

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No.26/RP/2021

in

Petition No.560/MP/2020

Coram:

Shri P.K. Pujari, Chairperson

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of order: 22nd April, 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,
6th 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. Isnain Muzamil, Advocate, JPL
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').

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 (VAT), 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 except for Entry tax. As regards levy of entry tax, the Commission observed that 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. 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.

3. Aggrieved with the aforesaid finding of the Commission disallowing the entry tax as Change in Law events, 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.”

4. The Review Petitioner, JPL has contended that the impugned order deserves to be reviewed as it does not consider that it had not claimed compensation towards increase in rate of entry tax and rather it had claimed the compensation on account of consequent impact on entry tax due to increase in component on which entry tax is levied. The Review Petitioner has submitted that the impugned order erroneously ignores the fact that entry tax was payable, *inter alia*, on DMF, NMET, Excise Duty, Clean Energy Cess and Chhattisgarh Paryavaran Evam Vikas Upkar and that after the cut-off date, there have been increase in these levies, levy of entry tax has also been increased. 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. However, in case of entry tax, the Commission has adopted a different approach.

5. The Petition was heard on 29.3.2022 on 'admission' through Video Conferencing.

6. During the course of hearing on 29.3.2022, learned counsel for the Petitioner submitted that 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 Excise Duty, VAT and Service Tax with the same components, while disallowing relief in entry tax is erroneous. Disallowed claim of entry tax on coal was also raised on a similar premise. The concept of compensation on account of increase in the assessable value of tax even though the tax 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. It is argued that the order requires to be reviewed on account of the said error apparent on the face of the record.

7. The Review Petition is admitted.

8. The Review Petitioner is directed to serve the copy of the Review Petition along with this order on the Respondent immediately. The Respondent shall file its reply on or before 28.4.2022, after serving a copy to the Petitioner, who shall file its rejoinder, if any, by 3.5.2022. The parties shall ensure the completion of pleadings within the due date mentioned above.

9. Matter shall be listed for hearing in due course for which separate notice will be issue to the parties.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(P.K. Pujari)
Chairperson