

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION**

**GANDHINAGAR**

**Petition No. 2187 of 2023.**

**In the matter of:**

**Petition under Section 86 of the Electricity Act, 2003 and Article 9 of the PPA dated 30.01.2021 seeking declaration that imposition of Basic Custom Duty of 40% on solar PV modules effective from 01.04.2022 through the Finance Act 2022 and O.M. dated 09.03.2021 bearing O.M. No. 283/3/2018-GRID SOLAR issued by MNRE and change in rate of GST from 5% to 12% on various parts / equipment for solar plants w.e.f. 01.10.2021 on account of amendment to Notification No. 01/2017-Central Tax (Rate) and Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 by way of Notification No. 6/2021-Central Tax (Rate) and Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 are 'Change in Law' events and to further direct the Respondent to compensate the Petitioner towards additional amount incurred on account of such Change in Law event along with carrying cost towards additional amount incurred on account of increment in GST paid by the Petitioner pursuant to Notification dated 30.09.2021 and to restitute the Petitioner to the same financial position as it would have been before the Notification dated 30.09.2021.**

Petitioner : M/s ABRel SPV 2 Limited

Represented by : Ld. Adv. Sanjay Sen along with Adv. Sakya Singha Chaudhari and Adv. Aparna Tiwari.

Vs.

Respondent : Gujarat Urja Vikas Nigam Limited

Represented by : Ld. Adv. Ms. Srishti Kindaria along with Mr. Amit Chavda.

**CORAM:**

**Anil Mukim, Chairman  
Mehul M. Gandhi, Member  
S. R. Pandey, Member**

**Date: 06 /07/2024.**

**DAILY ORDER**

1. The matter was heard on 21.02.2024.
2. Ld. Sr. Adv. Mr. Sanjay Sen appearing on behalf of the Petitioner submitted that the Petitioner is a power generating company and is a wholly owned subsidiary of Aditya Birla Renewable Limited. The Petitioner has set up Solar PV power plant of 120 MW capacity (60 MW x 2).
- 2.1. Ld. Sr. Adv of the Petitioner submitted that the present Petition is filed under Section 86 of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreement (PPA) signed with the Respondent on 30.01.2021. It is submitted that the events constitute as "Change in Law" events occurred in the Petitioner case are (i) Basic Customs Duty of 40% on solar PV modules which was imposed by the Government of India through the Finance Act, 2022 and OM dated 09.03.2021 issued by the Ministry of New and Renewable Energy (MNRE) and (ii) for

increase in rate of GST from 5 % to 12 % on various parts / equipment's for solar plant equipment with effect of 01.10.2021 on account of amendment to Notification No. 01/2017-Central Tax (Rate) and Notification No. 01/2017 – Integrated Tax ( Rate) dated 28.06.2017 by way of Notification No. 06/2017- Central Tax (Rate) and Notification No. 08/2021-Central Tax(Rate) dated 30.09.2021 by Department of Revenue, Ministry of Finance, Government of India. This change was implemented by the Government through notifications in September 2021. The Petitioner is seeking that these events constitute "Change in Law" events as per the terms of PPA. Further, the Petitioner seeks compensation for the additional costs incurred due to the increased rate in (i) Customs Duty and (ii) GST including the carrying cost of the additional amount spent on above change in Law effect. He further submitted to restore the Petitioner to its financial position as if the said event of "Change in Law" would not have been occurred.

2.2. It is submitted that the Petitioner and the Respondent entered into a PPA on 30.01.2021 for supply of 120 MW solar power to the Respondent at a tariff of Rs.1.99/unit for the period of 25 years life of the project from the SCOD of the Project. The timelines under the PPA, the Financial Closure had to be achieved by 31.01.2022 and the projects had to be

commissioned by 30.07.2022. On account of resurgence of COVID 2019 in the month of April 2021, the Financial Closure and SCOD was extended up to April 2022 and October 2022 respectively in view of the Force Majeure conditions by the Respondent.

