

No./N/193/194/195/196 & 197 of 2019

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.**

Dated: 05.10.2021

Present

Shri Shambhu Dayal Meena : Chairman
Shri H.M. Manjunatha : Member
Shri M.D. Ravi : Member

1. OP No.78/2019

BETWEEN:

ACME Siddhalgatta Solar Energy Private Limited,
Plot No.152, Sector 44,
Gurgaon,
Haryana-122 001.

.... PETITIONER

[Petitioner represented by Sri Samarth Kashyap &
Ms. Sowmya Prakash, Advocates of M/s HAS Advocates]

AND:

Bangalore Electricity Supply Company Limited,
BESCOM, K.R. Circle,
Bengaluru-560 001.

.... RESPONDENT

[Respondent represented by Sri S. Sriranga, Advocate,
Ms. Sumana Naganand, Ms. Medha M. Puranik &
Ms. C.R. Deepthi, Advocates of M/s Just Law Advocates]

2. OP No.79/2019

BETWEEN:

ACME Kittur Solar Energy Private Limited,
Plot No.152, Sector 44,
Gurgaon,
Haryana-122 001.

.... PETITIONER

[Petitioner represented by Sri Samarth Kashyap &
Ms. Sowmya Prakash, Advocates of M/s HAS Advocates]

AND:

Bangalore Electricity Supply Company Limited,
BESCOM, K.R. Circle,
Bengaluru-560 001.

.... **RESPONDENT**

[Respondent represented by Sri S. Sriranga, Advocate,
Ms. Sumana Naganand, Ms. Medha M. Puranik &
Ms. C.R. Deepthi, Advocates of M/s Just Law Advocates]

3. OP No.80/2019

BETWEEN:

ACME Guledagudda Solar Energy Private Limited,
Plot No.152, Sector 44,
Gurgaon,
Haryana-122 001.

.... **PETITIONER**

[Petitioner represented by Sri Samarth Kashyap &
Ms. Sowmya Prakash, Advocates of M/s HAS Advocates]

AND:

Bangalore Electricity Supply Company Limited,
BESCOM, K.R. Circle,
Bengaluru-560 001.

.... **RESPONDENT**

[Respondent represented by Sri S. Sriranga, Advocate,
Ms. Sumana Naganand, Ms. Medha M. Puranik &
Ms. C.R. Deepthi, Advocates of M/s Just Law Advocates]

4. OP No.81/2019

BETWEEN:

ACME Hukkeri Solar Energy Private Limited,
Plot No.152, Sector 44,
Gurgaon,
Haryana-122 001.

.... **PETITIONER**

[Petitioner represented by Sri Samarth Kashyap &
Ms. Sowmya Prakash, Advocates of M/s HAS Advocates]

AND:

Hubli Electricity Supply Company Limited,
Corporate Office, Navanagar,
P.B. Road,
Hubballi-580 025.

.... **RESPONDENT**

[Respondent represented by Sri S. Sriranga, Advocate,
Ms. Sumana Naganand, Ms. Medha M. Puranik &
Ms. C.R. Deepthi, Advocates of M/s Just Law Advocates]

5. OP No.82/2019

BETWEEN:

ACME Sandur Solar Energy Private Limited,
Plot No.152, Sector 44,
Gurgaon,
Haryana-122 001.

.... **PETITIONER**

[Petitioner represented by Sri Samarth Kashyap &
Ms. Sowmya Prakash, Advocates of M/s HAS Advocates]

AND:

Hubli Electricity Supply Company Limited,
Corporate Office, Navanagar,
P.B. Road,
Hubballi-580 025.

.... **RESPONDENT**

[Respondent represented by Sri S. Sriranga, Advocate,
Ms. Sumana Naganand, Ms. Medha M. Puranik &
Ms. C.R. Deepthi, Advocates of M/s Just Law Advocates]

COMMON ORDERS

1. These petitions involve common questions of facts and law, therefore, we clubbed all these cases, heard together and proposed to pass this common orders. In all these petitions, the reliefs prayed for are similar.
2. These petitions are filed under Section 86 (1) (f) and other provisions of Electricity Act, 2003 read with Article 15 of the Power Purchase Agreement (PPA) by the petitioners namely; (a) M/s ACME Siddhalgatta Solar Energy

Private Limited, (b) M/s ACME Kittur Solar Energy Private Limited, (c) ACME Guledagudda Solar Energy Private Limited, (d) ACME Hukkeri Solar Energy Private Limited and (e) ACME Sandur Solar Energy Private Limited, against BESCO in respect of (i) OP No.78 of 2019, (ii) OP No.79 of 2019 & (iii) OP No.80 of 2019 and against HESCO in respect of (iv) OP No.81 of 2019 & (v) OP No.82 of 2019 respectively, seeking issuance of appropriate order(s)/direction(s) for a mechanism for recovery of the compensation towards increase in capital cost due to introduction and imposition of safeguard duty by way of Notification No.01/2018-Ctuoms-SG dated 30.07.2018 issued by the Department of Revenue, Ministry of Finance, Government of India and have prayed this Commission for the following reliefs to:

a) Determine the appropriate and proportionate increase in tariff due to imposition of Safeguard Duty of

- (i) Rs.6,93,81,830 in respect of OP No.78 of 2019;
- (ii) Rs.4,91,49,113 in respect of OP No.79 of 2019;
- (iii) Rs.7,70,46,102 in respect of OP No.80 of 2019;
- (iv) Rs.5,89,92,091 in respect of OP No.81 of 2019; and
- (v) Rs.7,19,77,993 in respect of OP No.82 of 2019,

which includes the payments made through Bonds and accordingly allow such compensatory payments be paid to the petitioners herein in terms of their proposals as mentioned or amend the tariff specified in all the PPAs dated 22.03.2018 and 27.03.2018 in respect of the above five cases by allowing

incremental tariff increase and pass consequential orders including/allowing carrying cost to financially and commercially retribute the petitioners herein;

b) Pass such other further Orders as this Commission may deem fit in the interest of justice.

3. The petitioners have entered into separate Power Purchase Agreements (PPAs) with the Respondents for setting up of the Solar PV ground mounted projects. The particulars of different Solar Projects involved in these cases are set out as in the following table:

Sl. No.	Petition No. & Name of Project & Location	Capacity	Date of issue of letter award (LoA)	Date of signing PPA with concerned ESCOM	Date of approval of PPA by KERC	Period allowed as per PPA for SCOD from 04.05.2018
1	Petition No.78/2019 ACME Siddhalghatta Solar Energy Pvt. Ltd. Siddhalghatta	20 MWAC	08.02.2018	22.03.2018 BESCOM	04.05.2018	18 months
2	Petition No.79/2019 ACME Kittur Solar Energy Pvt. Ltd. Kittur	15 MWAC	08.02.2018	22.03.2018 BESCOM	04.05.2018	18 months
3	Petition No.80/2019 ACME Guledagudda Solar Energy Pvt. Ltd. Guledagudda	15 MWAC	08.02.2018	22.03.2018 BESCOM	04.05.2018	18 months
4	Petition No.81/2019 ACME Hukkeri Solar Energy Pvt. Ltd. Hukkeri	15 MWAC	08.02.2018	27.03.2018 HESCOM	04.05.2018	18 months
5	Petition No.82/2019 ACME Sandur Solar Energy Pvt. Ltd. Sandur	20 MWAC	08.02.2018	27.03.2018 HESCOM	04.05.2018	18 months

4. The brief facts set out in these petitions are as under:

a) Karnataka Renewable Energy Development Limited (KREDL), the Nodal Agency of the Government of Karnataka (GoK) for

facilitating the development of Renewable Energy in the State of Karnataka, pursuant to its Request for Proposal (RfP) dated 07.12.2017 in all cases had allotted 20 MW to Sidhalagatta, 15 MW to Kittur, 15 MW to Guledagudda, 15 MW to Hukkeri & 20 MW to Sandur respectively in the above five cases.

