



नई दिल्ली  
NEW DELHI

याचिका संख्या./ Petition No. 543/MP/2020

कोरम/ Coram:

श्रीआई. एस. झा, सदस्य/ Shri I. S. Jha, Member  
श्रीअरुण गोयल, सदस्य/ Shri Arun Goyal, Member  
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 29<sup>th</sup> June, 2022

**IN THE MATTER OF:**

Petition under Section 79(1) (b) of the Electricity Act, 2003 read with Article 12.2 of the Power Purchase Agreement dated 09.08.2016 executed between the Petitioner and NTPC for seeking approval of Change in Law events due to enactment of Telangana Tax on Entry of Goods into Local Areas Act, 2001 read with Judgment dated 11.11.2016 titled *Jindal Stainless Limited & Anr. Vs. State of Haryana & Ors. and Batch* (Civil Appeal Nos. 3453 of 2002) read with Show Cause Notice dated 02.01.2020 issued by Commercial Taxes Department, Government of Telangana and Assessment Order dated 11.02.2020 pronounced by Commercial Tax Officer, Mahboobnager Circle, Nalgonda Division, Telangana read with Hon'ble Telangana High Court Order dated 04.03.2020.

**AND IN THE MATTER OF:**

ACME Yamunanagar Solar Power Private Limited,  
Plot No. 152, Sector-44,  
Gurugram, Haryana-122002.

...Petitioner

**VERSUS**

1. NTPC Limited,  
Scope Complex,  
Core-7, Institutional Area, Lodhi Road,  
New Delhi - 110 003.
2. Southern Power Distribution Company of Telangana Limited,  
6-1-50, Mint Compound,  
Hyderabad, Telangana – 500 063.
3. Northern Power Distribution Company of Telangana Limited,  
H.No.2-5-31/2, Corporate Office,  
Vidyut Bhavan,  
Nakkalgutta, Warangal – 506 001,  
Telangana.

...Respondents

**Parties Present:** Shri Sanjay Sen, Sr. Advocate, AYSPPPL  
Shri Shreshth Sharma, Advocate, AYSPPPL  
Shri Utkarsh Singh, Advocate, AYSPPPL  
Shri Venkatesh, Advocate, NTPC  
Shri Siddharth Joshi, Advocate, NTPC  
Ms. Simran Saluja, Advocate, NTPC  
Shri Ispaul Uppal, NTPC

### **आदेश/ ORDER**

The Petitioner, ACME Yamunanagar Solar Power Private Limited, is engaged inter-alia in the business of solar power generation by setting up solar power generation plants and manufacturing electricity using photovoltaic solar modules and selling the generated power to the State electricity distribution companies. The Petitioner has its manufacturing/generating facility at Mushrifa Village, Kosgi Mandal, Mahbubnagar Circle, Nalgonda Division, Telangana for generation and sale of electricity within the State of Telangana. The Petitioner has filed the petition under Section 79(1)(b) of the Electricity Act, 2003 read with Article 12.2 of the Power Purchase Agreements (PPAs) dated 09.08.2016 for seeking approval of 'Change in Law' events due to enactment of Telangana Tax on Entry of Goods into Local Areas Act, 2001 read with Judgment dated 11.11.2016 titled *Jindal Stainless Limited & Anr. Vs. State of Haryana & Ors. and Batch* (Civil Appeal Nos. 3453 of 2002) read with Show Cause Notice dated 02.01.2020 issued by Commercial Taxes Department, Government of Telangana and Assessment Order dated 11.02.2020 pronounced by Commercial Tax Officer,

Mahboobnager Circle, Nalgonda Division, Telangana read with Hon'ble Telangana High Court Order dated 04.03.2020.

2. The Respondent No. 1, NTPC Limited (NTPC) is a Central Public Sector Undertaking and is engaged in the business of generation of electricity and allied activities and has been identified by the Government of India as the Implementation Agency for setting up of Grid – connected Solar PV Power Projects under State Specific Bundling Scheme and for facilitating purchase and sale of 33 kV or above Grid-connected Solar PV Power under the National Solar Mission of Government of India.
3. The Respondent No. 2 and the Respondent No. 3, Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited (collectively referred as 'Telangana DISCOMS') are the distribution companies of State of Telangana which carry out electricity distribution business.
4. The Petitioner has made the following prayers:
  - a. *Admit the instant Petition;*
  - b. *Hold and declare that imposition of Entry Tax for entry of Goods in the state of Telangana through Telangana Tax on Entry of Goods into Local Areas Act, 2001 read with Judgment dated 11.11.2016 titled "Jindal Stainless Limited &Anr. Vs. State of Haryana &Ors. and Batch (Civil Appeal Nos. 3453 of 2002) read with Show Cause Notice dated 02.01.2020 issued by Commercial Taxes Department, Government of Telangana and Assessment Order dated 11.02.2020 pronounced by Commercial Tax Officer, Mahboobnager Circle, Nalgonda Division, Telangana read with Hon'ble Telangana High Court Order dated 04.03.2020 qualify as a Change in Law Event as per Article 12 of the PPA; and*
  - c. *Direct the Respondent to reimburse the Petitioner for the corresponding increase in the Project cost on account of imposition of the Entry Tax as and when paid by the Petitioner no later than seven (7) days of claim(s), as one time lump amount, submitted by the Petitioner;*
  - d. *Allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition;*

- e. Grant exemption from filing duly affirmed affidavit in view of the extension of the countrywide lockdown due to the outbreak of COVID-19 with an undertaking that the duly affirmed affidavit will be submitted once the regular functioning of the Courts resume;
- f. Pass such other/further Order(s)/directions(s) as this Hon'ble Commission may deem fit in the facts and circumstances in the present case.

The Petitioner has made an additional prayer through an Additional Affidavit filed on 24.05.2021 to bring on record subsequent facts with documents.

- g. Direct Respondent- NTPC Limited to reimburse the payments as already made by the Petitioner towards Entry tax;
- h. Grant carrying cost as per normative parameters of the applicable CERC Renewable Tariff Regulations from the date of impact till reimbursement by the Respondent.

#### **Submissions of the Petitioner:**

5. The Petitioner has submitted as under:

- a) Section 3 of the *Andhra Pradesh Tax on Entry of Goods into Local Areas Act of 2001* on 16.10.2001 (AP Entry Tax Act) is a charging section as per which, Tax is levied and collected. Section 3 (1) (a) and Section 3(2) reads as follows:

*“Section 3 (1) (a): “There shall be tax levied and collected on the entry of notified goods into any local area for sale, consumption or use therein....”*

*Section 3 (2): “No tax shall be levied on the notified goods imported by the dealer registered under the Andhra Pradesh Value Added Tax Act, 2005, who brings such goods into local area for the purpose of resale or using them as inputs for manufacture of other goods in the State of Andhra Pradesh or during the course of inter-state trade or commerce.”*

- b) The constitutional validity of Sections 3 and 4 of the AP Entry Tax Act was challenged before the Hon'ble High Court of Andhra Pradesh in the matter titled “*Sree Rayalseema Alkalies and Allied Chemicals Limited Vs. State of Andhra Pradesh and Ors.*” (WP Nos. 615 of 2002) and the Hon'ble High Court vide its Order dated 31.12.2007 declared levy of Entry Tax as unconstitutional.

