BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

GANDHINAGAR

Petition No. 2200 of 2023

In the matter of:

Petition under Section 86(1) (f) of the Electricity Act, 2003 read with Regulation 23 of GERC (Conduct of Business) Regulations, 2004 and Article 9 of the Power Purchase Agreement (PPA) dated 23.04.2021 seeking 'In Principle' declaration of issuance of Notifications dated 19.10.2022 and 01.02.2023 as a Change in Law Event.

Petitioner : Tata Power Saurya Limited

Represented by : Ld. Adv. Mr. Suhael Buttan along with
Mr. Vedant Chaudhary and Miss. Nuha Rehman

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited

Represented by : Ld. Adv. Ms. Ranjitha Ramachandran along with
Ld. Adv. Ms. Shrishti Khindaria and Mr. R. K. Gohil

CORAM:
Pankaj Joshi, Chairman
Hiren Shah, Member
Jatin N. Thakkar, Member

Date: 29/09/2026

DAILY ORDER

1. The present matter was kept for hearing on 22.09.2026 through Hybrid Mode.

2. Ld. Adv. Mr. Suhael Buttan, appearing on behalf of the Petitioner, submitted that the present Petition is filed by the Petitioner, Tata Power Saurya Limited, under Section 86 (1) (f) of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreement (PPA) dated 23.04.2021 executed between the parties seeking in principle declaration of the Project Imports (Amendment) Regulations, 2022 introduced vide Notification bearing reference No. 54/2022 Customs dated 19.10.2022 and the Project Imports (Amendment) Regulations, 2023 introduced vide Notification bearing reference No. 07/2023 – Customs Notification dated 01.02.2023 by the Central Board Indirect Taxes and Customs (CBIC) and published by the Ministry of Finance (MoF), Govt. of India as Change in Law event.

2.1. He submitted that the matter had already been heard at length during the previous hearing held on 25.08.2025, and that, in pursuance of the directions of the Commission recorded in the daily order dated 10.09.2025, the Respondent, GUVNL, had been directed to file its submissions in respect of the case laws relied upon by the Petitioner on the issue of the Project Imports Regulations (PIR) constituting a Change in Law event. He submitted that the Respondent has since filed its additional submissions dated 19.11.2025, and that he would, at the outset, confine himself to responding to the said additional submissions.

2.2. He submitted that the Customs Tariff Act essentially provided for two routes, namely, Chapter 85 and Chapter 98, and that the present Petition is concerned with Chapter 98. He submitted that the basic customs duty under Chapter 98 was 10%, which came to be reduced to 5% in the year 2017, whereas the basic customs duty under Chapter 85 remained at 0%

up to 31.03.2021. He submitted that the MNRE Office Memorandum dated 09.03.2021 increased the basic customs duty under Chapter 85 alone, prescribing 40% on solar modules and 25% on solar cells with effect from 01.04.2022, and that the said Office Memorandum is of no relevance to the present matter, which is concerned solely with the exclusion of solar power projects from the concessional route under Chapter 98 read with the PIR, 1986.

2.3. He submitted that Para 5 of the MNRE Office Memorandum dated 09.03.2021 itself records that the Ministry of Finance has advised that the customs notification in this regard shall be issued at the appropriate time, and that the said Office Memorandum was therefore neither a formal notification nor an amendment of the applicable rates. He submitted that a specific customs notification is necessary to effectuate a Change in Law, and that the Office Memorandum, by itself, cannot be treated as such Notification.

2.4. The relevant para of MNRE Office Memorandum dated 09.03.2021 referred to by the Petitioner is reproduced below:

> *"5.The Ministry of Finance has also advised that the customs notification in this regard shall be issued at appropriate time."*

2.5. He further submitted, relying upon the judgment of the Hon'ble Supreme Court in Nabha Power Ltd. v. Punjab State Power Corporation Ltd., 2024 SCC OnLine SC 3128, and in particular paras 42, 46, 49, 50, 51 and 55 as reproduced by the petitioner in their additional submission dated 06.12.2024 , that 'law' and 'Change in Law' are two distinct concepts, and that a press release / Office Memorandum which does not alter, amend or

repeal the existing law does not amount to binding law or to a Change in Law. He submitted that, applying the said principle, the MNRE Office Memorandum dated 09.03.2021, which itself contemplated the issuance of an appropriate notification by the customs department is of no relevance.