2.3. He submitted that the contention of the Respondent that Petitioner has sought claim of BCD of 40% is not permissible as the Project import scheme prevailing at that time provides for a concessional rate of 5% BCD for certain kind of Project which was not availed by the Petitioner. He further submitted that it is prerogative of the developer to construct its power project and associated transactions as long as it complies with material conditions of the RfS and PPA. He denied that the Petitioner was entitled to avail benefit under the project import scheme where the limited scope of its import of solar modules for the projects who fulfilled certain conditions and the facts that it was not importing all the project related equipment's and components. He further submitted that solar projects are entitled to goods under project import scheme where benefits, if any availed even after 01.04.2022 was contrary to the intent of Parliament and the said benefit was withdrawn w.e.f. October 2022.

2.4. Further, the Petitioner has denied that the solar project entitled to project import rate benefit even after 01.04.2022 was contrary to the intent of the parliament. It is further submitted that in this regard the Petitioner had written to the Ministry of Finance, MNRE and NITI Aayog about the apparent inconsistency between the Finance Act, 2022 and the Advance Ruling allowing project import rates, whereby Petitioner was orally informed that adopting project import rate was bypassing the law. Thereafter, the Central Government withdrew project import benefits for solar power projects.

2.5. It is further submitted that the Petitioner had considered GST at the rate of 5% applicable on the solar modules and associated equipment's for the purpose of bidding in terms of the existing Notifications at the time of bidding. i.e. Notification Nos. 1/2017-Central Tax (rate) and 11/2017-Central Tax (Rate) dated 28.06.2017 issued by the Ministry of Finance, GoI. It is submitted that vide Notification Nos. 06/2021 & 08/2021 Central Tax (Rate) dated 30.09.2021, GST applicable on solar modules was raised from 5% to 12% w.e.f. 01.10.2021. as a result of the notification dated 30.09.2021 GST @ 12% became payable on the Solar Modules as well as on the equipment supplied under the Contract for Balance of Supplies instead of the existing rate of 5%. It is further

submitted that under Balance of System (BOS) contract procured by the Petitioner for setting up of the project attracted GST of 12 % instead of 5% as envisaged by the Petitioner at the time of bidding. Under the BoS contract, GST @ 5% rate applicable on 70% value of the contract and @ 18% on value of the 30% of the contract, so average GST rate became of 8.9%. As a result of the Notifications dated 30.09.2021, GST at the rate of 12% became payable on the solar modules as well as on the equipment's supplied under the contract for balance of supplies instead of the existing rate of 5%. Under the BOS contract average GST rate of 13.8% is applicable on the entire value of the BOS contract, thus the effective rate of GST has increased from 8.9% to 13.8%.

2.6. It is submitted that the Competitive Bidding Process has been carried out by the Respondent under Section 63 of the Electricity Act, 2003. It is Statutory requirement for carrying out the bidding process, in accordance with the Bidding Guidelines. It is further submitted that Central Government had issued the Guidelines for Tariff Based Competitive Bidding (TBCB) process on 03.08.2017, under the Bidding guidelines, the bid documents are required to be prepared in accordance with the guidelines and the standard bidding documents notified by the Central Government which is a binding requirement.

Clause 3.1.1 (c) of the guidelines requires the procurer to seek approval of the Appropriate Commission for deviations, if any, in the draft RfS and draft PPA and draft PSA from the guidelines and/or the standard bidding documents by following the process provided under Clause 18 of the guidelines. It is submitted that in the present case, the alleged deviation in the language in Change in Law clause was addressed in the pre-bid clarification, and the intension of the parties was always to reduce such risk/uncertainty with reference to major factors such as Anti-Dumping Duty, Safeguard Duty, Custom Duty etc. Hence, Article 9 of the PPA does not restricts the applicability of the change in law clause provided in Clause 5.7 of the said Bidding Guidelines. The steps contemplated in Clause 18 of the Bidding Guidelines have not been taken, to enable introduction of any deviation from the Guidelines and /or Standard Bidding Documents, which in any event had to be approved by the Appropriate Commission. A plain reading of Clause 3.1.1 read with Clause 18 and Section 63 of the Electricity Act, 2003, it is clear that the process under the Bidding Guidelines will have to be followed strictly for every bidding process, any unapproved deviations in any bidding process cannot be considered and such clauses of draft RfS, draft PPA, draft PSA and other projects agreement will have to be read in line with the Bidding Guidelines issued under Section 63 of the