- c) AP High Court Order dated 31.12.2007 was challenged before the Hon'ble Supreme Court in "*State of A.P. v. M/S Rayalaseema Alkalies*", SLP (C) No. 8053-8077/2008. Vide the said petition, Entry Tax of various States were under challenge and all matters were tagged and titled as "*Jindal Stainless Ltd. & Anr vs State of Haryana & Ors.*"
- d) ACME Solar Holding Ltd. (ACME Solar) submitted its bid on 08.02.2016 and was declared as one of the successful bidders for the development of 5 (five) Grid Connected Solar Photo Voltaic Projects of 10MW capacity each in the State of Telangana. The Letter of Intent (LoI) was issued on 20.06.2016. Meanwhile, Telangana Distribution utilities entered into a Power Sale Agreement (PSA) with NTPC, on 18.06.2016, for procurement of 50 MW of Solar Power from ACME Solar on a long-term basis. ACME Solar formed SPV (ACME Yamunanagar Solar Power Private Limited/ the Petitioner) and executed two PPAs with the Respondent on 09.08.2016 to set up Solar PV Power Project based on Photo-voltaic technology of 10 MW capacity each in the State of Telangana and supply it to the Respondent.
- e) For setting up solar power plant, inter-State movement of various products including but not limited to Solar PV Module, String & Array, Array Junction box/String Combiner Box, DC Cable, Inverter, Inverter Duty Transformer, Medium Voltage Switch Gear, Earthing & Lighting Protection System, Pooling End Substation, Power Transformer, SCADA, WMS and PPC System etc., are required. In order to procure components to set up its solar power plant in Telangana, the Petitioner filed C- Forms prescribed under the Central Sales Tax Act providing the Detailed Report for system descriptions and specifications of components/equipment.
- f) Subsequently, the Hon'ble Supreme Court of India vide its Order dated 11.11.2016 in the case of *Jindal Stainless Steel Ltd. v State of Haryana (2017) 12 SCC 1* declared that the levy of the entry tax is constitutional.
- g) In view of the said Order, the Chief Tax Officer (CTO) issued a Show Cause Notice dated 02.01.2020 to the Petitioner informing liability of an amount of INR 1,17,00,379/- (One Crore Seventeen Lakhs Three Hundred and Seventy Nine only) as an entry tax for importing notified goods into the State of Telangana for the period from April, 2017 to June, 2017.
- h) The Petitioner submitted a detailed reply dated 30.01.2020 to the Show Cause Notice issued by CTO, contesting the allegations as made out. Pursuant thereto, CTO passed the Assessment Order dated 11.02.2020 (Assessment Order), confirming the demand of the

proposed entry tax of INR 1,17,00,379/- for the period from April, 2017 to June, 2017 to be paid on notified goods imported into the State of Telangana.

- i) Aggrieved by the said Assessment Order, the Petitioner filed a petition being W.P No. 4894 of 2020, titled as *ACME Yamunanagar Solar Power Pvt. Ltd. v. State of Telangana and Ors.*, on 03.03.2020 before the Hon'ble High Court of Telangana at Hyderabad. The said petition was listed on 04.03.2020 whereby the Hon'ble High Court directed interim stay on the recovery amount subject to the payment of 25% entry tax as demanded by the CTO within 6 weeks from the date of Order dated 04.03.2020. The Hon'ble High Court further passed an Order dated 27.04.2020 vide which the timelines to pay such 25% amounts was extended till 06.06.2020.
- j) Thereafter, the Petitioner by way of communication dated 03.04.2020 duly furnished a Change in Law Notice upon the Respondent, highlighting the judgment dated 11.11.2016 passed by the Hon'ble Supreme Court, Show Cause Notice dated 02.01.2020 issued by the Commercial Tax Department, Government of Telangana and Assessment Order dated 11.02.2020 pronounced by CTO read with Hon'ble Telangana High Court Order dated 04.03.2020 as Change in Law Events. Accordingly, the Petitioner informed the Respondent that it will approach this Hon'ble Commission, in terms of Article 12.2 of the PPA, for seeking approval of the said "Change in Law" events.
- k) The Petitioner stated that the implementation of the entry tax is squarely covered by the definition of 'Change in Law' under Article 12 read with Article 1.1 of the PPA. 'Change in Law' as defined under the PPA, is an inclusive definition and, *inter alia*, includes a change in the interpretation or application of any Law by any Competent Court of Law, subsequent to the Effective Date, which results into additional expenses by the Petitioner. Article 12 of the PPAs stipulates as under:

***"12. ARTICLE 12: CHANGE IN LAW***

***12.1 Definitions***

*In this Article 12, the following terms shall have the following meanings:*

*12.1.1 "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/non-recurring expenditure by the SPD or any income to the SPD:*

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment of consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- a change in the interpretation or application of any Law by any Indian Government Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*

- *the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*
- *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPD;*
- *any change in tax or introduction of any tax made applicable for supply of power by the SPD as per the terms of this Agreement.*

*but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.*

### **12.2 Relief for Change in Law**

*12.2.2 The aggrieved party shall be required to approach the Central Commission for seeking approval of Change in Law.*

*12.2.2 The decision of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the parties.”*

- l) The Effective Date in terms of the PPA is 19.07.2016. Entry tax law was declared unconstitutional at the time of the execution of the PPA and the Hon’ble Supreme Court passed Orders on the constitutionality of the law on 11.11.2016 i.e. post the Effective Date. As per Article 12.2 of the PPA, the aggrieved party, the Petitioner herein, is required to approach the Hon’ble Commission to seek approval for Change in Law.
- m) Meanwhile, the Petitioner has filed writ petition, being W.P. 4894/2020, before the Hon’ble High Court of Telangana challenging the wrongful application of Telangana Tax on Entry of Goods into Local Areas Act, 2001 and passage of the Final Assessment Order dated 11.01.2020 passed by CTO under Telangana Tax on Entry of Goods into Local Areas Act, 2001 as being illegal, arbitrary and violative of Article 14, Article 19 (1) (g) of the Constitution of India. The Hon’ble High Court passed an Order dated 04.03.2020 and granted interim stay on the payment of entry tax by the Petitioner subject to the payment of 25% of the entry tax as demanded by CTO. The Hon’ble High Court has further passed an Order dated 27.04.2020 vide which the timelines to pay such 25% amounts has been extended till 06.06.2020.

### **Hearing dated 22.04.2021:**

6. After hearing the learned counsels for the Petitioner and the Respondent, NTPC, the Commission admitted the Petition and directed to issue notice to the Respondents.

