

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.207/MP/2021

- Subject : Petition under Section 79(1)(b), Section 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement(s) dated 25.06.2019 seeking issuance of appropriate order(s) / direction(s) / declaration from this Commission that the imposition of safeguard duty on the import of solar cells, whether or not assembled in modules or panels, vide Notification No. 2/2020-Customs (SG) dated 29.07.2020 issued by the Department of Revenue, Ministry of Finance (Government of India) is an event of Change in Law and for seeking approval to the quantum and mechanism of compensation (along with interest) as submitted along with the present Petition in line with the methodology as settled by this Commission vide its order dated 20.08.2021 in Petition No. 536/MP/2020.
- Date of Hearing : 2.5.2023
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Eden Renewable Cite Private Limited (ERCPL)
- Respondents : Solar Energy Corporation of India Ltd. (SECI) and 2 Ors.
- Parties Present : Shri Nitish Gupta, Advocate, ERCPL
Ms. Parichita Chowdhury, Advocate, ERCPL
Shri Nishant Talwar, Advocate, ERCPL
Shri Arijit Maitra, Advocate, BYPL & BRPL
Shri Sameer Singh, BYPL
Shri Nishant Grover, BYPL
Ms. Anushree Bardhan, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI

Record of Proceedings

The matter was re-listed for hearing in terms of the direction of Appellate Tribunal for Electricity dated 17.4.2023 in IA No.552 of 2023 in Appeal No. 343 of 2023. During the course of hearing, learned counsel for the Respondent Nos. 2 & 3 and learned counsel for the Petitioner made their respective submissions in the matter.

2. Learned counsel for the Respondent Nos. 2&3 referred to the provisions of Customs Tariff Act, 1975, Customs Tariff (Identification and Assessment of

Safeguard Duty) Rules, 1997, Safeguard Duty Notification dated 29.7.2020, etc. and *inter-alia* submitted as under:

- (a) As per Section 8(B)(4) of the Customs Tariff Act, 1975, Safeguard Duty would operate for a period of four years from the date of its imposition.
- (b) Safeguard Duty on the solar cells whether or not assembled in module or panel came to be imposed by Notification dated 30.7.2018 and the said Notification prescribed the rates to be imposed on solar cells to be imported till 29.7.2020.
- (c) As on cut-off date, the Safeguard Duty was already in existence and subsequent Notification dated 29.7.2020 only continued the imposition of Safeguard Duty as evident from the provisions thereof. Therefore, the Notification dated 29.7.2020 cannot be considered as a fresh Change in Law event under the agreements. On the other hand, the said Notification reduced the rate of Safeguard Duty prescribed under the earlier Notification dated 30.7.2018.
- (d) As per the PPA, the SCD of the Petitioner's Project was 24.12.2020. Therefore, the Petitioner had to necessarily import the solar panels prior to 29.7.2020- factoring into the prevalent Safeguard Duty-if it wanted to commission the Project by SCD.

3. *In rebuttal*, learned counsel for the Petitioner mainly submitted as under:

- (a) A clause indicating that "*any extension of taxes, cess or levies at the same rate on the expiry of current period shall be not considered as Change in Law*" as featuring in the original RfS was specifically removed by SECI vide 2nd amendment to the RfS.
- (b) Safeguard Duty Notification dated 30.7.2018 specifically provided for a sunset period i.e. till 29.7.2020 and no Safeguard Duty was applicable beyond 29.7.2020. The Petitioner submitted its bid on 15.2.2019 and at that time, there was no Safeguard Duty applicable for the period after 29.7.2020. Even, the Notification dated 3.3.2020 which initiated the review investigation for continued imposition of Safeguard Duty, as relied upon by the Respondents, was issued after the submission of bid on 15.2.2019.
- (c) Original SCD of the Project was 24.12.2020 i.e. approximately 5 months after the expiry of the Safeguard Duty applicable in terms of Notification dated 30.7.2018. As per the industry practice, the Petitioner planned to procure the solar modules only after 29.7.2020 and accordingly, did not consider the cost of Safeguard Duty in its bid. *Albeit* the SCD was later extended by SECI till 6 months after the operationalization of LTA and the Project achieved the commercial operation on 13.8.2021.
- (d) Safeguard Duty Notification dated 29.7.2020 constitutes a Change in Law under the PPA and this Commission has also held so in its recent order dated 20.1.2023 in Petition Nos. 722/MP/2020 & 723/MP/2020 involving almost similar facts & circumstances.

4. Learned counsel for the Respondent No. 1, SECI submitted that the Respondent has already made its detailed submissions on 7.3.2023 which may be considered.

5. Considering request of the learned counsels for the parties, the Commission permitted the Respondent Nos. 2&3 to file their written submissions within two weeks with copy to the Petitioner who may file its written submissions, if any, within a week thereafter.

6. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)