b) On 08.02.2018, the petitioners herein were selected as a successful bidders for development of 20 MW AC, 15 MW AC, 15 MW AC, 15 MW AC & 20 MW AC Solar PV Project (hereinafter referred to as Project). Thereafter, the above petitioners have entered into Power Purchase Agreements (PPAs) dated 22.03.2018 in respect of (i) OP No.78 of 2019, (ii) OP No.79 of 2019 & (iii) OP No.80 of 2019 with BESCO and dated 27.03.2018 in respect of (iv) OP NO.81 of 2019 & (v) OP No.82 of 2019 with HESCO. As per the terms of the PPAs the entire quantum of power generated from the Project is required to be procured at the tariff discovered through the competitive bidding i.e.,

- (i) Rs.2.97 per unit in respect of OP No.78 of 2019 by BESCO;
- (ii) Rs.2.98 per unit in respect of OP No.79 of 2019 by BESCO;
- (iii) Rs.2.99 per unit in respect of OP No.80 of 2019 by BESCO;
- (iv) Rs.3.15 per unit in respect of OP No.81 of 2019 By HESCO; and
- (v) Rs.3.09 per unit in respect of OP No.82 of 2019 by HESCO.

c) This Commission has accorded its approval vide its letter dated 04.05.2018 to the PPA executed between the petitioners and

BESCOM & HESCOM in the above cases and the petitioners herein were declared, as successful bidders.

- d) On 30.07.2018, the Government of India (GoI) issued Safeguard Duty (SGD) Notification which impacted the capital cost of the Project. As per the said notification, the GoI has imposed safeguard duty as per the following rates on the import of solar cells and modules (whether or not assembled in modules or panels) from certain countries, including China:

Time Period	Safeguard Duty
From 30.07.2018 to 29.07.2019	25%
From 30.07.2019 to 29.01.2020	20%
From 30.01.2020 to 29.07.2020	15%

- e) The imposition of SGD on the import of solar cells and modules, pursuant to the SGD Notification would be treated as a Change in Law (CIL) event in terms of the PPA. Such imposition of the SGD by virtue of the SGD Notification would be covered by the phrase "introduction of any taxes and duties made applicable for setting up of the Project" as the SGD has been imposed on the solar cells and modules which are primary component in the setting up of a solar power project. Thus, the imposition of SGD on imported cells and modules would in effect tantamount to an incremental tax cost accrued on the setting up of the solar power project.

- f) Since the SGD has been imposed after the date of technical bid submission, the CIL pertaining to taxes and duties after the date of technical bid submission shall be to the account of the respondents.
- g) Imposition of the SGD is also in the nature of an enactment of a new law in as much as the same has been imposed by a Notification of the Ministry of Finance, Gol, which has been made on 30.07.2018 i.e., after the Effective Date of the PPA and SGD would result in an additional expenditure being incurred by the petitioners.
- h) The petitioners issued notice on 12.09.2018 (Annexure-P4) of Chang in Law (CIL) to BESCO & HESCO, by way of the said letter informing the respondents about the imposition of SGD by the Gol and its consequential impact on the project cost. The Respondents (BESCO/HESCO) have failed and neglected to provide any response to such intimation/notice to the petitioners.
- i) This Commission has held in OP No.101 of 2019, OP No.102 of 2019, OP No.98 of 2019, OP No.103 of 2019 & OP No.100 of 2019 that imposition of SGD by Gol through SGD Notification as Change in Law event in terms of Article 15 of the PPA.
- j) During the course of hearing of above cases, the petitioners have brought to the notice of the Commission that the petitioners were in the process of procuring solar modules and therefore, they couldn't furnish the details along with the petition. Considering the oral

submissions of the petitioners, this Commission directed the petitioners for filing documents and details of computation of impact of SGD payable.

- k) It was stated that the petitioners have placed the orders for purchase of solar modules from M/s ACME Solar Holding Limited which is a single business entity which is promoted and incorporated as a developer by the petitioners and received all the solar panels after SGD notification dated 30.07.2018. M/s ACME Solar Holding Limited has issued the debit note for reimbursement of SGD on solar modules along with the IGST, CGST and SGST. Therefore, the petitioners have to pay the SGD and IGST to the M/s ACME Solar Holding Limited who have procured the solar modules from China. Hence, the SGD had including IGST to be reimbursed by the respondent due to change in law event. The invoice-wise details of payments made by the petitioners on account of SGD along with IGST on the said SGD are as under:

(i) OP No.78 of 2019 - ACME, SIDDHALGATTA

(Amount in Rs.)							
Sl. No.	Invoice No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD
1	2	3	4	5	6	7	8
1	ECO-ACME-20190608	3795162	24.06.2019	1,67,94,877.44	8,39,743.87	41,98,719.36	2,09,935.97
2	BDLW-CI-2019-07-023	4637963	26.08.2019	5,33,45,210.69	26,67,260.53	1,06,69,042.14	5,33,452.11
3	BDLW-CI-2019-07-018	4546943	19.08.2019	5,33,45,210.69	26,67,260.53	1,06,69,042.14	5,33,452.11
4	BDLW-CI-2019-07-011	4459432	12.08.2019	2,59,85,837.00	12,99,291.85	51,97,167.40	2,59,858.37
5	BDLW-CI-2019-09-003	5037702	24.09.2019	8,04,07,603.58	40,20,380.18	1,60,81,520.72	8,04,076.04
6	ECO-ACME-20190903	5035988	24.09.2019	9,63,12,208.02	48,15,610.40	1,92,62,441.60	9,63,122.08
Total				32,61,90,947.42	1,63,09,547.37	6,60,77,933.36	33,03,896.67

The payment details on SGD and IGST and impact on account of
SGD is as detailed below:

(Amount in Rs.)

Sl. No.	SGD amount	IGST paid on SGD	Details of Payment					Impact on a/c of SGD
			Cash	Challan No.	Date	Name of the Bank and branch code	Bond No. (GRN No) and date	
1	41,98,719	2,09,935.97	52,50,556	2027536498	27.06.2019	SBI-0008087	PD No. 2001610432 dated 17.09.2019 & PD No 2001628437 dated 17.09.2019	44,08,655
2	1,06,69,042.14	5,33,452.11	82,73,989	2028297356	01.09.2019	SBI-0008087		1,12,02,494
3	1,06,69,042.14	5,33,452.11	82,79,469	2028244041	01.09.2019	SBI-0008087		1,12,02,494
4	51,97,167.40	2,59,858.37	40,33,145	2028244061	01.09.2019	SBI-0008087		54,57,026
5	1,60,81,520.72	8,04,076.04	1,24,63,178	2028852943	11.10.2019	SBI-0008087		1,68,85,597
6	1,92,62,441.60	9,63,122.08	1,49,28,392	2028855894	12.10.2019	SBI-0008087		2,02,25,564

(ii) OP No.79 of 2019 - ACME, KITTUR

(Amount in Rs.)

Sl. No.	Invoice No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD
1	2	3	4	5	6	7	8
1	CECEP-20190824	4907616	16.09.2019	4,99,48,490.55	24,97,424.53	99,89,698.11	4,99,484.91
2	CECEP-20190810	5034621	24.09.2019	6,93,51,558.09	34,67,577.90	1,38,70,311.62	6,93,515.58
3	CECEP-20190826	5034646	24.09.2019	2,97,22,096.33	14,86,104.82	59,44,419.27	2,97,220.96
4	TS-1908008-1	5202020	07.10.2019	4,86,94,237.02	24,34,711.85	97,38,847.40	4,86,942.37
5	CECEP-20190902	5125072	01.10.2019	3,63,27,006.62	18,16,350.33	72,65,401.32	3,63,270.07
Total				23,40,43,388.61	1,17,02,169.43	4,68,08,677.72	23,40,433.89

The payment details on SGD and IGST and impact on account of
SGD is as detailed below:

(Amount in Rs.)