**Submissions of the Respondent (NTPC):**

7. The Respondent, NTPC, submitted that:
- a) The adoption of Entry Tax Act in the State of Telangana had not been quashed by the Hon'ble High Court after its adoption into the State of Telangana, therefore, the applicability of Telangana Entry Tax Act was not in question before the Hon'ble Supreme Court of India while adjudicating the constitutionality of different Entry Tax Act as implemented by respective States.
  - b) The edifice of the present Petition that the Law in question was quashed by the Hon'ble High Court at the time when the PPAs was signed is not relevant as in so far as Telangana Entry Tax Act is concerned the same was only adopted on 01.06.2016 by Government of Telangana.
  - c) Post the adoption of the Entry Tax Act in State of Telangana, the Petitioner had signed a PPAs dated 09.08.2016 with NTPC for development, generation and sale of Solar Power from its 2x10 MW of Solar Power Project.
  - d) The following requirements need to be satisfied for a claim to be admissible under 'Change in Law' which are as under:
    - i. The occurrence of events should have taken place after the Effective Date i.e. 19.07.2016 as stipulated under Clause 2.1 of the Agreement.
    - ii. Such occurrences should have resulted in any recurring or non-recurring expenditure by the Seller or any income to the Seller.
  - e) AP Entry Tax Act, 2001 was adopted by the State of Telangana on 01.06.2016 which is prior to the Effective Date as stipulated in the PPAs executed between the parties. Therefore, the Petitioner had failed to satisfy the requirement of Article 12.1 to claim relief under Change in Law.
  - f) The Petitioner had factored in the Entry Tax on Domestic Procurements for the purpose of developing a Solar Power Project. Hence, the Petitioner was aware and conscious about the applicability of the Telangana Entry Tax Act as on Effective Date.
  - g) The Petitioner cannot contend that enactment of the Entry Tax Act in the State of Telangana is a 'Change in Law' event as it has itself factored in the implication of Entry Tax while entering into PPAs with the Respondent.
  - h) The Petitioner after accepting the validity and applicability of Entry Tax as on Effective Date cannot now claim it as Change in Law. The Petitioner cannot be permitted to approbate reprobate on the applicability of the Entry Tax Act.



- i) The Petitioner has contended that the provisions of the Entry Tax Act has not been upheld by the Hon'ble Supreme Court of India, therefore, Petitioner has questioned the very levy before the Hon'ble High Court.
- j) Since the Petitioner has invoked Writ Jurisdiction of the Hon'ble High Court of Telangana challenging the Notice issued by the Commercial Tax Officer on the ground that in terms of Section 3(2) of the Telangana Entry Tax Act, no tax shall be levied on notified goods imported by the dealer, who brings such goods into a local area for resale or using them as inputs for the manufacture of other goods in the State of Telangana.
- k) The final Assessment Order dated 11.02.2020 passed by the Commercial Tax Officer has been challenged by the Petitioner vide a *Writ Petition bearing No 4894 of 2020* before the Hon'ble High Court of Telangana on the grounds that in terms of Section 3(2) of the Telangana Entry Tax Act, no tax shall be levied on notified goods imported by the dealer, who brings such goods into a local area for resale or using them as inputs for the manufacture of other goods in the State of Telangana.
- l) On 11.02.2020, the Hon'ble High Court has granted stay of the operation of the final assessment Order passed by Commercial Tax Officer, subject to making part deposit.
- m) The Interim Order passed by the Hon'ble High Court was challenged by the Petitioner before the Hon'ble Supreme Court of India contending that the Hon'ble High Court ought not to have directed the Petitioner to deposit 25% of the entry tax amount demanded in view of the final Assessment Order dated 11.02.2020 passed by the Commercial Tax Officer.
- n) The Special Leave Petition filed by the Petitioner was disposed of vide Order dated 03.06.2020 with liberty to the Petitioner to approach the Hon'ble High Court.
- o) The Petitioner preferred an Interlocutory Application which was disposed of by the Hon'ble High Court vide Order dated 22.06.2020 with a direction to Stay collection of entry tax pursuant to the final assessment Order dated 11.02.2020 passed by the CTO on condition of Petitioner paying 25% of the entry Tax as demanded by the CTO.
- p) Given the fact that the imposition of entry Tax by the Commercial Tax Officer on the Petitioner is pending adjudication before the Hon'ble High Court of Telangana, therefore, if the Hon'ble High Court take a view that the entry Tax imposed upon Petitioner is bad and inoperative, then the claim for compensation as Change in Law by Petitioner would be rendered meaningless.

- q) The Distribution licensees in the State of Telangana are purchasing the Solar Power which NTPC is procuring from the Petitioner on back to back basis under the relevant PSA and PPAs executed between the parties.
- r) The PPAs as well as the Bidding Documents envisage sale of the Solar Power purchased from the thermal power of NTPC Coal based stations out of the unallocated quota of the Government of India (Ministry of Power) in the ratio of 2:1 by NTPC to the Distribution Licensees of various States across India under the respective PSAs.
- s) NTPC is an intermediary Company which facilitates the purchase and resale of Solar Power, whereas the Distribution utilities are the beneficiaries of the Solar Power in the State. Therefore, the claim being prayed by the Petitioner in the present Petition against the entry tax imposed if allowed must be recovered on back-to-back basis in view of the Agreement executed amongst the parties.
- t) Telangana Entry Tax Act was adopted by the State prior to the execution of the Agreement between the parties, therefore, on this ground alone, the claim of Petitioner is liable to be rejected.
- u) The reliefs prayed by the Petitioner before the Commission are not maintainable and are devoid of any merit. Hence the objection raised by the Respondent should be accepted and the instant petition filed by the Petitioner is liable to be dismissed with exemplary cost.

#### **Submissions made through Rejoinder by the Petitioner**

- 8. The Petitioner has submitted Rejoinder on 02.08.2021. The Petitioner has reiterated its averments made in the plaint and as such the same are not repeated herewith for the sake of brevity. Additionally, the Petitioner has submitted as under:
  - a) Since the AP Entry Tax Act came into force in 2001, various companies challenged the Entry Tax Acts of their respective States on the ground that entry tax provisions are against the concept of free trade and commerce under Article 301 of the Constitution of India. *Sree Rayalseema Alkalies and Allied Chemicals Ltd.* and *Tata Teleservices Ltd.* being one such entity from the State of Andhra Pradesh, challenged the A.P. Entry Tax Act before the Hon'ble High Court of Andhra Pradesh whereby the Hon'ble High Court of Andhra Pradesh declared the entry tax as unconstitutional. Subsequently both the *Rayalseema* and *Tata Teleservices* judgments (Order dated 31.12.2007) were challenged

by the State of Andhra Pradesh before the Hon'ble Supreme Court of India. However, post the reorganisation of the State of Andhra Pradesh vide which State of Telangana was formed, the State of Telangana replaced the State of Andhra Pradesh as the Petitioner in *Tata Teleservices* case.