Electricity Act, 2003. The Petitioner has relied on such clarification at the time of bidding.

2.7. It is submitted that during the process of bid clarification, when clarification sought with regard to scope of “Change in Law” Clauses while referring to GST, it has been clearly indicated by the Respondent that the Change in Law provisions of the PPA have been provided to reduce the risk/uncertainty emanating from major factors such as Anti-Dumping Duty, Safeguard Duty, Customs Duty, etc. The expression “etc.” would take into account all other levies and duties brought about by law in addition to the ones specifically mentioned. It is further submitted that by using the term “etc.” and /or “such as”, the Respondent had represented to the bidders that the Change in Law provisions is not merely limited to Anti-Dumping Duty, Safeguard Duty, Customs Duty, as contained in the draft PPA but also other statutory taxes and levies. The explanation was in fact in line with the definition of “Change in Law” in Clause 5.7 of the Competitive Bidding Guidelines issued by MoP which is not restrictive in any manner and includes any change in the rates of any taxes, which have a direct effect on the project.



2.8. It is submitted that the Bidding Guidelines require that any deviations in the draft Request for Proposal (RFP) and Power Purchase Agreement (PPA) desired by the entity who desire to procure power through bidding process shall be approved by the Commission before bidding begins. The Respondent has previously sought such approval for changes to similar clauses in other RFPs. This shows that the Respondent understands the approval process. However, in this case, no approval was sought for the deviation in Article 9 of the RFP/PPA from the Commission by the Respondent. Relying on the above, the Petitioner argues that Article 9 of the PPA cannot be used to deny their claims, especially considering the clarifications made at the pre-bid meeting. The Petitioner argued that Article 9 of the PPA must be interpreted in accordance with the Bidding Guidelines and clarifications given by the Respondent.

2.9. It is submitted that the Respondent has contended that the Change in GST rate should not be considered as Change in Law because the Respondent made it clear during the bidding process that the PPA only covers certain Change in Law. However, the clauses in Article 9 of the PPA were ambiguous and deviated from the Bidding Guidelines. In relation to Article 9.1.1 (a) of the PPA, concerns were raised by some of

the bidders with regard to changes in the GST slab by the Central Government and the non-inclusion thereof in Article 9. With regard to Article 9.1.1 (b) of the PPA is concerned was raised that the effect of taxes and duties were restricted thereunder only to solar PV modules. The aforesaid submissions with regard to Article 9 of the PPA were not in line with Clause 5.7 of the Bidding Guidelines. Bidders were concerned that these Clauses would not cover a Change in GST rates. The Respondent has clarified in writing that the PPA's Change in Law provision applies to major factors such as taxes or Change in Law like Anti-Dumping duty, Safeguard duty, Customs duty etc. but did not mention about GST. The Petitioner argues that the Respondent's response now was misleading that the change in GST rates should not be covered under the Change in Law provision. Further, the Respondent proceeded to state that the imposition of tax or surcharge or levies on generation or sale of electricity "is also covered" under Change in Law as per provisions of the PPA.

2.10. It is submitted that the Respondent earlier clarified that the Change in Law provision in Article 9.1.1(a) applies to major factors like Anti-dumping Duty, Safeguard Duty, Customs Duty etc. However, the Respondent now claims that taxes, duties, and levies incurred during

construction stage does not cover GST under this Article 9.1.1(a). The submission now made is completely inconsistent with the bid clarification process and is an afterthought.

