dated 13.12.2017 in Petition No. 189/MP/2016 (*DMF, NMET, Clean Energy Cess and Chhattisgarh Paryavaran Evam Vikas Upkar*) and order dated 24.10.2021 in Petition No. 560/MP/2020 (Excise Duty). The said fact was accepted by the Commission while allowing claim for compensation for various levies. Hence, on account of increase in components of entry tax, there is a consequential increase in entry tax which may be allowed as a Change in Law. In fact, the claim of Change in Law with respect to excise duty was allowed as the assessable value of its components had increased. However, the same argument was overlooked in regard to JPL's claim for entry tax compensation which necessitated exercise of review jurisdiction by this Commission.

(d) The error apparent on face of record is also borne from the fact that this Commission *vide* the impugned order allowed all other compensation claims, on account of arguments which were exactly same as those advanced for entry tax. The components of the allowed claims are the same components used to compute the assessable value of entry tax. The scope of "sufficient reason" is wide enough to include the present Review Petition, and the same can be established and understood in light of the judgment of the Hon'ble High Court of Allahabad in its judgment in *Narain Das v. Chiranjilal*; [AIR 1925 All 364] held that the scope of "sufficient reason" has deliberately been made extensive.

(e) Review lies against decisions which appear unreasonable. In this regard reliance has been placed upon the judgment of Hon'ble High Court of Delhi in the case of *JSW Energy v. Union of India*; [2019 SCC OnLine Bom 988], wherein it

was held that the principles for review are confined to decision making process and not the decision.

(f) The present Review Petition is in no way an attempt to re-open the case on merits. Rather, the inadvertent error in overlooking material facts and taking a different approach for similar claims carves out a case for review of the impugned order, by this Commission. The Commission vide impugned order has observed that JPL has failed to submit relevant documents reflecting increase in entry tax. However, JPL never claimed that there was any direct increase in the rate of entry tax and therefore, no such documents could have been placed on record by JPL. Further, as submitted above, JPL's case regarding entry tax has been misinterpreted as a claim for compensation on account of increase in entry tax, rather than a claim for consequential increase due to increase in the assessable value of its components, as was the actual case.

(g) In regard to failure to place on record any documents, JPL submitted all relevant documents to prove that there had been an indirect increase in entry tax, as the components on which the said tax is levied had increased. The said increase in the components had been allowed as Change in Law events by this Commission in its order dated 13.12.2017 in Petition No. 189/MP/2016.

(h) TANGEDCO is incorrect in submitting that JPL is advancing any overruled arguments made in Petition No. 560/MP/2020. The present Review Petition is limited to the inadvertent error in the impugned order with respect to the claim of entry tax. JPL's arguments were not overruled while entry tax claim was disallowed. Rather, the exact same arguments were admitted and appreciated while allowing other similar claims. Therefore, Commission has merely misinterpreted/ overlooked JPL's claim and arguments for entry tax, and in no way overruled or negated the same. Thus, TANGEDCO's reliance on Kamlesh Verma judgment is absolutely misplaced.

(i) It is an admitted fact that the claim for entry tax was disallowed on account of lack of evidence reflecting increase in entry tax. JPL's case for review is based on the said fact itself. It is an admitted fact that this Commission has recorded JPL's submission for consequential increase in entry tax, however disallowed the same for lack of proof of increase in entry tax. JPL, as submitted above never

claimed that its submissions were not considered. The case itself is based on consideration of submission and subsequent disallowance by inadvertently overlooking the previously considered claims. The Commission, in paragraph 35 of the impugned order, has recorded that JPL is claiming a consequent increase. However, at paragraph 36, the Commission has held that JPL has not submitted any proof showing increase in entry tax. In this regard, it is to be noted that lack of proof for increase in entry tax could not have been placed on record by JPL, when JPL never claimed any such increase. Rather, as per paragraph 35, JPL was claiming consequential increase.