Sl. No.	SGD amount	IGST paid on SGD	Details of Payment					Impact on a/c of SGD
			Cash	Challan No.	Date	Name of the Bank and branch code	Bond No. (GRN No) and date	
1	99,89,698.11	4,99,484.91	74,97,406	2028566380	23.09.2019	SBI-0008087	PD No. 2001610432 dated 17.09.2019 & PD No 2001628437 dated 17.09.2019	10,489,183
2	1,38,70,311.62	6,93,515.58	1,04,13,434	2028717525	05.10.2019	SBI-0008087		14,563,827
3	59,44,419.27	2,97,220.96	4,465,758	2028717057	05.10.2019	SBI-0008087		6,241,640
4	97,38,847.40	4,86,942.37	7,304,136	2028882081	15.10.2019	SBI-0008087		10,225,790
5	72,65,401.32	3,63,270.07	5,454,051	2028882085	15.10.2019	SBI-0008087		7,628,671

(iii) OP No.80 of 2019 - ACME, GULEDAGUDDA

(Amount in Rs.)

Sl. No.	Invoice No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD
1	2	3	4	5	6	7	8
1	ECO-ACME-20190524-1	3690107	17.06.2019	5,70,21,471.67	28,51,073.58	1,42,55,367.92	7,12,768.40
2	ECO-ACME-20190526	3690041	17.06.2019	2,01,25,225.00	10,06,261.25	50,31,306.25	2,51,565.31
3	ECO-ACME-20190606	3863778	29.06.2019	5,37,43,607.81	26,87,180.39	1,34,35,901.95	6,71,795.10
4	ECO-ACME-20190817	4830369	09.09.2019	3,93,73,938.24	19,68,696.91	78,74,787.65	3,93,739.38
5	ECO-ACME-20190823	4940020	17.09.2019	3,83,67,984.93	19,18,399.25	76,73,596.99	3,83,679.85
6	CECEP-20190825-1	5034664	24.09.2019	7,92,58,923.53	39,62,946.18	1,58,51,784.71	7,92,589.24
7	CECEP-20190825	5034651	24.09.2019	4,62,34,372.06	23,11,718.60	92,46,874.41	4,62,343.72
Total				33,41,25,523.24	1,67,06,276.16	7,33,69,619.87	36,68,480.99

The payment details on SGD and IGST and impact on account of SGD is as detailed below:

(Amount in Rs.)

Sl. No.	SGD amount	IGST paid on SGD	Details of Payment					Impact on a/c of SGD
			Cash	Challan No.	Date	Name of the Bank and branch code	Bond No. (GRN No) and date	
1	1,42,55,367.92	7,12,768.40	1,78,19,210	2027557569	27.06.2019	SBI-0008087	PD No.	1,49,68,136
2	50,31,306.25	2,51,565.31	62,89,133	2027552459	27.06.2019	SBI-0008087	2001610432	52,87,872
3	1,34,35,901.95	6,71,795.10	94,29,426	2027609064	24.07.2019	SBI-0008087	dated	1,41,07,697
4	78,74,787.65	3,93,739.38	59,06,091	2028613554	21.09.2019	SBI-0008087	17.09.2019	82,68,527
5	76,73,596.99	3,83,679.85	57,69,775	2028613552	23.09.2019	SBI-0008087	&	80,57,277
6	1,58,51,784.71	7,92,589.24	1,43,78,552	2028717042	05.10.2019	SBI-0008087	PD No	1,66,44,374
7	92,46,874.41	4,62,343.72	69,43,957	2028717054	05.10.2019	SBI-0008087	2001628437	97,09,218
							dated	
							17.09.2019	

(iv) OP No.81 of 2019 - ACME, HUKKERI

(Amount in Rs.)

Sl. No.	Invoice No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD
1	2	3	4	5	6	7	8
1	ECO-ACME-20190524-2	3690109	17.06.2019	6,03,75,675.89	30,18,783.79	1,50,93,918.97	7,54,695.95
2	ECO-ACME-20190609	3863813	29.06.2019	1,67,94,877.44	8,39,743.87	41,98,719.36	2,09,935.97
3	CECEP-20190816	4843933	10.09.2019	5,66,08,289.34	28,30,414.47	1,13,21,657.87	5,66,082.89
4	ECO-ACME-20190821	4886277	13.09.2019	4,47,87,855.36	22,39,392.77	89,57,571.07	4,47,878.55
5	CECEP-2019824-1	4907984	16.09.2019	5,99,38,189.00	29,96,909.45	1,19,87,637.80	5,99,381.89
6	CECEP-20190825-1	5034664	24.09.2019	1,65,12,275.74	8,25,613.79	33,02,455.15	1,65,122.76
7	CECEP-20190825-2	5124358	01.10.2019	66,04,910.29	3,30,245.51	13,20,982.06	66,049.10
Total				26,16,22,073.06	1,30,81,103.65	5,61,82,942.28	28,09,147.11

The payment details on SGD and IGST and impact on SGD is as detailed below:

(Amount in Rs.)

Sl. No.	SGD amount	IGST paid on SGD	Details of Payment					Impact on a/c of SGD
			Cash	Challan No.	Date	Name of the Bank and branch code	Bond No. (GRN No) and date	
1	1,50,93,918.97	7,54,695.95	1,88,67,399	2027574734	28.06.2019	SBI-0008087	PD No.	1,58,48,615
2	41,98,719.36	2,09,935.97	29,47,041	2027607617	25.07.2019	SBI-0008087	2001610432 dated	44,08,655
3	1,13,21,657.87	5,66,082.89	85,01,713	2028495096	21.09.2019	SBI-0008087	17.09.2019	1,18,87,741
4	89,57,571.07	4,47,878.55	67,21,860	2028544452	21.09.2019	SBI-0008087	&	94,05,450
5	1,19,87,637.80	5,99,381.89	89,96,886	2028566402	23.09.2019	SBI-0008087	PD No	1,25,87,020
6	33,02,455.15	1,65,122.76	14,378,552	2028717042	05.10.2019	SBI-0008087	2001628437 dated	34,67,578
7	13,20,982.06	66,049.10	9,95,738	2028882084	15.10.2019	SBI-0008087	17.09.2019	13,87,031

(v) OP No.82 of 2019 - ACME, SANDUR

(Amount in Rs.)

Sl. No.	Invoice No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD
1	2	3	4	5	6	7	8
1	ECO-ACME-20190530	3792443	24.06.2019	4,03,07,705.86	20,15,385.29	1,00,76,926.47	5,03,846.32
2	ECO-ACME-20190826	5035986	24.09.2019	9,76,23,569.40	48,81,178.47	1,95,24,713.88	9,76,235.69
3	ECO-ACME-20190904	5036020	24.09.2019	4,29,54,370.54	21,47,718.53	85,90,874.11	4,29,543.71
4	BDLW-CI-2019-09-001	5131236	01.10.2019	3,35,03,168.16	16,75,158.41	67,00,633.63	3,35,031.68
5	BDLW-CI-2019-09-002	5131233	01.10.2019	1,67,51,584.08	8,37,579.20	33,50,316.82	1,67,515.84
6	TS-1908008-2	5199668	07.10.2019	4,86,94,237.02	24,34,711.85	97,38,847.40	4,86,942.37
7	CECEP-20190902-2	5131235	01.10.2019	5,28,39,281.60	26,41,964.08	1,05,67,856.32	5,28,392.82
Total					1,66,33,695.83	6,85,50,168.63	34,27,508.43

The payment details on SGD and IGST and impact on account of SGD is as detailed below:

(Amount in Rs.)