- b) NTPC has erroneously interpreted Section 101 of the A.P. Reorganisation Act and submitted that since Telangana Entry Tax Act was adopted on 01.06.2016 by the Government of Telangana and it was never challenged before the Hon'ble Supreme Court, quashing of the said Act cannot be constituted as change in law in terms of the provisions of PPA. The amendment application in *Tata Teleservices* case was filed by the State of Andhra Pradesh and allowed by the Hon'ble Supreme Court of India even prior to the Telangana Adaptation of Laws order dated 01.06.2016.
- c) NTPC failed to appreciate that the Adoption Order *per se* which sets out that the enactment being adopted has the force of law as on 02.06.2014 which was clearly not the case herein. Further, Section 5 of the Telangana Adaptations Order further specifies that laws being adopted will be effective if they were in force in the State of Andhra Pradesh immediately before the formation of the State of Telangana.
- d) Since A.P. Entry Tax Act was declared unconstitutional by the Hon'ble High Court of Andhra Pradesh by virtue of its Order dated 31.12.2007 the same cannot be treated to be as Law in force. Further in terms of the above-mentioned facts/ reasoning / grounds (in the preliminary submissions column), NTPC's alleged claim that the vires of the Telangana Entry Tax Act was not pending consideration before Supreme Court is baseless, illogical immaterial and unsustainable.
- e) NTPC has failed to provide any cogent reasons towards the cause of action and demand raised in 2020 and has rather completely ignored that a State instrumentality under Article 12 of the Constitution i.e. "Commercial Tax Officer" has raised demand in 2020, which is based on judgments of the Hon'ble Supreme Court. Hence, as per the concerned Department's own understanding, the imposition of entry tax has come into force only pursuant to the Order dated 11.11.2016 of the Hon'ble Supreme Court and that having been the reason and legal basis for issuance of such demand, NTPC's claim of the law being in force prior to Effective Date is completely contradictory to its own statement.
- f) NTPC has ignored the chart specifying the taxes that were imposed prior to GST law, on procurement of goods for development of the instant project, which were factored in by

the Petitioner while quoting tariff and further compared it with the new GST tax rates to substantiate the incremental cost impact on account of the introduction of GST law.

- g) The Petitioner produced the following table to provide the details of the taxes levied on the procurement made in Pre and Post GST era:

A. Duties/Taxes applicable on import of goods and services

Duties applicable Pre GST-Law	Duties applicable Post GST Law
BCD	BCD
CESS	CESS*
CVD under Section 3(1) of CTA in lieu of Central Excise. Also known as ACD	IGST As per Section 7(2) of the IGST Act, supply of goods imported in to India till they cross the customs frontier of India shall be treated as supply of goods in the course of inter-state trade or commerce.
CVD under section 3(5) of CTA in lieu of Sales tax/VAT. Also known as SAD	

B. Duties/Taxes applicable on Domestic procurements

Taxes applicable Pre GST-Law	Taxes applicable Post GST Law
Excise Duty	Excise Duty abolished
Cess	Excise Duty Cess abolished
VAT on intra-state sale	Simultaneous levy of CGST and SGST
CST on inter-state sale	IGST
Octroi / Entry Tax / Local body tax	Octroi / Entry Tax / Local Body Tax abolished
Works contract	Deemed as service under GST law.
	Intra-state supply: CGST and SGST
	Inter-state supply: IGST

- h) The Petitioner had submitted the bid taking into account the rate of taxes prevalent at that point in time. Any subsequent change in the structure of tax or imposition or introduction of tax, which can have a substantial impact on the capital cost of the Project, clearly qualifies as Change in Law.
- i) The Petitioner is also entitled for carrying cost to be paid for the following three periods:
- i. Period 1 - from the date as to when the Petitioners incurred the additional cost on account of introduction of Entry Tax till the date of filing of the present Petition;

- ii. Period 2 – from the date of filing present Petition till the approval of Change in Law by this Commission; and
  - iii. Period 3 - from the date of approval of Change in Law till the actual date of payment through one-time upfront lumpsum payment as approved by this Commission.
- j) The changes in the tax regime are uncontrollable expenses and a generating company cannot reasonably be forced to assume or absorb such risks. The intention while tying up long term capacity under the PPAs could never have been to denude the generating company of an opportunity to be compensated for risks/changes which are beyond its' control.
- k) This Commission has settled in various Orders that intermediary procurer is responsible to pay the Change in Law compensation to the developers and such compensation can be recovered by intermediary procurer from Distribution utilities /Buying Utilities as the PSAs and PPAs are interlinked and back to back in nature. Therefore, the Petitioner has no objections to NTPC's plea of recovering entry tax claim from the Distribution utilities on back to back arrangement.
- l) The concern of the Petitioner herein is the timely payment towards entry tax claims by NTPC which cannot be conditional upon the billing payments and adjustments between NTPC and the Distribution utilities.

**Hearing dated 24.01.2022:**

9. The case was called out for virtual hearing on 24.01.2022. During the course of hearing, the learned senior counsel for the Petitioner submitted that the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (the Change in Law Rules) have no application where the other party to the agreement has already disputed/ contested the Change in Law event. In the present case, the Respondent having already disputed the Change in Law claim of the Petitioner in the reply filed on the affidavit, the Change in Law Rules ought not be applied as they would not serve any purpose.
10. Learned counsel for the Respondent, NTPC submitted that the Petitioner itself has contested the levy of entry tax by way of *Writ Petition No. 4894 of 2020* before the Hon'ble High Court of Telangana, wherein stay has been granted with respect to the operation of the final assessment order dated 11.2.2020 passed by the Commercial Tax Officer, subject to making

part deposit (i.e. 25%). As on date, the imposition of the entry tax by the Commercial Tax Officer on the Petitioner is pending adjudication before the Hon'ble High Court of Telangana and if the Hon'ble High Court takes a view that the entry tax imposed upon the Petitioner is bad and inoperative, then the Petitioner's claim for Change in Law compensation would be rendered meaningless. Therefore, the present Petition is pre-mature and may be disposed of with liberty to the Petitioner to approach the Commission after the Writ Petition is decided.

11. In rebuttal, the learned senior counsel for the Petitioner submitted that as on the date of submission of bid (i.e. 8.2.2016), there was no valid law levying entry tax under the AP Entry Tax Act and the same was declared unconstitutional by the Hon'ble High Court of Andhra Pradesh by its Order dated 31.12.2007 in WP No. 61 of 2002 in the matter of *Sree Rayalseema Alkalies and Allied Chemicals Ltd. v. State of AP and Ors.* It was only on 11.01.2016 that the Hon'ble Supreme Court in *Jindal Stainless Ltd. & Anr. vs. State of Haryana & Ors.* and batch matters upheld the validity of entry tax. Learned senior counsel submitted that even the Telangana Adaptation of Law Orders, 2016, whereby the laws of the erstwhile State of Andhra Pradesh prevailing as on the appointed date were adopted by the State of Telangana, were notified only on 01.06.2020 i.e. after the date of submission of bid and that as on the appointed date (02.06.2014), the AP Entry Tax was already declared unconstitutional. Learned senior counsel submitted that as on date, it cannot be disputed that the Assessing Authority, Commercial Tax Department, Government of Telangana has issued Notice of Assessment dated 02.01.2020 and Assessment order dated 11.02.2020 to the Petitioner claiming payment of entry tax and that the Petitioner has paid 25% of such amount as per the direction of the Hon'ble High Court. In the event, the Petitioner succeeds in the proceedings before the Hon'ble High Court, the benefits of the same will also occur to the Respondents. Learned senior counsel further submitted that apart from the pendency of Writ Petition, NTPC has also disputed claim of the Petitioner on the ground that the Petitioner ought to have factored the entry tax at the time of submission of bid as the vires of Telangana entry tax was not pending for consideration before the Hon'ble Supreme Court and the Telangana Entry Tax Act was not quashed by the Hon'ble High Court of Telangana. However, the said contention, according to the Petitioner, is misplaced.

12. Based on the request of the learned senior counsel for the Petitioner and the learned counsel for the Respondent, NTPC, the Commission permitted the parties to file their brief note of submissions within a week with copy to other side.