(j) The claims (excise duty and VAT) have been allowed by the Commission on account of increase in their assessable value and the same has been recorded at paragraph 33 of the impugned order. The increase in components or increase in rate of components is of no relevance, rather the increase in assessable value is of significance. Consequential increase in VAT has been allowed due to increase in its components, which have already been allowed as Change in Law events. (*paragraph 38 of impugned order*). Similarly, all other claims have been allowed due to their consequent increase, as is the case regarding claim for consequential increase in entry tax.

10. The matter was listed for hearing on 24.6.2022. During the course of hearing, learned counsel for the parties reiterated the submissions made in their respective pleadings and the matter was reserved for order.

### **Analysis and Decision**

11. We have considered the submissions made by the Review Petitioner, JPL and the Respondent, TANGEDCO. Accordingly, we proceed to consider whether any case for review has been made out by the Review Petitioner in terms of Order 47 Rule 1 of the Code of Civil Procedure, 1908 ('CPC') read with Regulation 103 of the Conduct of Business Regulations. Under 47 Rule 1 of the CPC, a person aggrieved by order of a Court can file for review on the following grounds, if no appeal against the said order

has been filed:

- (a) Discovery of new and important matter of 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.
- (b) On account of some mistake or error apparent on the face of record; and
- (c) For any other sufficient reason.

In light of the above provisions, we proceed to consider the grounds raised in the Review Petition for review of the impugned order dated 24.10.2021 in Petition No. 560/MP/2020.

12. The Review Petitioner, JPL has submitted that the primary reason stated by the Commission in the impugned order while disallowing the claim regarding entry tax is that JPL did not place on record any documentary proof to show that entry tax has been increased by promulgation/amendment of any statute or any government instrumentality. However, the impugned order does not consider the aspect that JPL had not claimed compensation towards increase in rate of entry tax rather it had claimed compensation on account of consequent impact on entry tax due to increase in components viz. DMF, NEMT, Excise Duty, Clean Energy Cess and Chhattisgarh Paryavarn Evam Vikas Upkar on which entry tax is levied and increase in such components had already been allowed as Change in Law vide order dated 13.12.2017 in Petition No. 189/MP/2016. The Review Petitioner has submitted that in relation to its claims of excise duty and VAT, the impugned order itself allows the Change in Law compensation on account of increase in assessable value of taxes and in disallowing the claim of entry tax, the impugned order has adopted a different approach in respect thereof. Accordingly, there exists an error apparent on the face of record and the present case is a fit case for the Commission to exercise its review jurisdiction.

13. *Per contra*, TANGEDCO opposing the Review Petition has submitted that in the present case, none of the grounds for review are made out and the Review Petitioner has only sought to re-agitate the same arguments it had made in Petition No. 560/MP/2020, which have already been decided by this Commission. It has been submitted that in paragraph 35 of the impugned order, the Commission has clearly appreciated the Petitioner's submission that compensation has been sought due to increase in rate of components of entry tax and it was only after consideration of the above submission that this Commission reached the conclusion that the consequent impact of entry tax does not constitute Change in Law as the Petitioner had failed to provide any documentary evidence relating to increase in entry tax. The Review Petitioner's claim that the Commission has made an inadvertent mistake in not appreciating its submission is erroneous and it is the Review Petitioner who appears to have misinterpreted the observation of the Commission where it notes that the Review Petitioner had failed to provide any documentary evidence relating to increase in entry tax. It is also incorrectly urged by the Review Petitioner that the Commission has taken a different approach with the claim of entry tax as the other claims such as VAT, excise duty and service tax were allowed by the Commission in completely different circumstances whereas in the entry tax, there had neither been an actual increase in the rate of tax nor had the Petitioner provided sufficient material to the Commission to show impact thereon.