Sl. No.	SGD amount	IGST paid on SGD	Details of Payment					Impact on a/c of SGD
			Cash	Challan No.	Date	Name of the Bank and branch code	Bond No. (GRN No) and date	
1	1,00,76,926.47	5,03,846.32	1,25,96,158	2027572119	28.06.2019	SBI-0008087	PD No.	1,05,80,772
2	1,95,24,713.88	9,76,235.69	1,51,31,969	2028852919	11.10.2019	SBI-0008087	2001610432 dated	2,05,00,950
3	85,90,874.11	4,29,543.71	66,57,928	2028852924	11.10.2019	SBI-0008087	17.09.2019	90,20,418
4	67,00,633.63	3,35,031.68	81,90,089	2028874706	15.10.2019	SBI-0008087	&	70,35,665
5	33,50,316.82	1,67,515.84	25,96,495	2028874768	14.10.2019	SBI-0008087	PD No	35,17,833
6	97,38,847.40	4,86,942.37	75,47,607	2028872014	15.10.2019	SBI-0008087	2001628437 dated	1,02,25,790
7	1,05,67,856.32	5,28,392.82	51,92,991	2028874775	14.10.2019	SBI-0008087	17.09.2019	1,10,96,249

- l) Though Scheduled Commercial Operation Date (SCOD) under the present PPA was on 04.11.2019, the petitioners were able to Commission the Project within SCOD despite happening of such change in law eventuality.
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- m) This commission vide its Order dated 17.09.2019 has already declared that the imposition of the SGD is a change in law event in terms of Article 15 of the PPA. The present petitions were filed to seek consequential relief of such order for recovery of the additional capital cost that has been incurred by the petitioners due to imposition of the SGD by the Central Government.
- n) The procedure for working out the compensation for Solar Renewable projects has neither been outlined in any document nor in any order of the Commission. Petitioners request the Commission to consider that the impact of Safeguard Duty be converted into additional tariff.
- o) This approach is preferable from ESCOMs point of view, as the additional tariff can be recovered from the consumers through their ARR. Further the developers would have been neutral since the additional burden on capital cost would have been recovered through tariff if the bidding had taken place after date of notification of Ministry of Finance. The PPA provides for appropriate change in tariff.

p) The Ministry of Power had issued directions on 27.08.2017 under Section 107 of the Electricity Act, 2003 to the Hon'ble Central Electricity Regulatory Commission (CERC) wherein MoP had directed the Central Commission to determine the per unit impact of such domestic duties, levies, cess and taxes which can be passed on. The relevant extracts of the directions as given below:

“3. Now in Order to address the above issue and ensure sustainability of the electricity market in the larger public interest, the Central Government, in exercise of the powers conferred under section 107 of the Act, hereby issues this direction to the Central Electricity Regulatory Commission:

(a) Any change in domestic duties, levies, cess and taxes imposed by Central Government, State Governments/ Union Territories or by any Government instrumentality leading to corresponding changes in the cost, may be treated as “Change in Law” and may unless provided otherwise in the PPA, be allowed as pass through.

(b) Central Commission will only determine the per unit impact of such change in domestic duties, levies, cess and taxes, which will be passed on.”

q) Based on the above directions and as mentioned in the PPA, petitioners requested the Commission to compute the per Unit impact even considering the part payment made by the petitioners herein by way of Bonds.

r) It is pertinent to note that the entire bidding in the present case has been carried out by KREDL as per the ‘Guidelines for Tariff Based

Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects' issued by Ministry of Power vide Notification bearing No.23/27/2017-R&R, dated 03.08.2017 ("Bidding Guidelines"). The said Bidding Guidelines have been issued under the provisions of Sections 63 of the Electricity Act, 2003 for the long-term procurement of electricity by distribution licensees, from grid-connected Solar PV Power Projects having a size of 5 MW and above, through competitive bidding.

- s) Para 5.7.1 of the Bidding Guidelines states that, if a Change in Law Event results in any adverse financial loss/ gain to the Solar Power Generator, the Solar Power Generator/ procurer shall be entitled to compensation by the other party, in order to ensure that the Solar Power Generator is placed in the same financial position as it would have been, had it not been for the occurrence of the Change in Law event.
- t) The Bidding Guidelines is the parent/ principal document governing the bid-out projects under Section 63 of the Electricity Act, 2003 and is binding on the State Commission and clearly support the factum that petitioners are required to be placed in the same financial position as it would have been had the Change in Law not occurred, which is essentially the principle of restitution.
- u) The restitution is an integral part of compensation granted for Change in Law and carrying cost money. The Hon'ble Supreme

Court of India in the case of Yadava Kumar V. National Insurance Co. Ltd., (2010)10 SCC 341 while interpreting the term "compensation" was pleased to note that a compensation is granted to put back the injured party to the same position, as far as possible, as if such injury had not occurred. The Hon'ble Appellate Tribunal for Electricity (ATE) as well in a plethora of cases such as Appeal No. 210 of 2017, Appeal No. 193 of 2017 and Appeal. No. 111 of 2017 has allowed carrying cost upon the amount allowed as compensation for "Change in Law" events.

- v) The Applicants are entitled to seek tariff revision due to the impact of Safeguard Duty in terms of the PPA and the competitive Bidding Guidelines. It is reiterated that this Commission has already held that imposition of SGD by the Central Government qualifies as a "Change in Law" Event in terms of Article 15 of the PPA. Therefore, the Applicants are entitled to seek consequential relief in accordance with the agreed terms of the PPA and provisions of Competitive Bidding Guidelines.

5. In response to the notice, the respondents appeared through their Counsels and filed separate Statement of Objections, which are as follows:

- a) The respondents have admitted that the petitioners are the successful bidder for development of Solar PV ground mounded projects at Siddhalgatta, Kittur, Guledagudda, Hukkeri and Sandur in Karnataka. KREDL has issued the Letter of Award (LoA) and the

petitioners had accepted the same, executed these PPAs and which are concurred by this Commission.

- b) The petitioners have imported Solar Panel from China despite knowing the same would attract the levy of Safeguard duty and it was entirely possible for the petitioners to avoid the payment of the safeguard duty by importing the solar cells from Countries notified as developing countries or procuring from the domestic market, in which event the duty would not be levied and no change in law event would have occurred. The petitioners have wilfully attracted the levy of safeguard duty and are seeking to pass on the burden to the respondents who were not consulted prior to such decision being made.
- c) The petitioners are not entitled for the relief of change in law under Article 15 of the PPA, as the grievance of the petitioners are based on facts and circumstances that could have easily been avoided by them. It ought to be noted that the Safeguard Duty Notification produced at Annexure P-1 of the petitions, allows the import of the subject goods from Countries notified as Developing Countries [vide Notification No. 19/2016 – Customs (N.T.) dated 5th February 2016, except China and Malaysia] and such import would be exempt from the levy of Safeguard Duty.
- d) The petitioners are well aware of the fact that any increase in project cost would affect consumer tariff and same is contrary to

the public interest. Article 5.1.2 casts duty on the petitioners to discharge their obligations in accordance with Good Industry Practice and as a reasonable prudent person would have done it. In the present case, the petitioners have not demonstrated any steps taken to procure modules from the domestic market or developing countries, which do not attract levy of safeguard duty. The petitioners have failed in their duty to discharge their obligation as a prudent businessman would do.