2.11. It is further submitted that the clarification provided by the Respondent addressed not only Anti-Dumping Duty, Safeguard Duty, and Customs Duty, but also suggested that it could apply to other taxes, duties, or levies. This is because the response used the terms “such as” and “etc.” The question is raised on the increase in project costs, including GST rates. In light of this, the use of these terms are significant. It is suggested that the Change in Law clause applies not just to the specific duties mentioned but also to other statutory taxes and levies. This is further supported by the fact that the Respondent did not exclude GST specifically.

2.12. Ld. Sr. Adv. for the Petitioner denied that the claims under Article 9.1.1(a) only relate to Change in Law events during the operating period. It is submitted that this is contrary to Respondent’s bid clarifications where it has referred to Anti-dumping Duty, Safeguard Duty and Customs Duty and other levies and statutory taxes while clarifying the position under Article 9.1.1.(a). He further submitted that

Article 9.2.2 of the PPA does not include GST contended by the Respondent is not correct. It is further submitted that the Respondent in its subsequent RFPs / PPAs, has kept the Change in Law Clause in compliance with the Bidding Guidelines.

2.13. It is submitted that the Office Memorandum (OM) issued on September 27, 2022, by the Ministry of New and Renewable Energy (MNRE) and co-joint reading of the Finance Act, 2022, and the said Office Memorandum (OM) have adversely affected the cost of the project envisaged by the Petitioner at the time of submitting the bid. It is further submitted that the said Office Memorandum (OM) has been included as a part of the Petition only to highlight the fact that MNRE had clarified that the increase in the Basic Custom Duty (BCD) at 40% and increase in the Goods and Services Tax (GST) from 5% to 12% are to be treated as "Change in Law" events.

2.14. It is submitted that the import of solar panels falls within the extended deadline of SCOD due to the COVID-19 pandemic. The Petitioner claimed the additional costs due to a Change in Law should be covered. The Respondent argues that the Petitioner should have purchased the panels before April 1, 2022, to avoid these extra costs due to imposition

of Basic Customs Duty. In response to above, he submitted that it had to follow the extended deadline of SCOD and import the panels closer to installation to avoid damage during storage of modules. It is further submitted that importing the solar panels earlier would have resulted in extra charges for storage, security, and insurance. The Petitioner submitted that the solar panels were delivered on time despite the pandemic and ongoing conflict between Russia and Ukraine. The RfS as well as the PPA nowhere stipulate that the Petitioner is responsible to mitigate the impact of Change in Law. It is requested that the additional costs incurred due to the Change in Law be considered.

2.15. It is submitted that the Finance Act, 2022 provides for imposing BCD of 40% on import of solar modules, since BCD on modules had been nil earlier the occasion of exploring project import rate did not arise. It is further submitted that it is not possible for the Petitioner to explore project import rates after 01.04.2022 given the timeline and fact of the case. It is further submitted that the Petitioner was also importing solar modules and not the entire project components and therefore the Petitioner would not have been eligible for concession in tax in project import scheme. Also, the Petitioner had informed the Respondent GUVNL on 07.08.2022 and sought the confirmation from the

Respondent in view of their insistence for import of solar module etc. under project import scheme. It is further submitted that the Petitioner has paid the BCD @ 40% rate in accordance with law and is therefore entitled to reimbursement thereof.

2.16. It is submitted that in response to the contention raised by the Respondent that if the Petitioner had imported the solar modules before 01.04.2022 the same would not have attracted Customs Duty, is totally misconceived. The Petitioner finalized the solar panel supply contract on April 18, 2022, considering the revised deadline for completing the project (SCOD). It is submitted that the Petitioner has procured goods and services after following its internal business practices. If the business plan for the Petitioner is subject to review by the Commission, then the project of the Petitioner would become subject matter of determination of tariff of cost-plus basis under Section 62 of the Electricity Act, 2003 and not one subject to the tariff-based bidding process under Section 63 of the Electricity Act, 2003.