2.6. He further submitted, relying upon the order of the CERC in the case No. 49/MP/2023 of M/s Vena Energy dated 12.01.2024, that the very same MNRE Office Memorandum dated 09.03.2021 had therein been sought to be relied upon as a Change in Law, and that the CERC held that the 2021 Office Memorandum is only an office memorandum and not a notification, which would qualify as a Change in Law only once it is supported by the notification issued pursuant to the relevant Act.

2.7 He further submitted, relying upon the MERC Order dated 20.08.2024 in Case No. 75 of 2023 which he submitted is an identical petition filed by TP Saurya seeking an 'in-principle' declaration that the MERC framed the issue as to whether the PIR Notifications dated 19.10.2022 and 01.02.2023 qualify as a Change in Law event, and, after noticing the two options available under Chapter 85 and Chapter 98, Petitioner reiterated paras 14.3, 14.4, 14.7, 14.9 and 14.10, as reproduced in their additional submission dated 06.12.2024, that the developer therein had genuinely intended to import the solar cells / modules and avail the benefit of the concessional customs duty under Chapter 98, and that the said event constituted a Change in Law. He submitted that the Petitioner's case stands on an even better footing than the MERC case, inasmuch as, unlike in the MERC case where no recommendatory letter had been issued to the generator, in the present matter the recommendatory letter of the

sponsoring authority had already been issued on 28.09.2022, well before the amendment came into force.

2.8 He further submitted that the appeal filed by MSEDCL against the aforesaid MERC Order came to be dismissed by the Hon'ble Appellate Tribunal for Electricity on the ground of delay in filing, and that the said Order has thereby attained finality on merits. He further submitted that the MERC has, by a subsequent Order in Case No. 215 of 2023, likewise held the amendment to the Project Imports Regulations to be a Change in Law event, against which an appeal is stated to be pending, without any stay.

2.9 He further submitted that the reliance placed by the Respondent GUVNL on the CERC Order in Case No. 245/AT/2022 is misplaced, inasmuch as, in that case, the CERC proceeded on the footing of a specific clause contained in the bid documents therein, read with the undertaking given thereunder, whereas there is no such clause in the Petitioner's bid documents, rendering the said order wholly inapplicable to the present matter.

2.10 He further submitted that the extension of the SCOD from 16.12.2022 to 31.03.2024, granted by the Respondent itself on account of COVID-19 and force majeure circumstances, cannot be held against the Petitioner. He submitted that the Petitioner had commissioned part capacity of 25 MW by 14.12.2022, during the peak COVID period, and had commissioned the balance capacity on 18.03.2024, prior to the extended SCOD of 31.03.2024. He submitted that the Change in Law event had occurred after the bid submission and is squarely covered by the Change in Law provisions of the PPA, and prayed that the 'in-principle' approval sought in the Petition be

granted, with the cost incurred on the import of the equipment being allowed subsequently.

3 Ld. Advocate Ms. Ranjitha Ramachandran appearing for the Respondent, GUVNL, raised, at the outset, a preliminary submission that the Petitioner had imported the project modules / equipment through its group company, which had filed a writ petition before the Hon'ble High Court of Delhi challenging the imposition of customs duty, wherein stay has been refused and which is stated to be still pending. She submitted that, in the event the said writ petition is decided in favour of the importer, the very basis of the present claim would not survive, and requested the Commission either to keep the present matter pending , direct petitioner to inform case status or to consider the said aspect while deciding the matter.

3.1 She further submitted that the Petitioner is seeking an 'in-principle' approval of the Change in Law at a highly belated stage, inasmuch as the project stood commissioned in March 2024 and more than two and a half years have since elapsed. She submitted that an 'in-principle' declaration is appropriate only where the cost impact is still being anticipated, whereas in the present case the cost has already been incurred, and relied upon the judgment of the Hon'ble Appellate Tribunal for Electricity to the effect that the Change in Law and its computation ought to be decided together and not in a piecemeal manner. She accordingly submitted that 'in-principle' approval cannot be granted at this stage.