- e) It is a well settled principle of law that a party is entitled to damages only if it has taken steps to mitigate loss consequent to a breach. In the case on hand, the petitioners have not taken any steps towards reducing additional cost incurred on account of imposition of safeguard duty. The petitioners have the duty to mitigate the loss by procuring the modules from domestic market and developing countries, which do not attract the levy of safeguard duty. The petitioners having failed in their duty to mitigate loss, are not entitled to any reliefs from this Commission.
- f) The rates of solar modules purchased by the petitioners from the Econess Energy Company Limited (based in China) in respect of
- (i) OP No. 78/2019 the cost per watt of solar module is approximately Rs.21;
 - (ii) in OP 79/2019, the cost per watt of solar module is approximately Rs.18-20;

- (iii) OP No.80/2019, the cost per watt of solar module is approximately Rs.20.38;
- (iv) OP No.81/2019 the cost per watt of solar module is approximately Rs.20; and
- (v) OP No.82/2019 the cost per watt of solar module is approximately Rs.20;

The solar modules purchased from Tara Power Solar and Adani Solar are even more economical at the rate of Rs.18 per watt. If solar panels purchased from an Indian manufacturer are more economical and more competitive than those purchased from China.

- g) The safeguard duty is levied on the purchase of foreign products, primarily during periods of import surge in order to protect domestic manufacturers and ultimately encourage the purchase of products from domestic manufacturers and discourage their purchase from foreign entities. The petitioners in blatant disregard for contents of the Notification and the intention of the Government of India to discourage purchase of goods from foreign entities to the detriment of their local counterparts, have imported modules from China. If the safeguard duty is ordered to be paid by the respondent, a Government company, rather than the petitioners, wilful purchasers of the foreign goods, it would defeat the view purpose of notification. The project in question is a public project, and the respondent, being a wholly owned Government company providing an essential service to the public at large should not be

made to bear the additional cost incurred on account of petitioners' voluntary business decision.

- h) The petitioners in these petitions have requested this Commission to increase the tariff in view of the additional cost incurred on account of imposition of safeguard duty and IGST on the safeguard duty and in support of its prayer they have furnished invoices, bills of entry and E-receipts of payment.
- i) The Respondents have further contended that, from perusal of Annexure P-10 the petitions it is clear that these petitioners have procured more than the required No. of modules for the project. The details of solar modules purchased by the petitioners are has under:

(i) OP No. 78/2019

SL. No.	BOE No. & Date	Quantity in No.	Watt No.	Total No. Watt
1	3795162/ 24.06.2019	3,410	330	11,25,300
2	4637963/ 26.08.2019	10,368	330	34,21,440
3	4546943/ 19.08.2019	10,368	330	34,21,440
4	4459432/ 12.08.2019	5,184	330	17,10,720
5	5037702/ 24.09.2019	15,552	330	51,32,160
6	5035988/ 24.09.2019	5,952	335	19,93,920
7	5035988/ 24.09.2019	12,462	330	41,12,460
		63,296		2,09,17,440

Details	As indicated in Objection statement	Calculated as per Invoices
For 20.92 Mw SGD+IGSD	Rs.6,93,81,830	Rs. 6,93,81,830.02
For contracted capacity 20 Mw SGD+IGS T	Rs.6,63,30,621	Rs. 6,63,30,621.43
Excess claimed	Rs. 30,51,209	Rs. 30,51,208.586

(ii) OP No. 79/2019

SL. No.	BOE No. &Date	Quantity in No.	Watt No.	Total No. Watt
1	4907616/ 16.06.2019	9720	330	32,07,600
2	5034621/ 24.09.2019	13608	330	44,90,640
3	5202020/ 07.10.2019	9360	330	30,88,800
4	5034646/ 24.09.2019	5832	330	19,24,560
5	5125072/ 01.10.2019	7128	330	23,52,240
	Total	45,648		1,50,63,840

Details	As indicated in Objection statement	Calculated as per Invoices
For 15.064 Mw SGD + IGST	Rs. 94,45,021	Rs. 4,91,49,111.61
For contracted capacity 15 Mw SGD + IGST	Rs. 94,04,893	Rs. 4,89,40,819.48
Excess claimed	Rs. 40,128	Rs. 2,08,292.1277

(iii) OP No. 80/2019

SL. No.	BOE No. & Date	Quantity in No.	Watt No.	Total No. Watt
1	3690107/ 17.06.2019	11,594	330	38,26,020
2	3690041/ 17.06.2019	4,092	330	13,50,360
3	3863778/ 29.06.2019	10,912	330	36,00,960
4	4830369/ 09.09.2019	7,440	335	24,55,200
5	4940020/ 17.09.2019	2,104 5,208	330 335	6,94,320 17,44,680
6	5034664/ 24.09.2019	15552	330	51,32,160
7	5034651/ 24.09.2019	9,072	330	22,93,760
	Total	69,214		2,18,34,660

Details	As indicated in Objection statement	Calculated as per Invoices
For 21.83 Mw SGD + IGST	Rs. 7,70,38,101	Rs. 7,70,38,100.94
For contracted capacity 15 Mw SGD + IGST	Rs. 5,04,61,638	Rs. 5,29,23,723.75
Excess claimed	Rs. 2,65,76,463	Rs. 2,41,14,377.19

(iv) OP No. 81/2019

SL. No.	BOE No. & Date	Invoice No./ Date	Quantity In No.	Watt No.	Total No. Watt
1	3690109/ 17.06.2019	ECO-ACME-2019524-2/ 24.05.2019	12,276	330	40,51,080
2	3863813/ 29.06.2019	ECO-ACME-20190609/ 09.06.2019	3,410	330	11,25,300
3	4843933/ 10.09.2019	CECEP-20190816/ 16.08.2019	11,016	330	36,35,280
4	4886277/ 13.09.2019	ECO-ACME-20190821 / 21.08.2019	8,463	335	28,35,105
5	4907984/ 16.09.2019	CECEP-20190824-1/ 24.08.2019	11,664	330	38,49,120
6	5034664/ 24.09.2019	CECEP-20190825-1/ 25.08.2019	3240	330	10,69,200
7	5124358/ 01.10.2019	CECEP-20190825-2/ 25.08.2019	1,296	330	4,27,680
	Total	Total Modules	51,365		1,69,92,765

Details	As indicated in Objection statement	Calculated as per Invoices
For 16.99 Mw SGD + IGST	Rs. 66,917	Rs. 5,89,92,089.39
For contracted capacity 15 Mw SGD + IGST	Rs. 45,368	Rs. 5,20,74,005.66
Excess claimed	Rs. 21,549	Rs. 69,18,083.726

(v) OP No. 82/2019

SL. No.	BOE No. &Date	Invoice No./Date	Quantity In No.	Watt No.	Total No. Watt
1	3792443/ 24.06.2019	ECO-ACME-2019053	8184	330	2700720
2	5035986/ 24.09.2019	ECO-ACME-20190826	18600	335	6231000
3	5036020/ 24.09.2019	ECO-ACME-20190904	8184	335	2741640
4	5131236/ 01.10.2019	BDLW-CI-2019-09-001	6480	330	2138400
5	5131233/ 01.10.2019	BDLW-CI-2019-09-002	3240	330	1069200
6	5199668/ 07.10.2019	TS-1908008-2	9360	330	3088800
7	5131235/ 01.10.2019	CECEP-20190902-2	10368	330	3421440
	Total	Total Modules	64,416		21391200

Details	As indicated in Objection statement	Calculated as per Invoices
For 21.39 Mw SGD + IGST	64416 (modules)	Rs. 7,19,77,677.06
For contracted capacity 20 Mw SGD + IGST	60227 (modules)	Rs. 6,72,96,530.41
Excess claimed	4189 (modules)	Rs. 46,81,146.655

- j) It is clear from the above information that petitioners have purchased solar panels in excess of what was contracted for and is resultantly seeking to mislead the respondents as well as this Commission. The petitioners cannot pass the additional cost borne in respect of modules installed in excess on the respondents.
- k) Details of safeguard duty and IGST payable as per the bills of entries and e-receipts of payment produced by the petitioners are as under:

OP No. 78/2019-ACME, SIDDHALGATTA

Sl. No.	BOE No. &Date	Page No.	SGD (Rs.)	IGST (Rs.)	Total (Rs.)	Amount paid as per challan	Page No.
1	3795162/ 24.06.2019	178-182	4198719.40	10,49,679.75	52,48,399	52,50,556	183
2	4637963/ 26.08.2019	199-203	-	26,67,260.50	26,67,261	82,73,989	204
3	4546943/ 19.08.2019	219-223	-	26,67,260.50	26,67,261	82,79,469	224
4	4459432/ 12.08.2019	235-239	-	12,99,291.75	12,99,292	40,33,145	240
5	5037702/ 24.09.2019	259-262	-	40,20,380.25	40,20,380	1,24,63,178	263
6.1	5035988/ 24.09.2019	272-276	-	15,61,977.12	-	-	
6.2	5035988/ 24.09.2019	272-276	-	32,21,577.75	-	-	
6.3	5035988/ 24.09.2019	272-276	-	32,055.50	48,15,610	1,49,28,392	287

OP No.79/2019-ACME, KITTUR

Sl. No.	BOE No. & Date	Page No.	SGD (Rs.)	IGST (Rs.)	Total (Rs.)	Amount paid as per challan	Page No.
1	4907616/ 16.06.2019	178-180	0.00	24,97,424.50	24,97,425	74,97,406	181
2	5034621/ 24.09.2019	190-192	0.00	34,67,578	34,67,578	1,04,13,434	225
3	5202020/ 07.10.2019	201-202	0.00	24,34,712	24,34,712	73,04,136	233
4	5034646/ 24.09.2019	209-211	0.00	14,86,104.75	14,86,105	44,65,458	226
5	5125072/ 01.10.2019	219-221	0.00	18,16,350.25	18,16,350	54,54,051	232

OP No. 80/2019-ACME, GULEDAGUDDA

Sl. No.	BOE No. & Date	Page. No.	SGD (Rs.)	IGST (Rs.)	Total (Rs.)	Amount paid as per challan	Page No.
1	3690107/ 17.06.2019	179-180	1,42,55,367.90	3,55,63,842	1,78,19,210	1,78,19,210	182
2	3690041/ 17.06.2019	190-192	50,31,306.30	12,57,826.62	62,89,133	62,89,133	193
3	3863778/ 29.06.2019	201-202	-	26,87,180.50	26,87,180	94,29,426	203
4	4830369/ 09.09.2019	211-212	-	19,68,696.88	19,68,697	59,06,091	258
5.1	4940020/ 17.09.2019	221-223	-	5,40,311.38			
5.2			-	13,78,087.75	19,18,399	57,69,775	224
6	5034664/ 24.09.2019	234-236	-	4,76,88,560.00	47,68,560	1,43,78,552	255
7	5034651/ 24.09.2019	245-247	-	23,11,718.50	23,11,719	69,43,957	254

OP No. 81/2019-ACME, HUKKERI

Sl. No.	BOE No. & Date	Page No.	SGD (Rs.)	IGST (Rs.)	Total (Rs.)	Amount paid as per challan	Page No.
1	3690109/ 17.06.2019	170	1,50,93,919	37,73,479	1,88,67,399	1,88,67,399	174
2	3863813/ 29.06.2019	182	-	8,39,743.88	8,39,744	29,47,041	184
3	4843933/ 10.09.2019	192	-	28,30,414.50	28,30,415	85,01,713	237
4	4907984	Not available	Not available	Not available	Not available	89,96,886	214
5	4886277/ 13.09.2019	203	-	22,39,392.75	22,39,393	67,21,860	236
6	5034664/ 24.09.2019	223	-	47,88,560.00	47,88,560	1,43,78,552	245
7	5124358/ 01.10.2019	230	-	3,30,245.50	3,30,246	9,95,738	233

OP No. 82/2019 ACME SANDUR

Sl. No.	BOE No. & Date	Page No.	SGD (Rs.)	IGST (Rs.)	Total	Amount paid as per challan	Page No.
1	3792443/ 24.06.2019	172-174	1,00,76,926.50	25,19,231.50	1,25,96,158	1,25,96,158	176
2	5035986/ 24.09.2019	184-186	0.00	48,81,178.50	48,81,179	1,51,31,969	263
3	5036020/ 24.09.2019	196-198	0.00	21,47,718.50	21,47,719	66,57,928	264
4	5131236/ 01.10.2019	213-216	0.00	16,75,158.38	16,75,158	51,92,991	265
5	5131233/ 01.10.2019	228-230	0.00	8,37,579.10	8,37,579	25,96,495	266
6	5199668/ 07.10.2019	240-242	0.00	24,34,712	24,34,712	75,47,607	267
7	5131235/ 01.10.2019	252-254	0.00	26,41,964	26,41,964	81,90,089	268

- l) From the perusal of the above tables, it is clear that some of the bill of entries do not reflect the safeguard duty paid as shown in challan and bills of entries show safeguard duty imposed are zero. The amount stated in respect of safeguard duty in the bill of entries and challans (e-receipt) do not correlate. The documents produced by the petitioners do not support the sum claimed. In view of no correlation between the sum claimed and documents produced, the petitioners are not entitled to any reliefs and the present petitions deserves to be rejected.
- m) The petitioners have also prayed for the grant of interest/ carrying cost (to be restored to the same economic position as if the alleged change in law had not occurred) from the date of the impact until the reimbursement thereof by the respondents. With regard to carrying cost, the law stands settled that only if there is a provision in the PPA for the restoration of the developer/ seller to the same economic position as if no change in law event has occurred, the developer/seller is eligible for carrying cost. In the present cases, neither does the PPA entered into between the parties contain a single provision that permits/ stipulates restoring the solar power generator to same financial position as prior to the change in law, nor does it contemplate the payment of carrying cost or interest of any kind to the aggrieved party on account of a change in law. The PPA is a legally binding contract entered into by the parties,

reflecting the intention of both parties and the petitioners are bound by the terms of the same. In view of the above, the petitioners are not entitled to carrying cost as claimed.

- n) It is important to note that in the earlier petitions filed by the petitioners, this Commission has categorically held that the petitioners are not entitled to carrying cost and petitioners cannot raise the issue of carrying cost in the present petition as it has been already decided by the Commission. Therefore, the claim of the petitioner for carrying cost is barred by the principle of res judicata.
- o) As per Article 5.1.1 of the PPA the petitioners are responsible for the payment of all taxes and duties imposed by the Government in relation to all works connected to the project. It is in cognizance of this fact that the petitioners have bid in response to the request for proposal. The bid of eligible bidders (i.e., the petitioners) are all-inclusive bid that includes the cost of any existing foreseeable taxes and duties including anti-dumping duty. The respondents have accepted the bid of the petitioners and executed the PPA on the understanding that the petitioners have factored in to their bid any expenditure to be incurred by them on account of the payment of taxes and also duties for import of solar modules from China, including safeguard duty deducting anti-dumping duty payable. The petitioners have already been compensated for the cost of anti-dumping duty payable by them in view of the fact that

it was included in the cost of petitioners bid. The only change in law benefit, if any, payable to the petitioner would be the difference in the rates stated in the safeguard duty Notification and the anti-dumping duty payable. In view of the same the petitioners ought to make available a statement of the difference amount payable, if any, including the cost of anti-dumping duty paid, in order to ascertain whether any additional duty has been levied at all.

6. Apart from the above, the respondents have also denied the contents of the each of the paras of these petitions.
7. The petitioners filed the rejoinders in each case reiterating the contents of petition and denying the contentions raised by the respondents in their statement of objections. Further explained that how imposition of safeguard duty amounts to change in law event, with reference to the relevant Articles of PPA, RfP document and contents of the letters of Karnataka Renewable Energy Development Limited (KREDL), SGD Notification of Gol, directions of Ministry of New & Renewable Energy (MNRE), Bidding Guidelines. Petitioners further clarified regarding specific objections raised by the respondents as hereunder:

OP No. 78/2019-ACME, SIDDHALGATTA

- i. BESCO in its objections had contended that the amount stated in bill of entry and challans do not correlate and the documents submitted does not support the sum claimed.