2.17. It is submitted and denied that the Petitioner was entitled to avail the benefit of Project Import Scheme rate as it was given to the limited scope of its import of solar modules. In fact, that it was not importing all the

projects related equipment's and components. It is further submitted that the Petitioner had written about the inconsistency between the Finance Act, 2022 and the Advance Ruling wherein, allowing the Project Import Scheme rate equipment under the project to the Ministry of Finance, MNRE and Niti Aayog. He further submitted that the project import benefits for solar project were withdrawn by the Central Government later on. The Respondent has raised the contention regarding availing project import benefit, which stood disallowed for solar projects, and which would have delayed the delivery of solar modules and project execution by few months. It is further submitted that inconsistency of project import rates with the Finance Act, 2022 was contrary to law. The Respondent, on the other hand, is arguing that the Petitioner should have used import the equipment under Project Import Scheme rate, which is not allowed for solar projects and would have delayed the project. The Petitioner acted in accordance with the law and the Finance Act, 2022. The difference in Project Import Scheme rates was an error and an unintended loophole. This is proven by the fact that the issue was addressed shortly after the Petitioner brought it up with the Government. The Petitioner has already explained the situation in detail in the Petition, including the fact that the Finance Act, 2022 imposed a 40% BCD on solar panel imports.

2.18. It is submitted that the written clarifications issued by the Respondent would be binding on the parties in view of Clause 6.5 of the Bidding Guidelines. He further emphasized on the word 'etc.' had been used along with the other sets of levies, which is clearly suggestive of the fact that the list of levies for the purpose of "Change in Law" is not exhaustive and would include all other taxes and levies imposed on the project / equipment. It is denied that the Change in Law has to be considered only as per the PPA Clauses, since the same have not been approved by the Commission. It is submitted that during the process of bid clarification, when specific issues were raised with regard to scope of Change in Law Clause, it has been clearly indicated by the Respondent that the Change in Law provisions of the PPA have been provided to reduce the risk/uncertainty emanating from major factors such as Anti-Dumping Duty, Safeguard Duty, Customs Duty, etc. It is submitted that the expression "etc." and "such as" would take into account all other levies and duties brought about by law in addition to the ones specifically mentioned. By using the terms "such as" and "etc.", the Respondent had represented to the bidders that the Change in Law provision is not merely limited to Anti-Dumping Duty, Safeguard Duty, Customs Duty, as contained in the draft PPA but also Statutory taxes and levies, both for



Clause 9.1.1(a) and 9.1.1(b). Petitioner had relied on such clarification at the time of bidding.

2.19. It is submitted that the Petitioner is entitled to extension of time beyond 14.10.2022 for which the Petitioner had already approached the Respondent. In any case, the modules have been imported before the SCOD and the incidence of GST also occurred prior to the SCOD. It is also submitted that the PPA does not specifically disallow the claim of Change in Law as claimed in the present Petition by the Petitioner, hence, the Petitioner is entitled to claim the additional amounts towards such increase levies as Change in Law.

2.20. It is submitted that the Petitioner is ready to place on record all documents and details that may be sought by the Commission to prove its claim. It is submitted that the Petitioner is in the process of arranging for the documents. The Petitioner agreed to file at the earliest the documents sought by the Respondent in its Reply. It is submitted that there is a clear and one to one correlation between the invoices to establish that the additional cost was incurred on account of the Change in Law event. It is further submitted that compilation of Judgments on the subject of carrying cost would be filed and for that

Ld. Adv. for the Petitioner sought time to file their submissions as stated above.

3. Ld. Adv. Ms. Sristi Kindaria appearing on behalf of the Respondent GUVNL submitted that the Petition has been filed seeking declaration of Change in Law in regard to change in Basic Customs Duty (BCD) claimed to be effective from 01.04.2022 and change in GST rate on equipment's/parts for solar plant.