3.2 She further submitted that, whereas the earlier Written Submissions had proceeded on the footing that the capital cost stood limited to the original

SCOD of 16.12.2022, the basis of the subsequent extension of the SCOD up to 31.03.2024 — as queried by the Commission — has since been placed on record in the Respondent's additional submission dated 19.11.2025, and that the SCOD, as on date, is 31.03.2024.

3.3 She further submitted that the orders of the MERC and the CERC relied upon by the Petitioner are not binding upon this Commission, and that the Commission is not bound even to consider or to distinguish the same, but is to decide the matter on the basis of the terms of the PPA and the facts and circumstances of the present case. She submitted that, in any event, the MERC case is factually distinguishable, as already set out in the Respondent's submissions.

3.4 She further submitted that the Customs authority has rejected the Petitioner's EPC Contractor's application for registration under the PIR on the ground that solar power projects are not covered under the Project Imports Regulations at all, and not merely on the basis of the Notification dated 19.10.2022. She submitted that the said rejection makes specific reference to the MNRE Office Memorandum dated 09.03.2021, whereunder the imposition of basic customs duty of 40% on modules and 25% on cells stood approved with effect from 01.04.2022, thereby demonstrating that solar power projects were never intended to be covered under the PIR.

3.5 She further submitted that Para 6 of the MNRE Office Memorandum dated 09.03.2021 specifically directs all RE implementing agencies and other stakeholders to take note of the BCD trajectory and to include the said provision in their bid documents, where the last date of bid submission is

subsequent to the Office Memorandum, and expressly stipulates that, in all such bids, the imposition of BCD as per the trajectory shall not be considered as a Change in Law.

3.6 The relevant para of MNRE Office Memorandum dated 09.03.2021 referred to by the Respondent is reproduced below:

> *"6. In view of above, the undersigned is directed to inform all RE implementing agencies and other stakeholders, to take note of above trajectory and to include provisions in their bid documents, so that bidders take the trajectory into account while quoting tariffs, in all bids where the last date of bid submission is subsequent to this GM. In all such bids, the imposition of BCD as per above trajectory shall not be considered as change- in-law.*

3.7 She further submitted that, pursuant to the issuance of the Office Memorandum dated 09.03.2021 by the MNRE, notifying the trajectory for imposition of Basic Customs Duty (BCD) on imported solar PV cells and modules, GUVNL issued a specific Corrigendum dated 10.03.2021 to the Request for Selection (RfS). By way of the said Corrigendum, GUVNL formally communicated the MNRE Office Memorandum dated 09.03.2021, along with the BCD trajectory stipulated therein, to all prospective bidders, and expressly requested them to take the said trajectory into consideration while formulating and submitting their bids. She submitted that, in order to afford the bidders adequate time to factor the said BCD trajectory into their bids, GUVNL also extended the last date for bid submission to 12.03.2021 through the same Corrigendum. She therefore submitted that the MNRE Office Memorandum and the BCD trajectory were duly brought to the notice of all bidders by GUVNL through a specific corrigendum forming part of the RfS, prior to the bid due date. Accordingly, the bidders were fully aware of the BCD trajectory at the time of bid

submission and were under an obligation to account for it in their quoted tariffs.

3.8 She further submitted that the reliance placed by the Petitioner on Nabha Power (supra) is misconceived, inasmuch as the Hon'ble Supreme Court was in that case dealing with a press release concerning a cabinet decision, which gave no particulars as to when or how it would come into effect, whereas the present matter concerns a specific MNRE Office Memorandum issued with the approval of the Ministry of Finance, prescribing a definite date and rate, together with a specific direction that the same shall not be treated as a Change in Law. She submitted that, moreover, GUVNL, by way of a specific Corrigendum to the RfS, duly informed all prospective bidders of the said MNRE Office Memorandum and the BCD trajectory prescribed therein, with a request to take the same into consideration while bidding. It was thereby made clear that no claim for Change in Law would lie on the basis of the said trajectory. She submitted, relying upon Lloyd Electric and cognate judgments already placed on record along with its Additional Submission dated 19.11.2025, that once the Government has, in one voice, issued such a policy / Office Memorandum, the Customs notification issued in pursuance thereof cannot be at variance therewith.

