

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1938 of 2021.

In the matter of:

Petition under Section 86 (1) (b), (e) & (f) of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreement dated 23.10.2019 filed by the Petitioner seeking declaration from the Commission that the imposition of safeguard duty for the period of 30.07.2020 to 29.07.2021 on the import of solar cells vide Notification No. 02/2020-Customs (SG) dated 29.07.2020 of the Ministry of Finance as an event of 'Change in Law'.

Petitioner : Tata Power Renewable Energy Limited

Represented by : Ld. Sr. Adv Sanjay Sen along with Adv. Anand
Srivastava, Adv. Priya Goyal, Mr. Rahul Ranade, Mr.
Abhishek Kulkarani, Mr. Jatin Ghuliani.

Vs.

Respondent : Gujarat Urja Vikas Nigam Ltd.

Represented by : Ld. Adv. Mr. Utkarsh Singh along with Mr. H. N. Shah and
Mr. Amit Chavda.

CORAM:

**Mehul M. Gandhi, Member
S.R. Pandey, Member**

Date: 07.11.2024.

DAILY ORDER

1. The matter was kept for hearing on 18.09.2024.
2. At the outset, Ld. Sr. Adv. Sanjay Sen appearing on behalf of the Petitioner submitted that after the last date of hearing before the Commission the parties

have met and minutes of the meeting are already submitted. He further referred Para No. 6 of the Daily Order dated 21.02.2024 wherein the Commission had allowed the parties to meet together for the mapping documents. Pursuant to the Commission's Directives, the meeting was held, the documents were mapped, and the Petitioner filed an additional affidavit dated 02.07.2024.

2.1. He further submitted that the Respondent has filed two affidavits. The first affidavit, dated 03.12.2023, explained that the 50 MW Radio Frequency Identification Device (RFID) was not matching because they were used in the 250 MW project. The Petitioner was implementing two adjacent projects in the Dholera Solar Park, with capacities of 250 MW and 50 MW, both at the same tariff of Rs. 2.75/kWh. The present Petition is for 250 MW, and Petition No. 1939 of 2021 is for 50 MW.

2.2. It is further submitted that due to various obstructions, including the COVID - 19 pandemic, the modules were delivered in trenches and were kept in Petitioner's warehouse. The Scheduled Commercial Operation Date (SCOD) for the 250 MW was 22.06.2021, before the SCOD of the 50 MW project on 04.10.2021. Hence, the Petitioner installed the 250 MW Solar project first, The modules, tariff and period were alike, leading to an unintentional interchange of solar modules.

- 2.3. It is further submitted that the Petitioner through its affidavit dated 30.11.2023, filed all the required documents, including the Bill of lading, packing list, invoices, customs documents, Marine insurance, and E – way bills.
- 2.4. It is further submitted that subsequently through another affidavit dated 02.07.2024, the Petitioner responded to the points raised in the meeting held on 19.01.2024. The points raised included the EPC Contract Value, Module Supply Agreement, Chartered Accountant Certificate, insurance from sister concern, and E-way bills. He submitted that the details are filed in the affidavits.
- 2.5. It is further submitted that the Petitioner referred Daily Orders dated 27.03.2023 and 18.09.2023, where the Commission directed for filing of additionally documents. All documents have been filed.
3. On the query of the Commission from the Petitioner that is there any submission on the law point in the present matter, Sr. Adv. Sanjay Sen replied that the law point involved is already dealt in earlier Order passed by the Commission in Juniper case the principles applies in the present matter. In Juniper case also the review Petition is filed on merits only and not on the law point.
4. He further submitted that the claim of Change in law in case of GST wherein, recently the Hon. Appellate Forum has passed the Judgement in the similar matter and hence it can become the precedent for deciding the present matter. He further

submitted that the claim of 8.9% of GST is a combined contract where goods and services are taken together. The reason for claiming the extra amount will be filed through the submissions on affidavit, if the Commission allows. He submitted that 28.06.2017 was the date of notification where the supply of goods and services were separate, thereafter through Notification dated 31.12.2018 the Ministry of Finance, Govt. of India, inserted an explanation to provide that a composite contract for supply and service GST shall be deemed to be 70% of the Supply and 30% of the services, so it works out to 8.9%. The modifications came later in 2021 based on the recommendation of the fitment committee. He requested the Commission to decide that whether GST claimed as Change in Law in the Petition is permissible or not and, if yes than, what percentage of it. The Petitioner will file a written note.