14. We have examined the submissions made by the parties. On the issue of levy of entry tax, the Commission, in the impugned order, has held as under:

***“(B) Levy of Entry Tax***

*35. The Petitioner has submitted that as on cut-off date of LT-PPA, i.e. 27.2.2013, the applicable Entry Tax on coal was 1% if coal is used within the State of Chhattisgarh as*

*a raw material for generation of power in terms of Section 4 of the Chhattisgarh Sthaniya Kshetra Mei Mal Ke Pravesh Par Kar Adhiniyam, 1976 ('Chhattisgarh Entry Tax Act, 1967'). It has been submitted that the Entry Tax was payable, inter alia, on DMF, NMET, Excise Duty, Clean Energy Cess and Chhattisgarh Paryavran Evam Vikas Upkar and that after the cut-off date, there has been increase in these levies, leading to the consequent increase in the total amount of Entry Tax payable by the Petitioner on the said levies, which qualifies as change in law event in terms of 5th bullet of Article 10.1.1 of the LT-PPA. The Petitioner has submitted that it is not seeking any compensation towards increase in rate of Entry Tax rather it is claiming compensation on account of consequent impact on Entry Tax due to increase in component on which Entry Tax is levied (which have already been approved by the Commission as well as the APTEL as change in law events) i.e. Excise Duty (as claimed in Petition), Clean Energy Cess, Chhattisgarh Paryavaran Evam Vikas Upkar, DMF and NMET.*

*36. We have considered the submissions of the Petitioner. It is noticed that as on the cut-off date, 27.2.2013, Entry Tax levied was 1% on the coal. At the time of submission of bid, the Petitioner was expected to factor the above levy in the bid. The Petitioner has not placed on record any documentary proof to show that Entry Tax has been increased by promulgation/ amendment of any statute or any government instrumentality. Therefore, we are not inclined to treat the claim of the Petitioner as change in law as per Article 10.1.1 of the PPA and accordingly, the claim of the Petitioner in this regard is disallowed."*

15. Thus, in the impugned order, the levy of entry tax was disallowed by the Commission considering that the Petitioner had failed to place on record any documentary proof to show that entry tax has been increased by promulgation/ amendment of any statute or any governmental instrumentality. However, in doing so, the impugned order as such appears to overlook the specific submission of the Review Petitioner that it had not sought the compensation towards increase in rate of entry tax rather it is claiming compensation on account of consequent impact on entry tax due to increase in component on which entry tax is levied i.e. Excise Duty, Clean Energy Cess, Chhattisgarh Paryavaran Evam Vikas Upkar, DMF and NMET, which have already been recognised as Change in Law events in the case of the Review Petitioner. The Review Petitioner has pointed out that in the impugned order, the compensation claimed on account of Excise Duty, VAT/CST, Service Tax has been allowed by the Commission on account of their overall change due to change in their components.

16. It is observed that with regard the Petitioner's claim of increase in VAT, which was similar to its claim of entry tax, the following held in the impugned order:

***“(C) Value added Tax***

*37. The Petitioner has submitted that as on cut-off date of LT-PPA i.e. 27.2.2013, VAT was levied at the rate of 5% and CST was levied at the rate of 2%, which was considered and factored by the Petitioner in its bid. VAT/CST is payable, inter alia, on DMF & NMET, Excise Duty, Entry Tax, Clean Energy Cess and Chhattisgarh Paryavaran Evam Vikas Upkar. Though the rate of VAT/CST remained unchanged, due to increase in the rate at which the aforesaid components are levied, there is corresponding increase in VAT/CST, which qualifies as change in law event under 5<sup>th</sup> bullet of Article 10.1.1 of the LT-PPA. The Petitioner has placed on record the auditor certificate certifying the payment made towards VAT/CST w.r.t to LT-PPA and sample invoice elaborating as to how Excise Duty, Entry Tax and VAT/CST are computed.*

*38. We have examined the matter. The Petitioner has submitted the sample invoice dated 6.4.2017 raised by South Eastern Coalfields Limited showing levy of VAT @ 5% of total invoice value of coal. Since DMF & NMET, Excise Duty, Entry Tax, Clean Energy Cess and Chhattisgarh Paryavaran Evam Vikas Upkar have been held as change in law events, consequential increase in VAT linked with these taxes and duties is also allowed under the change in law provision on the principle of restitution.”*

Thus, as regards increase in VAT, the impugned order allows the consequential increase in VAT on account of increase in DMF, NMET, Excise Duty, Entry Tax, Clean Energy Cess and Chhattisgarh Paryavaran Evam Vikas Upkar under Change in Law provision on the principle of restitution since they had already been held as Change in Law events in the case of the Petitioner.