3.9 She further submitted, relying upon the judgment of the Hon'ble Supreme Court in Energy Watchdog v. CERC already placed on record along with its Additional Submission dated 19.11.2025, that a letter of the Ministry of Power has been held to have the force of law, and that it cannot be that a letter of the Ministry of Power carries the force of law while an Office

Memorandum of the MNRE, issued with the approval of the Ministry of Finance, does not.

3.10 She further submitted that, even assuming that the Project Imports Regulations constituted a 'law', no Change in Law arises in the absence of any impact, inasmuch as the basic customs duty of 40% on modules and 25% on cells stood notified and known even prior to the bid deadline, and the Petitioner has been subjected to the very same rate. She submitted that a Change in Law under the PPA requires a demonstrable impact, and that, in the event any equipment was in fact imported by the Petitioner at the concessional rate of 5% during the intervening period, the same would, if at all, constitute a Change in Law in favour of the Respondent, require the differential to be passed on to GUVNL.

3.11 She further submitted that the Petitioner has not placed on record the particulars of the import of the solar modules / cells, viz. as to when the same were imported and what customs duty, if any, was paid thereon, and that the claim can therefore not be decided on an 'in-principle' basis, but only upon a consideration of the actual facts, including the impact, if any, in terms of the PPA. She submitted that, in so far as any additional judgments now sought to be cited by the Petitioner are concerned, neither the orders of the State Commissions and the Central Commission nor the said judgments are binding upon this Commission, and that the facts thereof are, in any event, distinguishable, all of which stands addressed in the Respondent's Written Submissions and additional submissions.

4 In rejoinder, Ld. Advocate for the Petitioner submitted that no additional judgment has been cited by him, and that all the authorities relied upon,

including MERC Order in Case No. 75 of 2023, form part of the written Submissions already on record. He submitted that the rejection letter of the Customs authority clearly records that the rejection is not on the basis of the amendment, but on the ground that solar power projects are not at all covered under the PIR.

4.1 He further submitted, relying upon the Advance Ruling of the Customs Authority for Advance Rulings dated 06.07.2022 in the case of Aquila Solar Power Pvt. Ltd. already placed on record along with its Additional Submission dated. 06.12.2024, that solar power projects were therein held to be included within the purview of power projects stipulated under the PIR, 1986, and that any generator, whether private or public, would be entitled to the statutory benefits available under the said scheme. He submitted that solar power projects thus stood included within the PIR until the issuance of the Notification of 2022, and that, if solar power projects were always to be excluded, there would have been no occasion to issue a specific notification excluding them.

4.2 He further submitted that the writ petition filed by the EPC contractor before the Hon'ble High Court of Delhi is independent of, and distinct from, the present matter, and that the Hon'ble High Court, vide its order dated 25.01.2023, submitted with the Petition dated 07.03.2023 already on record, while declining to direct any clearance of goods, has clarified that, in the event the petitioner therein prevails, the respondent would be obliged to refund the additional duty. He submitted that there is therefore no reason to keep the present Petition in abeyance, and that the facts are identical to those in MERC Case No. 75 of 2023, involving the same contractor and the same issue.

4.3 He further submitted that the purchase orders have been annexed to the Petition and form part of the record, and that, should the Commission not be inclined to decide the issue of Change in Law on an 'in-principle' basis, the Commission may so record and grant liberty to the Petitioner to amend the Petition and place on record the computation together with the invoices, within such time as the Commission may direct.

5 Per contra, Ld. Advocate for the Respondent, GUVNL, submitted that, in the event the Commission is not inclined to hear the matter on an 'in-principle' basis, the Petition ought to be dismissed with liberty to the Petitioner to file afresh, and not kept pending, so that the Petitioner may not claim any carrying cost on the strength of a petition filed in the year 2023. She reiterated that the Petitioner has had ample opportunity, the matter having earlier been heard and reserved.

6 Heard the counsels appearing for the Petitioner and Respondent at length. We note that the Ld.Counsels appearing for the Petitioner and the Respondent have made their submissions and completed the arguments in the matter.

7 The matter is reserved for appropriate order.

8 Order accordingly.

Sd/-	**Sd/-**	**Sd/-**
[Jatin N. Thakkar]	**[Hiren Shah]**	**[Pankaj Joshi]**
Member	**Member**	**Chairman**

Place: Gandhinagar
Date: 29/09/2026