- ii. The petitioner by way of Annexure-P8 and P10 to the petition paper-book has clarified by providing tabular representation of the details of the cost impact on the project on account of SGD. The details of the calculation of individuals BOEs are shown below:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	2	3	4	5	6	7	8	9	10	11	12	13
1	ECO-ACME-20190608	3795162	24.06.2019	1,67,94,877.44	8,39,743.87	41,98,719.36	20,99,35.97	52,50,556	Nhava-Sheva	44,08,655.33	-	-
2	BDLW-CI-2019-07-023	4637963	26.08.2019	5,33,45,210.69	26,67,260.53	1,06,69,042.14	5,33,452.11	82,73,989	KPCT	56,01,247.12	56,01,247	-
3	BDLW-CI-2019-07-018	4546943	19.08.2019	5,33,45,210.69	26,67,260.53	1,06,69,042.14	5,33,452.11	82,79,469	KPCT	56,01,247.12	56,01,247	-
4	BDLW-CI-2019-07-011	4459432	12.08.2019	2,59,85,837.00	12,99,291.85	51,97,167.40	2,59,858.37	40,33,145	KPCT	27,28,512.89	27,28,513	-
5	BDLW-CI-2019-09-003	5037702	24.09.2019	8,04,07,603.58	40,20,380.18	1,60,81,520.72	8,04,076.04	1,24,63,178	KPCT	84,42,798.38	84,42,798	-
6	ECO-ACME-20190903	5035988	24.09.2019	9,63,12,208.02	48,15,610.40	1,92,62,441.60	9,63,122.08	1,49,28,392	KPCT	1,01,12,781.84	1,01,12,782	-
				32,61,90,947.42	1,63,09,547.37	6,60,77,933.36	33,03,896.67	5,32,28,729		3,68,95,242.68	3,24,86,587	-

- iii. The tabular representation/ statement summarises the invoices and payment challans (at annexure – P10) along with the payment due through bonds (at annexure – P12) in relation to the total SGD payable by the petitioner.
- iv. It is clarified that each of the invoices annexed contains primarily 3 components:
- IGST on the total assessment value;
 - The safeguard duty payable on the total assessment value; and
 - The IGST on safeguard duty payable.
- v. The BOE value is therefore would be summation of (a), (b) and (c). The petitioner in the present petition is only claiming component (b) and (c). The safeguard duty as indicated under each of the

BoEs/Invoices, was paid either entirely through cash or partly through cash and creation of bonds by the petitioner in favour of the Custom department. For convenience sake the table below clearly records the same:

Payment of SGD and IGST on SGD by cash (INR)	Payment of SGD and IGST on SGD by bonds (INR)	Total Impact of SGD including IGST (INR)
3,68,95,243	3,24,86,587	6,93,81,830

ACME has placed orders for purchase of solar modules from China based companies namely, Econess Energy Co, Ltd, China and Baoding Lightway Green Energy Technology Co. Ltd., China and received the solar panels at two ports i.e., Krishnapatnam Port in Andhra Pradesh and Nhava-Sheva port in Mumbai.

- I) BoE No. 3795162 dated 24.06.2019 at page 178-179 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO - ACME-20190608	3795162	24.06.2019	1,67,94,877.44	8,39,743.87	41,98,719.36	2,09,935.97	52,50,556	Nhava-Sheva	44,08,655.33	-	-

The petitioner has paid Rs.52,50,556 to the Custom department as evident from the Custom e-receipt at page 183 of the petition paper book. However, petitioner is only claiming Rs.44,08,655.33 which is summation of the safeguard duty and the IGST on safeguard duty paid by the petitioner. The corresponding entry to the total amount paid to the Custom department is also reflective

in the bank statement of the company which is available at page 283 of the petition paper book.

II) BoE No. 4637963 dated 26.08.2019 at page 199-200 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	BDLW-CI-2019-07-023	4637963	26.08.2019	5,33,45,210.69	26,67,260.53	1,06,69,042.14	5,33,452.11	8,273,989	KPCT	56,01,247.12	56,01,247	-

(a) The imposition of safeguard duty by the Government of India and the Notification dated 30.07.2018 along with the final findings dated 16.07.2018 issued by the Director General for Trade Remedies, was challenged in a writ jurisdiction by the holding company of the petitioner before the Hon'ble Andhra Pradesh High Court contending that the promulgation would cause financial prejudice to them on account of imposition of safeguard duty by the Government of India. Petitioners prayed that the payment of the safeguard duty as imposed by the Government of India and being recovered by the Custom department through BoEs be suspended till the final outcome of the writ petition. The Hon'ble High Court vide its Interim order dated 26.08.2019 (Annexure-4) allowed the petitioner herein to pay 50% of the safeguard duty under the BoE and provide bonds for paying the balance 50% together with interest in the event the petitioner is not successful in the writ petition. That the Customs

Department had no option of charging "50% of the safeguard duty" in the portal/ software of Customs department and the Custom department issued "Provisional BoEs" with safeguard duty mentioned as "Zero" and bond amount mentioned as 50% of the total value of safeguard duty and IGST on safeguard duty payable i.e., Rs.56,01,247 and equivalent amount paid by cash in terms of said interim orders of Hon'ble High Court of Andhra Pradesh. Accordingly, the petitioner has paid the Custom department in terms of the directions of the Hon'ble Andhra Pradesh High Court. The Petitioner has paid Rs.82,73,989 to the Custom department as evident from the Custom e-receipt at page 204 of the petition paper books which is inclusive of IGST on assessment value, 50% safeguard duty and 50% IGST on safeguard duty. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount Rs.56,01,247 is paid by way of bonds which is mentioned in the said BoEs. Therefore, petitioner is claiming of Rs.1,12,02,494 which is summation of the safeguard duty and IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department is also reflective in the bank statement of the company which is available at page 285 of the petition paper book.

III) BoE No. 546943 dated 19.08.2019 at page 219-220 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	BDLW-CI-2019-07-018	4546943	19.08.2019	5,33,45,210.69	26,67,260.53	1,06,69,042.14	5,33,452.11	82,79,469	KPCT	56,01,247.12	56,01,247	-

(a) The explanation made for the BoE No. 4637963 dated 26.08.2019 at page 199-200 of the petition paper book is relied here and not repeated for the sake of brevity.

(b) The petitioner has paid Rs.82,79,469 to the Custom department as evident from the Custom e-receipt at page 224 of the petition paper book which is inclusive of IGST on Assessment value, 50% safeguard duty and 50% IGST on safeguard. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount i.e., Rs.56,01,247 is paid by way of bonds which is mentioned in the said BoE. Therefore, petitioner is claiming Rs.1,12,02,494 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 285 of the petition paper book.

IV) BoE No. 459432 dated 12.08.2019 at page 235-236 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	BDLW-CI-2019-07-011	4459432	12.08.2019	2,59,85,837	12,99,291.85	51,97,167.40	2,59,858.37	40,33,145	KPCT	27,28,512.89	27,28,513.00	-

(a) The explanation made for the BoE No.4637963 dated 26.08.2019 at page 199-200 of the petition paper book is relied here and not repeated for the sake of brevity.

(b) The petitioner has paid Rs.40,33,145 to the Custom department as evident from the Custom e-receipt at page 240 of the petition paper book which is inclusive of IGST on Assessment value, 50% safeguard duty and 50% IGST on safeguard duty. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount i.e., Rs.27,28,513 is paid by way of bonds which is mentioned in the said BoE. Therefore, petitioner is claiming Rs.54,57,026 which is summation of the safeguard duty and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page285 of the petition paper book.