**Note of Argument:**

13. The Respondent vide Note of Argument filed on 07.02.2022 has reiterated its stand taken in the earlier submissions as such the same are not reproduced herewith for the sake of brevity. Additionally, the Respondent has submitted as under:

**The reliefs/claims of the Petitioner/ACME Solar are premature:**

- a) The Petitioner has questioned the very levy before the Hon'ble High Court of Telangana. Therefore, the Petitioner in the present Petition cannot claim that such imposition is pursuant to the Judgement of the Hon'ble Supreme Court.
- b) The Petitioner has itself invoked the Writ Jurisdiction of the Hon'ble High Court of Telangana thereby challenging the Notice issued by the Commercial Tax Officer on the ground that in terms of Section 3(2) of the Telangana Entry Tax Act, no tax shall be levied on notified goods imported by the dealer, who brings such goods into a local area for resale or using them as inputs for the manufacture of other goods in the State of Telangana.
- c) The Hon'ble High Court granted the stay of the operation of the final assessment Order dated 11.02.2020 passed by the Commercial Tax Officer, subject to Petitioner making part deposits. However, the Petitioner by way of Special Leave Petition challenged the said Interim Order passed by the Hon'ble High Court before the Hon'ble Supreme Court of India.
- d) The Hon'ble Supreme Court disposed of the SLP vide Order dated 03.06.2020 with a liberty to the Petitioner to approach the Hon'ble High Court. Therefore, the petitioner once again approached the Hon'ble High Court by way of an Interlocutory Application, which was disposed off vide Order dated 22.06.2020 with a direction to stay the collection of Entry Tax pursuant to the final assessment Order dated 1.02.2020 passed by the CTO on condition of the Petitioner paying 25 % of the Entry Tax as demanded by the CTO.

- e) The proceedings initiated by the Petitioner before the Hon'ble High Court of Telangana are yet to be adjudicated upon the said issue. Therefore, there can be no speculation as to what shape the Judgement of Hon'ble High Court will take. Thus, it would be appropriate to defer issuance of directions on the claim raised by the Petitioner. In this regard reliance is placed upon the Judgment *Coastal Gujrat Power Ltd. v CERC & Ors. in Appeal No. 172 of 2017.*

**Written submissions of the Petitioner:**

14. The Petitioner vide written submissions filed on 07.02.2022 have reiterated its stand taken in the earlier submissions and as such, the same are not reproduced herewith for the sake of brevity. Additionally, the Petitioner has submitted as under:

***Re: Claims of the Petitioner are premature as the issue of Entry Tax levied by the CTO is pending adjudication before the Hon'ble Telangana High Court:***

- a) In compliance of the Hon'ble High Court Order dated 22.06.2020, the Petitioner on 19.08.2020, paid a sum of Rs. 29,25,095/- (25% of 1,17,00,379/-) for FY 2017-2018 vide Challan No. 2000497311.
- b) The Petitioner has already paid significant amount towards entry tax in compliance of aforesaid Order dated 22.06.2020. Such payment is squarely covered as a Change in Law event under Article 12 of the PPA. Therefore, it is the unequivocal contractual construct of the PPA by virtue of which, the Respondents are to compensate the Petitioner for such amounts along with carrying cost.
- c) In case the Petitioner succeeds in the pending proceedings before Hon'ble Telangana High Court, it will then adjust the 25% of the entry tax amount to the Respondents especially bearing in mind that the PPA is valid for 25 years. Hence no harm can be alleged in this regard by NTPC.
- d) In case the Petitioner is to lose the pending proceedings before the Hon'ble Telangana High Court, NTPC will be required to pay the balance 75% of the entry tax amount forthwith to the Petitioner (subject to the outcome of the present petition and the disputes as raised herein).
- e) The Petitioner seeks declaration *re* imposition of Telangana Tax on Entry of Goods into Local Areas Act, 2001 as a change in law event (which is disputed by NTPC on



facts and law) and in addition seeks payment of 25% of the amounts as deposited by it (should it succeed before the Hon'ble Commission and for being out of pocket to this extent). It is not the case where the Petitioner is seeking payment of 75% at this juncture. Hence the claim of NTPC that the present proceeding is pre-mature is erroneous and unsustainable.

- f) Further, with regard to reliance of NTPC on *Coastal Gujarat Power Limited vs CERC & Ors in Appeal No. 172 of 2017* for deferring the claim for CIL event, the concerned judgment relied upon is not relevant for its facts and circumstances being at variance to that of the Petitioner's case.

***Re: Petitioner in response to the Notice dated 30.01.2020 issued by the Commercial Tax Officer has itself made the submissions that the Hon'ble Supreme Court in Rayalseema Case and Tata Teleservices case has merely provided the liberty to file the Petitions for consideration before Hon'ble High Court of Telangana and therefore it cannot raise the claims for CIL for levy of Entry Tax.***

- g) The Petitioner had raised the objections with regard to the payments towards the Entry Tax and had challenged the same before the Hon'ble High Court of Telangana in the Petition bearing No. 4894 of 2020 titled as "*ACME Yamunanagar Solar Power Pvt. Ltd. v. State of Telangana*". This was done pursuant to the Assessment Order passed by the CTO. Thereafter, the High Court vide Order dated 22.06.2020 in *WP No. 4894 of 2020* & Batch directed interim stay on the recovery amount subject to the payment of 25% entry tax as demanded by the CTO within 6 weeks. Therefore, the Petitioner had no option but to comply with the said Order and subsequently make the payments towards said entry tax amount.

***Re: AP Entry Tax was adopted by the State of Telangana on 01.06.2016 which is prior to the Effective Date in the PPA i.e., 19.07.2016:***

- h) The Orders passed by the Hon'ble High Court of Andhra Pradesh dated 31.12.2007 in *Rayalseema case* and 19.07.2011 in *Tata Teleservices cases* regarding the unconstitutionality of Entry Tax squarely applies to the State of Telangana before the Adoption Order.
- i) NTPC has failed to appreciate that the PPA(s) were signed on 09.08.2016 and the Effective Date i.e., 19.07.2016 (as defined under the PPA at Clause 2.1.1), is prior to

the Order dated 11.11.2016 passed in the *Jindal Case*. Therefore, Entry Tax was not in force as on the date of either the Bidding or signing of the PPA.

***Re: Petitioner had filed Petition No. 233/MP/2017 for seeking Change in Law reliefs in pursuance to the introduction of GST laws, wherein the Petitioner has accepted the validity of Entry Tax as on the Effective Date of the PPA.***

- j) The table provided by the Petitioner in the Rejoinder filed in Petition No. 233/MP/277 is in response to NTPC's allegations that the Petitioner was intentionally not giving the details of the taxes subsumed with the introduction of GST. Therefore, the Petitioner produced the aforesaid table demonstrating the details of the taxes imposed on domestic procurements.
- k) Considering the Ministry of Finance's notification dated 14.11.2018 notifying the Acts of State Government, including A.P. Entry Tax Act, being subsumed into the GST, the table was only for the explanatory purpose to elaborate the shift from pre-GST to post-GST regime. Therefore, the portion of the Rejoinder only sets out the change in statutory regime and not at any point of time admits the factoring-in of levy of Entry Tax (especially for not being in-force).

***Re. Application of Change in Law, 2021 rules in the present case:***

- l) The Change in Law proceedings/events which were instituted prior to notification of the CIL Rules 2021, cannot be adjudicated as per the mandate of CIL Rules 2021.