3.1. She further submitted that the issue of Change in Law has to be decided in terms of the PPA dated 30.01.2021 executed between the parties and there cannot be any claim dehors the PPA. It is submitted that there is specific clause in the PPA to deal with Change in Law and only those events which qualify under the Article 9 of the PPA dealing with Change in Law are entitled by the Petitioner.

3.2. Ld. Adv. further referred the Article 13.10 of the PPA dealing with entire agreement and submitted that while dealing with the subject matter of the PPA, it needs to read and consider all Articles of the PPA. It is further submitted that the Respondent has to bear the taxes and changes only those events mentioned in the Article 9 of the PPA qualify as Change in Law.

- 3.3. She further referred the Article 13 of the PPA, Clause 3 of the bid information and instructions to bidder of RfS., format 6.1 i.e., covering letter and addendum - 1 of Sr. No. 10 wherein, clarification against the Clause No. 9.1.1 (a) of the PPA provided by the Respondent. Further, it is referred to the addendum - 1 of Sr. No. 11 wherein, clarification against the Clause No. 9.1.1 (b) of the PPA was provided.
- 3.4. She further submitted that clarification given by GUVNL in the pre-bid meeting was clear and all the bidders were aware prior to the bid that the Change in Law is to be considered under the PPA was specific and restricted and no other claim can be raised. The issue of GST during the pre-bid meeting was sought to include the same in the change in law provisions as it was not included. In the clarification the Respondent had rejected the inclusion of GST in Change in Law provisions.
- 3.5. It is submitted that the Petitioner had participated and submitted the bid based on the bid documents available and the pre-bid clarifications issued and duly acknowledged and accepted the terms and conditions therein. The bid covering letter dated 09.12.2020 submitted by the Petitioner clearly states that the bid submitted by the Petitioner in

response to the RfS and the PPA and addendum to it with consideration of clarifications as issued by the Respondent. Further, the Petitioner submitted the digitally signed draft PPA along with the bid as per portal requirement and thus, the Petitioner had accepted all terms and conditions of the PPA including Change in Law. It is therefore not open to the Petitioner to now question the terms of the PPA. Further, the Respondent had issued Letter of Award based on such bid and acceptance of the terms and conditions of the PPA and the terms cannot now be challenged by the Petitioner.

- 3.6. It is further submitted that the Petitioner has sought to claim BCD of 40%. However, admittedly the Project import scheme provides for a concessional rate of 5% BCD for certain kind of project i.e. if an entity imports all the project components, it would allow to do at a concessional rate of 5% import duty instead of the higher BCD and such scheme had included power project. The term of power projects is not restricted by type of power project and there cannot be any dispute that the solar power projects are included in the same. The principle for concessional rate of BCD for projects had been well established practice and was known to all. Therefore, the Petitioner cannot claim now that it was unaware of the same.

3.7. It is further submitted that the solar project developer can import solar modules under project import scheme is also clear from the Advance Ruling dated 06.07.2018, referred to in the letter dated 28.07.2022 by the Petitioner. However, the attempt of the Petitioner to claim that it had already placed orders prior to the said ruling is misconceived. The Advance Ruling is only clarifying in the case of a particular entity what the existing law already states i.e. there is no restriction under the project import regulation on a solar project from claiming the concessional rate of Customs Duty. The law on project import scheme was existing even in March 2022, when the Petitioner has claimed to place the Order. Hence, at that time the Petitioner knew that there was a BCD of 40% on solar modules under normal route and 5% under project import scheme. It cannot be disputed that prudent practice would require the solar modules be imported under the project import scheme, so that the overall impact of BCD is lower.

