

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 46/RP/2022**

Subject : 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 alongwith the applicable provisions of law, seeking review of the Order dated 23.08.2022 passed by this Commission in Petition No. 373/MP/2019 in light of the error apparent on the face of the record.

Date of Hearing : 14.3.2023

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

Review Petitioner: Adani Solar Energy Jodhpur Five Private Ltd. (ASEJFPL)

Respondents : Solar Energy Corporation of India Limited & Anr.

Parties Present : Shri Sujit Ghosh, Advocate, ASEJFPL  
Shri Ravi Sinha, ASEJFPL

**Record of Proceedings**

Learned counsel for the Petitioner submitted that present Review Petition has been filed seeking review of the Commission's order dated 23.8.2022 passed in Petition No. 373/MP/2019 in light of certain errors apparent on the face of the record. Learned counsel for the Petitioner further submitted as under:

(a) The Review Petitioner had filed Petition No.373/MP/2019 before this Commission seeking approval of Change in Law event i.e. imposition of Safeguard Duty vide Notification No.1/2018 along with carrying cost and to evolve a suitable mechanism to offset the financial implication arising due to such Change in Law event.

(b) Vide order dated 23.8.2022, the Commission allowed the Safeguard Duty claims of the Petitioner subject to such invoices being raised/issued prior to Commercial Operation Date (COD) and the Commission also directed that the mechanism for payment would be in accordance with the order dated 20.8.2021 passed in Petition No. 536/MP/2020. However, the Commission did not render any finding on the claim for carrying costs which was specifically pleaded and prayed for by the Petitioner. It is submitted that it , constitutes an error apparent on the face of record.

(c) Secondly, subsequent to the passing of the impugned order, Appellate Tribunal for Electricity vide judgment dated 15.9.2022 in Appeal No. 256 of 2019 and batch, titled "*Parampujya Solar Energy Pvt. Ltd. & Ors. vs. Central Electricity Regulatory Commission and Ors.*" has allowed the Change in Law claims for GST and Safeguard Duty for the entire period of its impact including

period post COD. Further, the APTEL, after interpreting the Change in Law clause under the PPA, has also allowed the claim of carrying cost.

(d) It is a trite law that if a point is covered by a decision rendered subsequently to the impugned order, it could be said to be a 'mistake apparent from the record' and corrected. Rectification of an order stems from the principle that justice is above all and is exercised to remove the error. In this regard, reliance was placed on the judgment of Hon'ble Supreme Court in the case of Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Limited, [(2008) 14 SCC 171].

2. After hearing the learned counsel for the Review Petitioner, the Commission directed to issue notice to the Respondents on merit as well on admissibility. The Respondents were directed to file their reply to the Review Petition within three weeks with copy to the Review Petitioner, who may file its rejoinder within two weeks thereafter.
3. The Review Petition shall be listed for hearing on 23.5.2023.

**By order of the Commission**

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