5. Ld. Adv. Utkarsh Singh on behalf of the Respondent GUVNL submitted that there are five documents on record which provide the different details of the modules installed and all are having different quantity. First document is the GEDA certificate dated 28.03.2022 for commissioned. Second document is Chartered Engineer's Certificate dated 23.08.2023. Third document is the Chartered Accountant's Certificate dated 14.02.2024. Fourth document is Chief Electrical Engineer's Certificate dated 27.12.2021. The Fifth document is the RFID document details also submitted of the Solar Modules. It is further submitted that there are five different documents filed and all documents are showing different figures of

the solar modules. The Respondent is not sure that what is the actual No. of solar modules which have been installed on the project site of the Petitioner on which SGD & GST payable by the Respondent. It is not ascertained the claim of the Petitioner with regard to installation of Solar Modules at Plant site on which SGD and GST payable. Whether the change in law is allowed or not is in the purview of the Commission with consideration of provisions of PPA and law. The quantity for which the Respondent will be required to pay for the Change in Law if the claim of the Petitioner is approved for the number of the solar modules is still uncertain. In the RFID document they have filed on record is having less number of Solar Modules. Further, there are other discrepancies also observed by the Respondent for which it will file its submissions.

- 5.1. It is further submitted that there is a need a fresh CA certificate showing details for the specific Change in Law event. It is further submitted that the number of the solar modules to be ascertained first by the Petitioner with correct details.
- 5.2. He further submitted that the Respondent will file a written submissions in response to the Rejoinder, covering legal aspects and discrepancies in the number of solar modules etc.
6. In response to the contentions of the Respondent GUVNL, Ld. Sr. Adv. Sanjay Sen submitted that the Petitioner has provided details of solar modules. He further

submitted that the RFID details are there which can be considered to decide the claim of the Petitioner. The RFID details can be tracked in physically and such numbers can be traced easily hence it can be considered for settling the claim of the Petitioner.

6.1. He further submitted on the contention raised on the CA certificate by the Respondent that as far as CA certificate is concerned the Petitioner cannot give any further certificate from CA. He referred the CA certificate dated 14.02.2024. The CA cannot give the certificate again and again it has its own limitations and CA is a statutory person the certificate cannot be given as per the requirements of the Respondent. The certificate clearly states that the CA has examined the invoices, other relevant records, and document for the above project. Based on its verification, CA has certified that the Tata Power Renewable Energy Ltd. has paid Safeguard Duty and additional GST. Accordingly, the CA has opine that the said amount is in accordance with the Clause 9 of the PPA dated 23.10.2019 between GUVNL and TPREL. There is no such format of the certificate. It is clearly certified that the said amount is in accordance with the Clause 9 of the PPA.

6.2. He submitted that the Commission may grant four weeks' time to file its written submissions in response to the contention of the Respondent GUNVL, Ld. Sr. Adv. Sanjay Sen submitted that if the Chartered Accountant certifies the such details as asked by the Respondent than is the Respondent going to

approve the claim. The CA can only certify the accounts of the Petitioner and it can provide certificate to support the claim of the Petitioner. The approval of the claim is in the purview of the Commission.

7. In response to the argument of the Petitioner, Ld. Adv. of the Respondent submitted that the CA certificate should have specific details that the adjustment in tariff change is directly related to Change in Law, and such certification is missing.

7.1 The Respondent requested to allow the filing its written submissions within four weeks' time and raise the discrepancy in the claim. The Respondent has also raised issues that are other discrepancy which will be submitted by the Respondents.

8. Heard the parties. During the hearing the Respondent has raised the issue on the number of Solar Modules imported and claimed of Change in Law by the Petitioner. The Respondent has also raised the issue on the certificate issued by the Chartered Accountant for Change in Law claimed by the Petitioner stating that it is not in accordance with requirement for Change in Law claimed. The payment of SGD and GST by the Petitioner with consideration of the number of modules which are stated in five different documents for which Respondent has also requested to grant four weeks' time to file its written submissions along with the discrepancies noted in the claim of the Petitioner. The Petitioner has also

requested to allow them to file their written submissions, hence we decide to grant four weeks' time to the Petitioner and the Respondent to file their written submissions.

9. The matter is reserved for Order.

10. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar.
Date: 07.11.2024.