17. In light of the above, we note that the impugned order indeed adopts a different approach in respect of the entry tax claim which, in our view, amounts to an error apparent deserving the exercise of the review jurisdiction by this Commission. Accordingly, in line with the decision of the Commission in respect of claim of VAT, the Review Petitioner also needs to be compensated for consequential increase in entry tax payable on account of other Change in Law events viz. increase in DMF, NMET, Excise Duty, Clean Energy Cess and Chhattisgarh Paryavaran Evam Vikas Upkar under Change in Law provision on the principle of restitution.



18. The Respondent, TANGEDCO has further contended that the Review Petitioner has sought to place new evidence without any justification for not placing them in the original proceedings. TANGEDCO has submitted that the invoices dated 4.10.2016, dated 14.6.2017 and dated 15.6.2017 had been filed by the Petitioner for the first time in support of its claim by way of additional affidavit dated 2.2.2022. However, these invoices are not new or subsequent facts. It has been contended that the Petitioner had always been in possession of these invoices issued by SECL regularly in course of its business. However, they have only been brought on record for the very first time with a view to overcome the Petitioner's deficiency in placing the relevant documents and materials. It has been further submitted that in terms of a settled law, no new evidence can be relied upon by a person in review proceedings unless it is an important fact which could not be discovered previously despite exercise of due diligence. In this context, TANGEDCO has placed reliance on the judgment of Hon'ble Supreme Court in the case of Puttagangamma v. Varija [(2010) 15 SCC 404] and Haridas Das v. Usha Rani, [(2006) 4 SCC 78].

19. However, the aforesaid submissions of TANGEDCO in opposing the present Review Petition, in our view, are misplaced inasmuch our decision to review the impugned order is not at all based on the invoices dated 4.10.2016, dated 14.6.2017 and dated 15.6.2017 furnished by the Petitioner vide its additional affidavit in the present review proceedings. As noted above, the error apparent in the impugned order results from the differential approach adopted therein in respect of entry tax and VAT claims. The subsequent invoices placed on record by the Review Petitioner to elaborate the scope of its submissions in the main proceedings and to indicate the computation of entry tax and impact thereon have no bearing on our decision to review the impugned order. Regardless, even as per TANGEDCO's own submission, similar

claim in respect of VAT has been allowed by the Commission on the basis of the production of SECL invoice dated 6.4.2017. However, the very same invoice also indicated the levy and computation of entry tax. Hence, both the similar claims of Petitioner i.e. increase in VAT and entry tax ought to have been treated equally and to the extent the latter has been not, the impugned order deserves to be reviewed.

20. In view of the foregoing observation, we hold that since DMF & NMET, Excise Duty, Clean Energy Cess and Chhattisgarh Paryavaran Evam Vikas Upkar have been held as Change in Law events, consequential increase in entry tax linked with these taxes and duties will also be allowed under Change in Law provision on the principle of restitution. The Commission has already devised the mechanism for payment of Change in Law compensation in its order dated 13.12.2017 in Petition No. 189/MP/2016. The parties are required to follow the same mechanism for payment of Change in Law stipulated in the order dated 13.12.2017 in Petition No. 189/MP/2016 for payment of entry tax.

21. In view of the above discussion, the Review Petition No. 26/RP/2021 is disposed of.

Sd/-  
**(P.K. Singh)**  
Member

sd/-  
**(Arun Goyal)**  
Member

sd/-  
**(I.S. Jha)**  
Member