**Analysis and Decision:**

15. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records.
16. From the submissions of the parties the following issues arise for adjudication:

**Issue No. 1:** *Whether imposition of Entry Tax for entry of Goods in the State of Telangana through Telangana Tax on Entry of Goods into Local Areas Act, 2001 read with Judgment dated 11.11.2016 titled "Jindal Stainless Limited & Anr. Vs. State of Haryana & Ors. and Batch (Civil Appeal Nos. 3453 of 2002) read with Show Cause Notice dated 02.01.2020*

*issued by Commercial Taxes Department, Government of Telangana and Assessment Order dated 11.02.2020 pronounced by Commercial Tax Officer, Mahboobnager Circle, Nalgonda Division, Telangana read with Hon'ble Telangana High Court Order dated 04.03.2020 qualify as a Change in Law Event as per Article 12 of the PPA?*

***Issue No. 2:*** *Whether there is a need to compensate the Petitioners for the increase in the Project cost on account of imposition of the Entry Tax as one-time lump amount on account of Change in Law? And whether the Petitioner is also entitled for carrying cost?*

***Issue No. 3:*** *Whether to compensate the Petitioner on account of legal and administrative costs incurred by the Petitioners in pursuing the instant petition?*

17. We now discuss and analyse the issues one by one.

***Issue No. 1:*** *Whether imposition of Entry Tax for entry of Goods in the State of Telangana through Telangana Tax on Entry of Goods into Local Areas Act, 2001 read with Judgment dated 11.11.2016 titled “Jindal Stainless Limited &Anr. Vs. State of Haryana &Ors. and Batch (Civil Appeal Nos. 3453 of 2002) read with Show Cause Notice dated 02.01.2020 issued by Commercial Taxes Department, Government of Telangana and Assessment Order dated 11.02.2020 pronounced by Commercial Tax Officer, Mahboobnager Circle, Nalgonda Division, Telangana read with Hon'ble Telangana High Court Order dated 04.03.2020 qualify as a Change in Law Event as per Article 12 of the PPA?*

18. The Petitioner has submitted that imposition of Entry Tax for entry of Goods in the State of Telangana through Telangana Tax on Entry of Goods into Local Areas Act, 2001 qualifies as a Change in Law Event as per Article 12 of the PPA in view of:-

- a) Judgment dated 11.11.2016 titled “Jindal Stainless Limited &Anr. Vs. State of Haryana & Ors. and Batch (Civil Appeal Nos. 3453 of 2002).
- b) Show Cause Notice dated 02.01.2020 issued by Commercial Taxes Department, Government of Telangana and
- c) Assessment Order dated 11.02.2020 pronounced by Commercial Tax Officer, Mahboobnager Circle, Nalgonda Division, Telangana.

19. Section 3 (1) (a) and Section 3(2) were enacted on 16.10.2001 of the *Andhra Pradesh Tax on Entry of Goods into Local Areas Act of 2001*(AP Entry Tax Act), which stipulates as under:

*Section 3(1)(a): “There shall be tax levied and collected on the entry of notified goods into any local area for sale, consumption or use therein....”*

*Section 3(2): “No tax shall be levied on the notified goods imported by the dealer registered under the Andhra Pradesh Value Added Tax Act, 2005, who brings such goods into local area for the purpose of resale or using them as inputs for manufacture of other goods in the State of Andhra Pradesh or during the course of inter-state trade or commerce.”*

20. The constitutional validity of Sections 3 and 4 of the AP Entry Tax Act was challenged before the Hon’ble High Court of Andhra Pradesh in the matter titled “*Sree Rayalseema Alkalies and Allied Chemicals Limited Vs. State of Andhra Pradesh and Ors.*” (WP Nos. 615 of 2002) and the Hon’ble High Court vide its Order dated 31.12.2007 held as under:

*“17. For one to justify, a particular tax levied to be compensatory in nature, it is essential that there should be direct and intricate relationship between the collection of tax and its intended expenditure. The broad and generalised statements mentioned by the State Government, as were noticed supra by us, are all representing or corresponding to the basic and fundamental obligations of any Government, which they owe to their citizens. They are not special features specific to cater to the needs of the people indulging in trade or commerce. Construction of roads, culverts and bridges or providing basic health care facilities or rest-houses for the transport operators on the waysides are not exclusively intended or meant for promoting any class, or even generally, the trade or commerce. Such basic and essential infrastructural facilities are also liable to be put to use by all others as well. In that respect, provision of such facilities like good motor-able roads, illumination of streets or provision of parks or gardens cannot be rolled up and presented as the "specific end objectives" of the intended promotion of the interests of tradesmen or businessmen. The essential link between the infrastructure or facility or service, which is directly or even indirectly held to promote the cause of trade or commerce, is missing in them. Hence, we find ourselves not in a position to accord approval for the present impost as a compensatory tax.*

*18. Therefore, clearly the impugned law amounts to impeding the freedom of movement of trade or commerce across the territory of the nation. The principles enunciated by the Supreme Court in *Atiabari Tea Co. Case*, *Shree Mahavir Oil Mills v. State of Jammu and Kashmir* [1997] 104 STC 148, *Automobile Transport (Rajasthan) Limited and Jindal Stainless case*, have all been followed in the breach. **Further, it is admitted that the procedure prescribed to obtain the sanction of the President has not been obtained prior to enacting the impugned Entry Tax Act.***

*19. Therefore, we have no hesitation to declare the impugned levy as unconstitutional. For the foregoing discussion, the batch of writ petitions stands allowed, but, in the circumstances without costs. That Rule Nisi has been made absolute as above.”*

21. Vide Judgment dated 11.11.2016, the Hon'ble Supreme Court of India in the titled "*Jindal Stainless Limited &Anr. Vs. State of Haryana &Ors. and Batch [Civil Appeal Nos. 3453 of 2002]*" has held as under:

**"ORDER**

*By majority the Court answers the reference in the following terms:*

- 1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word Free used in Article 301 does not mean free from taxation.*
- 2. Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that levy of a non-discriminatory tax would not constitute an infraction of Article 301.*
- 3. Clauses (a) and (b) of Article 304 have to be read disjunctively.*
- 4. A levy that violates 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso there under is satisfied.*
- 5. **The compensatory tax theory evolved in Automobile Transport case and subsequently modified in Jindals case has no juristic basis and is therefore rejected.***
- 6. Decisions of this Court in Atiabari, Automobile Transport and Jindal cases (supra) and all other judgments that follow these pronouncements are to the extent of such reliance over ruled.*
- 7. **A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing state.***
- 8. Article 304 (a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.*
- 9. **States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.***
- 10. **The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of India from another country are left open to be determined in appropriate proceedings.***

22. Subsequently, the Chief Tax Officer issued a Show Cause Notice dated 02.01.2020 to the Petitioner informing liability of an amount of INR 1,17,00,379/- (One Crore Seventeen Lakhs Three Hundred and Seventy Nine only) as an Entry Tax for importing notified goods into the State of Telangana for the period from April, 2017 to June, 2017.