3.8. Ld. Adv. further submitted that even assuming but not admitting, if the Petitioner is entitled to any compensation for Change in Law, the Petitioner can only claim the impact of the increase in specific tax or duty by submitting and providing the same with supporting documents subject to notification and approval of the Commission.

The Petitioner cannot claim any compensation for the expenditure incurred by the Petitioner, if any related to interest or penalties payable to the Authorities. This is not an impact of Change in Law.

3.9. With regard to the claim of carrying cost made by the Petitioner it is submitted that even assuming but not admitting that there is any Change in Law, the PPA in the present case does not have any provisions entitling the Petitioner for any carrying cost due to the implications of the Change in Law. The relief if any is limited to Article 9.2 and there can be no further claim. The formula as per the Article 9.2 contains time value, carrying cost, and interest.

3.10. It is submitted that in the present case, there is a specific formula provided as consequence for Change in Law and there is no other relief or principle of restitution or otherwise any other provision in the PPA. As there is no provision in the PPA regarding any restitutionary principles of restoration to the same economic position to the extent that carrying cost may be awarded to the Petitioner, hence the Petitioner is not entitled to any relief by way of the carrying cost.

3.11. Referring to the Judgement dated 13.04.2018 in Appeal No. 210 of 2017 in Adani Power Limited v. Central Electricity Regulatory

Commission and Ors. it is submitted that the Hon'ble APTEL has considered two scenarios of the provisions incorporated in the two PPAs, namely, dated 02.02.2007(Gujarat Bid-02 PPA) and 06.02.2007 (Gujarat Bid-01 PPA) both entered into between Adani Power and GUVNL. It is further submitted that in case of the Gujarat Bid-02 PPA, the Hon'ble APTEL while referring to the specific provisions of restitution contained in the PPA, decided that the carrying cost is admissible. However, while referring to the Gujarat Bid-01 PPA, which did not contain the restitution clause, the Hon'ble APTEL held that no carrying cost shall be admissible in terms of the same. It is further submitted that as similar to the Gujarat Bid-01 PPA, the present case, PPA does not contain restitutionary provision through which the Petitioner's claim for carrying cost can be granted. Therefore, the Petitioner is not entitled to any carrying cost.

3.12. It is submitted that Notification dated 30.09.2021 referred to by the Petitioner which is related to GST is not a Change in Law within the meaning of Article 9 of the PPA and therefore the Petitioner is not entitled to any relief thereto. It is further submitted that one of the bidders had specifically raised the issue of GST and stated that the same would not be covered under the current definition of the Change

in Law. In this regard, the Respondent had clarified that only specific taxes are included and there is no change to be made to the PPA, which means that the PPA Clause does not include GST. GST is not included in the taxes specified in Article 9 and even in case of taxes and duties specified in Article 9.1.1(b) the same is limited to the solar PV modules and no other parts or equipment.

3.13. On the query raised by the Commission about the Adoption of Tariff in the present case and the deviations approved to be provided with the deficiencies, if any, is required to be submitted on an affidavit, Ld. Adv. for the Respondent agreed to submit the same and sought time to file its submission.

4. Heard the parties. We note that the present Petition has been filed by the Petitioner under Section 86 of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreement (PPA) dated 30.01.2021 seeking declaration from the Commission that the imposition of Basic Custom Duty (BCD) with effect from 01.04.2022 on the import of Solar PV modules through the Finance Act, 2022 and OM dated 09.03.2021 issued by the Ministry of New and Renewable Energy and change resulting in increase in the rate of Goods and Services Tax with effect from 01.10.2021



through amendment to Notifications No. 01/2017 – Central Tax (Rate) and Notification No. 01/2017 – Integrated Tax (Rate) dated 28.06.2017 by way of Notification No. 6/2021 – Central Tax (Rate) and Notification No. 8/2021 – Central Tax (Rate) dated 30.09.2021 issued by department of Revenue, Ministry of Finance, Government of India as an event of ‘Change in Law’.

