

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.283/MP/2022

Subject : Petition under Section 79 of the Electricity Act, 2003 for seeking declaration of Change in Law on account of change in Goods and Services Tax Slabs vide Notification No. 8/2021-Central Tax (Rate) dated 30.9.2021 read with G. O. (MS) No. 121 bearing Notification No. II(2)/CTR/671(e-1)/2021 dated 4.10.2021 issued by the Government of Tamil Nadu in terms of Article 12 of the Power Purchase Agreement dated 1.5.2021 executed between JSW Renew Energy Limited and Solar Energy Corporation of India Limited.

Petitioner : JSW Renew Energy Limited (JREL)

Respondents : Solar Energy Corporation of India Limited and Anr.

Petition No.286/MP/2022

Subject : Petition under Section 79 of the Electricity Act, 2003 for seeking declaration of Change in Law on account of change in Goods and Services Tax Slabs vide Notification No. 8/2021-Central Tax (Rate) dated 30.9.2021 read with G. O. (MS) No. 121 bearing Notification No. II(2)/CTR/671(e-1)/2021 dated 4.10.2021 issued by the Government of Tamil Nadu in terms of Article 12 of the Power Purchase Agreement dated 27.7.2021 executed between JSW Renew Energy Limited and Solar Energy Corporation of India Limited.

Petitioner : JSW Renew Energy Limited (JREL)

Respondents : Solar Energy Corporation of India Limited and 2 Ors.

Date of Hearing : 16.2.2023

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Parties Present : Shri Aditya Singh, Advocate, JREL
Ms. Pratiksha Chaturevedi, Advocate, JREL
Shri Anurag Agarwal, JREL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petitions have been filed, *inter-alia*, seeking declaration of Change in Law on account of change in GST slabs vide Notification No.8/2021-Central Tax (Rate) dated 30.9.2021 read with G.O (MS) No. 121 bearing Notification No. II(2)/CTR/671(e-1)/2021 dated 4.10.2021 issued by the Government of Tamil Nadu in terms of Article 12 of the Power



Purchase Agreements dated 1.5.2021 and 27.7.2021 executed between the Petitioner and the SECI. Learned counsel further submitted as under:

(a) As per Article 12.1.3 of the PPAs, in case of change in rates of Safeguard Duty, GST and Basic Custom Duty after 28.7.2020 and resulting in change in Project Cost, then such change will be treated as Change in Law and the quantum of compensation of payment on account of change in rates of such duties shall be provided to the affected party as per the Article 12.2.3 subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall govern the developer and the buying entity.

(b) Accordingly, SECI in Petition No.178/AT/2021 filed seeking adoption of tariff for 970 MW Wind Power Project under Tranche IX, which also included the Petitioner's Projects, had also prayed to recognize that in terms of Article 12.2 of the PPAs and Article 8.2 of the PSAs, any change in rates of safeguard duty, GST and Basic Customs Duty after 28.7.2020, if any, will be considered as Change in Law subject to the fulfilling the conditions contained therein.

(c) However, in view of the notification of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 on 22.10.2021, the Commission vide order dated 22.12.2021, in respect of the aforesaid prayer, directed the parties to follow the process prescribed therein and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

(d) However, it has now been settled that the Change in Law Rules only apply to the Change in Law events which occur after the notification of the said Rules and for the events prior to such date, the parties shall be governed by the provisions of the PPAs.

(e) Keeping in view that the parties have clearly agreed that any change in rates of Safeguard Duty, GST and Basic Custom Duty after 28.7.2020 would constitute Change in Law and SECI itself had prayed for to this effect in Petition No. 178/AT/2021, the Commission may recognize the event, as pleaded by the Petitioner, as Change in Law event and dispose of the Petitions at this stage itself.

2. After hearing the learned counsel for the Petitioner, the Commission deemed it appropriate to afford the Respondents an opportunity of hearing in the matters and accordingly, ordered as under:

(a) Admit. Issue notice to the Respondents.

(b) The Petitioner to serve copy of the Petitions on the Respondents and the Respondents to file their reply to the Petition within three weeks after serving copy of the same to the Petitioner who may file its rejoinder within three weeks thereafter.

(c) Parties to comply with the above direction within the specified timelines and no extension of time shall be granted.

3. The Petitions shall be listed for hearing on 16.5.2023.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**