23. Vide Assessment Order dated 11.02.2020, Commercial Tax Officer, Mahboobnager Circle, Nalgonda Division, Telangana held as under:

*“...This liberty given to the respondents does not mean that the State Government does not levy entry tax. The liberty given to the respondents does not applicable to the assessee. However, the assessee has the liberty to approach the appropriate forum either regular appeal or Hon'ble High Court of Telanagana for redressal. **The liberty given to the respondents does not preclude the assessing authority for initiation of assessment proceedings. Since, the court upheld the validity of the Act, it is mandatory to assess the entry tax on goods on the importers within the stipulated time to avoid limitation of time as per the provisions of the Entry Tax on Goods Act 2001.***

*The order of the Central Electricity Regulatory Commission which is relied on by the assessee does not have any effect on the levy of Entry Tax on goods. It is liberty to the assessee to approach either State Government or any other forum for relief of additional burden of entry tax incurred in generation of solar power Le. electricity. The assessing authority has no power under the provisions of the Entry Tax on Goods Act 2001 to give exemptions on par with the Solar Power Policy. **It is the State Government to take decisions on the additional burden of Entry Tax which is the result of Hon'ble Supreme Court judgment** which is not subject matter while issuing Solar Power Policy*

*Once, the Hon'ble Supreme Court upheld the validity of Entry tax on goods, it is neither violative of inter State free trade nor violative of Constitution. The judgments relied on by the assessee are before the judgment of the Hon'ble Supreme Court. **Once, the Hon'ble Supreme Court upheld the validity, the judgments of the Hon'ble High Courts of various States including Tamilnadu State become no more applicable.***

24. From the above, we note that the constitutional validity of Sections 3 and 4 of the AP Entry Tax Act was challenged before the Hon'ble High Court of Andhra Pradesh, which vide its judgment dated 31.12.2007 held that levy of the Entry tax is unconstitutional. However, in appeal, the Hon'ble Supreme Court vide its judgment dated 11.11.2016 has held that only such taxes which are discriminatory in nature are prohibited by Article 304(a) of the Constitution of India. The compensatory tax theory has no juristic basis. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing State. In view of the said Order, the Chief Tax Officer issued a Show Cause Notice dated 02.01.2020 to the Petitioner informing liability of an amount of INR 1,17,00,379/- as entry tax for importing notified goods into the State of Telangana for the period from April, 2017 to June, 2017. Further, the Commercial Tax Officer vide its Order dated 11.02.2020 held that once the Hon'ble Supreme Court upheld the validity of entry tax on goods, it is neither violative of inter State free trade nor violative of the Constitution. We are also of the view that the validity of entry tax on goods has already been decided by the Hon'ble Supreme Court in affirmative.

25. We observe that on 16.10.2001, the State of Andhra Pradesh enacted the AP Entry Tax Act to levy and collect tax on the entry of certain goods into any local area for sale, consumption or use therein. Section 3 of the AP Entry Tax Act is the charging provision which enabled levy and collection. Subsequently, the constitutional validity of Andhra Pradesh Tax on Entry of Goods into Local Areas Act, 2001 was challenged before the Hon'ble High Court of Andhra Pradesh in *Sree Rayalaseema Alkalies vs State of Andhra Pradesh And Ors (WP Nos.615 of 2002)*. On 31.12.2007, the Hon'ble High Court of Andhra Pradesh, vide its Order declared levy of entry tax as unconstitutional. On 01.03.2014, Andhra Pradesh Reorganization Act, 2014 was enacted whereby a new State known as State of Telangana was formed which was initially a part of the State of Andhra Pradesh. On 01.06.2016, by virtue of the Telangana Adaptation of Laws Order, 2016, the A.P Tax on Entry of Goods into Local Areas Act, 2001 came into effect in the State of Telangana as Telangana Tax on Entry of Goods into Local Areas Act, 2001 (Telangana Entry Tax Act).
26. It is further observed that on 09.10.2015, NTPC issued RfS and the Petitioner submitted its bid on 08.02.2016. E-reverse auction was held on 20.06.2016. Upon conclusion of e-reverse auction, NTPC issued Letter of Intent (LoI) to the Petitioner on the same day. The Petitioner executed two PPAs with the Respondent on 09.08.2016 to set up Solar PV Power Project based on Photo-voltaic technology of 10 MW capacity each in the State of Telangana and supply it to NTPC. On 11.11.2016, the Hon'ble Supreme Court of India vide its Order in the case of *Jindal Stainless Steel Ltd. v State of Haryana (2017) 12 SCC 1* declared that the levy of the entry tax is constitutional.
27. The Commission observes that as per Article 12, 'Change in Law' means the enactment/ coming into effect/ adoption/ promulgation/ amendment/ modification or repeal of any Law in India; change in the interpretation of any law in India; imposition of a requirement for obtaining any consents or change in tax or introduction of any tax made applicable for supply of power by the SPD as per the terms of this Agreement, resulting into any additional recurring/ non-recurring expenditure or any income to the SPD. Since the Petitioners placed their bids on 08.02.2016 and the PPAs were executed on 09.08.2016 i.e. before holding of levy of the Entry Tax as constitutional by the Hon'ble Supreme Court (on 11.11.2016), the Commission holds that the enactment of '*Telangana Tax on Entry of Goods into Local Areas*

Act, 2001' is squarely covered as 'Change in Law' as per Article 12 of the PPAs. The issue is decided accordingly.

***Issue No. 2: Whether there is a need to compensate the Petitioner for the increase in the Project cost on account of imposition of the Entry Tax as one-time lump amount on account of Change in Law? And whether the Petitioner is also entitled for carrying cost?***  
**AND**

***Issue No. 3: Whether to compensate the Petitioner on account of legal and administrative costs incurred by the Petitioners in pursuing the instant petition?***

28. The Petitioner has submitted that there is need to compensate it for the increase in the project cost on account of imposition of the Entry Tax as one-time lump amount on account of Change in Law along with carrying cost. *Per contra*, NTPC has submitted that the Petitioner itself has contested the levy of entry tax by way of Writ Petition No. 4894 of 2020 before the Hon'ble High Court of Telangana, wherein the Hon'ble High Court has granted stay of the operation of the final assessment order dated 11.2.2020 passed by the Commercial Tax Officer, subject to making part deposit (i.e. 25%). Learned counsel submitted that as on date, the imposition of the entry tax by the Commercial Tax Officer on the Petitioner is pending adjudication before the Hon'ble High Court of Telangana and if the Hon'ble High Court takes a view that the entry tax imposed upon the Petitioner is bad and inoperative, then the Petitioner's claim for Change in Law compensation would be rendered meaningless. Therefore, the present Petition is pre-mature and may be disposed of with liberty to the Petitioner to approach the Commission after the Writ Petition is decided.
29. We observe that though the Petitioner has submitted that it should be compensated for the increase in the Project cost on account of imposition of the entry tax along with carrying cost, the Petitioner has not given any details about the impact of Entry Tax/carrying cost on its project. The Petitioner in its written submission has submitted that in compliance of the Hon'ble High Court order dated 22.06.2020, it has paid a sum of Rs. 29,25,095/- (25% of 1,17,00,379/-) for FY 2017-2018 vide Challan No. 2000497311 on 19.08.2020 and at this stage it is seeking only 25% of the amounts as deposited by it. Further, the Petitioner has submitted that it is not the case where it is seeking payment of 75% at this juncture.
30. We observe that vide judgment dated 24.08.2017, the Hon'ble Supreme Court of India in the *State of Telangana & Ors. Versus Tata Teleservices Ltd., Hyderabad Etc. [Civil Appeal Nos. 10832-10833 OF 2017 (Arising out of SLP(C)Nos.17156-17157 of 2013)]* has held as under:



.....  
“On perusal of the judgment, we find that that various contentions were raised by the respondents in this behalf. However, by the impugned judgment, the High Court has confined the discussion only to the question as to **whether the tax was compensatory in nature or not. Holding it to be non-compensatory, the levy is declared as unconstitutional. Insofar as, this aspect is concerned, it stands overruled by the judgment of this Court in “Jindal Stainless Ltd. And Anr. V. State of Haryana and Ors.” [2016 (11) SCALE 1].**

*In view thereof, the impugned judgment of the High Court is set aside and these appeals are allowed. However, since other contentions raised by the respondents were not dealt with by the High Court, the matter is remit back to the High Court for deciding those issues afresh.”*

31. We observe that the Hon’ble High Court of Telangana vide Order dated 22.06.2020 in W.P No.4894 of 2020 titled as *ACME Yamunanagar Solar Power Pvt. Ltd. v. State of Telangana and Ors.* has held as under:

*“13. It is not in dispute that after the Act was held unconstitutional by the High Court in *Sree Rayalaseema Alkalies and Allied Chemicals Ltd.* (3 Supra), the State approached the Supreme Court in C.A. No.s 8036 of 2017 and batch in *State of A.P.* (4 Supra), and the Supreme Court permitted the respondents in the said Appeals to file fresh petitions in the Telangana High Court challenging the vires of the Act.*

*14. Several cases (more than 300 in number) have been filed in this Court thereafter to declare the Act as violative of Articles 14, 301, 304(a), 265 and 300-A of the Constitution of India and in several cases a specific plea was also raised contending that the term ‘input’ in Section 3(2) of the Act should be widely interpreted, and not narrowly interpreted.*

.....

*21. In view of the rival contentions of the parties, the following issue requires consideration in these matters:*

*"whether the term 'input' used in sub-Section (2) of Section 3 of the Act should be given a narrow meaning confining it to only 'raw materials', which are part of the final product i.e. solar power*

*or*

*whether the term 'input' should be given a wider meaning so as to cover not only 'raw-materials' used in the final product but also capital goods and consumables used for the generation of solar power? "*

*22. In *CST v. Modi Sugar Mills Ltd.*, the Supreme Court has held that in interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing*

statute in the light of what is clearly expressed and that it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency.

.....

28. It requires to be considered whether the definition of such a term existing in other statutes / rules such as Rule 2(g) in the CENVAT Credit Rules, 2002 can be automatically adopted to interpret the word 'input' used in Section 3(2) of the Act.

29. At present, we are of the view that a more detailed hearing on the matter is warranted to decide the issue.

30. However, the interpretation suggested by the counsel for the petitioner cannot also be rejected outright as one which is not plausible.

31. Since several Writ Petitions (more than 300) are pending in this Court where such issues have been raised in relation to this Act apart from its constitutional validity, we are of the considered opinion that a detailed hearing is necessary to come to a final conclusion; and that no case has been made out by the petitioner to depart from the consistent view taken by this Court in the several matters which are pending in this Court raising same issue as well as other issues.

32. So in the facts and circumstances of these cases, there shall be a stay of collection of Entry Tax pursuant to the impugned final assessment orders dt.11.02.2020 passed by the 2nd respondent from the petitioner for the years 2015-16, 2016-17 and 2017-18 on condition of the petitioner **paying 25% of the Entry Tax demanded by the respondents** under the impugned proceedings within a period of six weeks from today”

32. From the above, we observe that the Petitioner has challenged the legality of the Assessment Order dated 11.02.2020 before the Hon’ble High Court of Telangana in W.P No. 4894 of 2020 titled as *ACME Yamunanagar Solar Power Pvt. Ltd. v. State of Telangana and Ors.* Further, the Hon’ble Supreme Court of India vide its judgment dated 24.08.2017 in the *State of Telangana & Ors. Versus Tata Teleservices Ltd., Hyderabad Etc. [Civil Appeal Nos. 10832-10833 OF 2017 (Arising out of SLP(C)Nos.17156-17157 of 2013)]* has remitted the matter back to Hon’ble High Court for hearing afresh the other contentions raised by the respondents were not dealt with.

33. In the instant case, it is observed that the Petitioner has itself invoked the Writ Jurisdiction of the Hon’ble High Court of Telangana thereby challenging the Assessment Order Notice issued by the Commercial Tax Officer on the ground that in terms of Section 3(2) of the Telangana Entry Tax Act, no tax shall be levied on notified goods imported by the dealer,

who brings such goods into a local area for resale or using them as inputs for the manufacture of other goods in the State of Telangana. As on date, the fact before the Commission is that the validity of the entry tax imposed by the Assessment Order dated 11.02.2020 is pending for adjudication before the Hon'ble High Court of Telangana in WP No. 4894 of 2020. The Commission is of the view that at this stage, any increase in the project costs by way of payment of the entry tax remains entirely subject to the decision of the Hon'ble High Court of Telangana.

34. The Commission observes that the Appellate Tribunal for Electricity in its judgment dated 27.04.2021 in the case titled "*Coastal Gujarat Power Ltd. v CERC & Ors. in Appeal No. 172 of 2017*" has held as under:

*"58. There is merit in the claim for compensation on account of CIL due to levy of Gujarat Green Cess, should the fiscal law be eventually upheld, and the judgment of High Court be vacated. **Conversely**, however, if the Supreme Court were to endorse the view taken by the High Court and the law is held bad and inoperative and the Government of Gujarat were called upon to refund the tax collected, the claim for compensation as CIL by the Procurer would be rendered meaningless. At best, in such scenario, the carrying cost suffered would need to be considered and taken care of, unless the decision of the Supreme Court comes with directions having a bearing even on such aspects. **If the cess is not due, it cannot be collected or passed on. This stage is one where there can be no speculation as to what shape the judgment of Supreme Court will take. In our considered view, a practical approach has to be adopted, by deferring issuance of any directions on the subject at this intermediary stage.***

*59. For foregoing reasons, and in the circumstances, we hold that if the burden created and borne by the appellant on account of enforcement of Green Cess Act, during the operation period, were to continue to be borne by the appellant even after decision is rendered by the Supreme Court on the pending challenge, the same shall be treated by the Commission as a CIL event and necessary order shall be passed by it to afford recompense to that extent along with corresponding carrying cost."*

35. In view of above, the Commission finds that since the reliefs sought in this petition and validity of the Assessment Order dated 11.02.2020 imposing entry tax which is sub-judice before the Hon'ble High Court of Telangana are directly and substantially and closely juxtaposed and any effective order by this commission may not be proper at this stage. After the outcome of the decision of the Hon'ble High Court of Telangana, the Petitioner is at liberty to approach to this Commission.

36. No Order as to cost. The issues are decided accordingly.

37. Accordingly, Petition No. 543/MP/2020 is disposed of.

sd/  
पी. के. सिंह  
(सदस्य)

sd/  
अरुण गोयल  
(सदस्य)

sd/  
आई. एस. झा  
(सदस्य)