4.1. We also note that during the hearing in response to query of the Commission that the necessary documents on record submitted by the Petitioner to prove its claim, the Petitioner agreed to provide the necessary details/documents in support of its claim with a copy to the Respondent. We also note that the following documents are essential to verify the claim of the Petitioner while deciding the claim of the Petitioner.

(i) Invoices and documents showing payment of BCD clear co-relation are between the project, supply of goods/ services and invoices raised backed by Auditor’s certificate. This includes invoices or documents providing the payment of BCD and GST.

(a) Copy of relevant supply agreements entered by the Petitioner for supply of solar PV modules with supplier of modules, inverter etc.

(b) Copies of invoices of all solar modules, inverter etc. imported by

the Petitioner.

(c) Details of BCD and GST payment challan as well as Bank Statement.

(d) Details of BCD and taxes paid.

(e) Details of interest cost along with debt.

(f) Bill of lading for proof of quantity both the master and house bill of landing.

(g) Packing list.

(h) Invoice.

(i) Custom accessed copy of bill of entry.

(j) Customs out of charge order.

(k) Marine insurance for sea and island transit.

(l) Copy of LRs for inland transport from port to projects site and E-way bill.

(m) Practicing Chartered Accountant certificate substantiating and supporting the claim of the Petitioner for the supply of Solar PV modules.

(n) Certificate from an Independent Engineer certifying that the modules that have been imported have actually been installed at the project.

(o) RFID Details.

(p) Detailed calculation sheet with BCD calculation.

- (q) CEIG approvals and supporting documents
  - (r) Commissioning Certificate stating number of modules installed on which BCD paid along with completion of transmission network, works of the line, bays, transmission etc. at connectivity sub-station.
  - (s) Details of interest cost along with details of debt.
- (ii) Documents for GST needs to provide are as under:
- (a) Proof of payment under GST.
  - (b) GST receipt.
  - (c) Form GSTR – 1.
  - (d) Form GSTR – 3B (on revenue side).
  - (e) GSTR – 2A (on purchase side).
  - (f) Statuary Auditor Certificate
  - (g) Copy of GSTR – 1 and GSTR – 3 B of vendors.
  - (h) Confirmation certificate from vendors.
  - (i) Relevant extract of GST Returns of vendors for the claim period.
  - (j) Auditor's certificate supportive of GST payment made to vendors and reflecting in the Auditors certificate provided by the Petitioner to the Respondent.

(k) Detail of increase/ decrease in tax/duties liabilities supported by Auditor's certificate regarding GST differential rates on various items and services and taxes.

(l) Details of components and applicable taxes: Submission of detail of each component and the tax applicable along with sample invoices demonstrating the claim for compensation.

4.2. We note that the Petitioner and the Respondent have primarily made submissions on the Article 9 of PPA 'Change in Law', applicability of Basic Custom Duty (BCD), claim for interest/carrying cost in the present matter. The Petitioner submitted that it would file the compilation of Judgements on the issue of carrying cost in the present matter along with its submission and for that it sought time, hence, let it be filed within two weeks' time with a copy to the Respondent. We also direct the Petitioner to submit the documents relied upon it in addition to the documents already submitted with the Petition, if any.

4.3. We direct the Petitioner to submit details of documents establishing one to one co-relationship of BCD and IGST/GST paid etc., solar modules/ Solar Inverters imported for commissioning in the power plant, in chart as well as tabular formats within 3 weeks' time. The Petitioner is also directed to provide copy of the above documents to

the Respondent. The Respondent will submit its response, if any, within two weeks' time from the receipt of details from the Respondent.

5. The next date of the hearing will be intimated separately.

6. Order accordingly.

**Sd/-**  
**(S.R. Pandey)**  
**Member**

**Sd/-**  
**(Mehul M. Gandhi)**  
**Member**

**Sd/-**  
**(Anil Mukim)**  
**Chairman**

Place: Gandhinagar

Date: 06/07/2024.