V) BoE No. 5037702 dated 24.09.2019 at page 259-260 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	BDLW-CI-2019-09-003	5037702	24.09.2019	8,04,07,603.58	40,20,380.18	1,60,81,520.72	8,04,076.04	1,24,63,178	KPCT	84,42,798.38	84,42,798	-

(a) The explanation made for the BoE No.4637963 dated 26.08.2019 at page 199-200 of the petition paper book is relied here and not repeated for the sake of brevity.

(b) The petitioner has paid Rs.1,24,63,179 to the Custom department as evident from the Custom e-receipt at page 273 of the petition paper book which is inclusive of IGST on Assessment value, 50% safeguard duty and 50% IGST on safeguard duty. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount i.e., Rs.84,42,798 is paid by way of bonds which is mentioned in the said BoE. Therefore, petitioner is claiming Rs.1,68,85,587 which is summation of the safeguard duty and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 278 of the petition paper book.

VI) BoE No. 5035988 dated 24.09.2019 at page 272-273 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190903	5035988	24.09.2019	9,63,12,208.02	48,15,610.40	1,92,62,441.60	9,63,122.08	1,49,28,392	KPCT	1,01,12,781.84	1,01,12,782	-

- (a) The explanation made for the BoE No.4637963 dated 26.08.2019 at page 199-200 of the petition paper book is relied here and not repeated for the sake of brevity.
- (b) The petitioner has paid Rs.1,49,28,392 to the Custom department as evident from the Custom e-receipt at page 277 of the petition paper book which is inclusive of IGST on Assessment value, 50% safeguard duty and 50% IGST on safeguard duty. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount i.e., Rs.1,01,12,782 is paid by way of bonds which is mentioned in the said BoE. Therefore, petitioner is claiming Rs.2,02,25,564 which is summation of the safeguard duty and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 278 of the petition paper book.

OP No. 79/2019-ACME, KITTUR

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	2	3	4	5	6	7	8	9	10	11	12	13
1	CECEP-20190824	4907616	16.09.2019	4,99,48,490.55	24,97,424.53	99,89,698.11	4,99,484.91	74,97,406	Nhava Sheva	49,94,849.06	49,94,849	4,99,484.91
2	CECEP-20190810	5034621	24.09.2019	6,93,51,558.09	34,67,577.90	1,38,70,311.62	6,93,515.58	1,04,13,434	Nhava Sheva	69,35,155.81	69,35,156	6,93,515.58
3	CECEP-20190826	5034646	24.09.2019	2,97,22,096.33	14,86,104.82	59,44,419.27	2,97,220.96	44,65,758	Nhava Sheva	29,72,209.63	29,72,210	2,97,220.96
4	TS-1908008-1	5202020	07.10.2019	4,86,94,237.02	24,34,711.85	97,38,847.40	4,86,942.37	73,04,136	Nhava Sheva	48,69,423.70	48,69,424	4,86,942.37
5	CECEP-20190902	5125072	01.10.2019	3,63,27,006.62	18,16,350.33	72,65,401.32	3,63,270.07	54,54,051	Nhava Sheva	36,32,700.66	36,32,701	3,63,270.07
				23,40,43,388.61	1,17,02,169.43	4,68,08,677.72	23,40,433.89	3,51,34,785		2,34,04,338.86	2,34,04,340	23,40,433.89

- (i) The tabular representation summarises the invoices and payment challans (at annexure – P/10) along with the payment due through bonds (at annexure – P/12) in relation to the total SGD payable by the petitioner in OP 79/2019.
- (ii) The petitioner has clarified that each of the invoices annexed contains primarily 3 components:
- (a) IGST on the total assessment value;
 - (b) The safeguard duty payable on the total assessment value; and
 - (c) The IGST on safeguard duty payable.
- (iii) The BOE value therefore, would be the summation of (a), (b) and (c) items stated above. The petitioner stated it is claiming in the present petition is only claiming component (b) and (c). The safeguard duty as indicated under each of the BoEs/Invoices, was paid either entirely through cash or partly through cash and creation of bonds by the petitioner in favour of the Custom department. For convenience sake the table below clearly records the same:

Payment of SGD & IGST on SGD by cash (INR)	Payment of SGD & IGST on SGD by bonds (INR)	IGST to be paid as per HC order (INR)	Total Impact of SGD including IGST (INR)
2,34,04,339	2,34,04,340	23,40,434	4,91,49,113

- (iv) ACME has placed orders for purchase of solar modules from China based company, namely, CECEP Solar Energy Technology (Zhenjiang) Co. Ltd. and Zhehang Trunsun Solar Co.

Ltd. China and received the solar panels at ports Nhava-Sheva port in Mumbai.

- l) BoE No. 4907616 dated 16.09.2019 at page 178-179 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-20190824	4907616	16.09.2019	4,99,48,490.55	24,97,424.53	99,89,698.11	4,99,484.91	74,97,406	Nhava-Sheva	49,94,849.06	49,94,849	4,99,484.91

(a) The imposition of safeguard duty by the Government of India and the Notification dated 30.07.2018 along with the final findings dated 16.07.2018 issued by the Director General for Trade Remedies, was challenged in a writ jurisdiction by the holding company of the petitioner before the Hon'ble High Court, Bombay. Relying on the decision of the Nagpur Bench of Bombay High Court in Writ Petition No. 3084 of 2019, petitioner was allowed to pay 50% of safeguard duty under the BoE and provide bonds for paying the balance 50% together with interest in the event the petitioner is not successful in the writ petition.

(b) In view of High Court order, the Custom Authorities allowed the petitioner for making payment of 50% of liability towards safeguard on the total value of safeguard duty payable upon the Total Assessment Value. The IGST on safeguard duty shall be paid subject to the outcome of pending writ before Hon'ble High Court. Accordingly, the petitioner was notified to pay as under:

50% SGD payable through Cash (Rs.)	50% SGD payable through Bonds (Rs.)
49,94,849.06	49,94,849.00

(c) It is the contention of the petitioner that there was no option of charging "50% of the safeguard duty" in the portal/software of Customs department which is allowed as an interim relief by the Hon'ble High Court, the Custom department issued "Provisional BoEs" with safeguard duty mentioned as "Zero" and bond amount mentioned as 50% of the total value of safeguard duty and IGST on safeguard duty payable i.e., Rs.49,94,849 and equivalent amount to be paid by cash. Accordingly, the petitioner has paid Rs.74,97,406 to the Custom Department as evident from the Custom e-receipt at page 181 of the petition paper books which is inclusive of IGST on assessment value, 50% safeguard duty. The remaining 50% safeguard duty i.e., Rs.49,94,849 is paid by way of bonds which is mentioned in the said BoEs. Further, IGST on safeguard duty i.e., Rs.49,94,849.91 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.1,04,89,183 which is summation of the safeguard duty and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the

company which is available at page 224 of the petition paper book.

II) BoE No. 5034621 dated 24.09.2019 at page 190-191 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-20190810	5034621	24.09.2019	6,93,51,558.09	34,67,577.90	1,38,70,311.62	6,93,515.58	1,04,13,434	Nhava Sheva	69,35,155.81	69,35,156	6,93,515.58

The explanation made for the BoE No. 4907616 dated 16.09.2019 at page 178-179 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.1,04,13,434 to the Custom department as evident from the Custom e-receipt at page 225 of the petition paper book which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty i.e., Rs.69,35,156 is paid by way of bonds which is mentioned in the said BoE. Further, IGST on safeguard duty i.e., Rs.6,93,515.58 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.1,45,63,827 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom Department by way of cash is also reflective in the bank statement of the company which is available at page 224 of the petition paper book.

III) BoE No. 5034646 dated 24.09.2019 at page 209-210 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-20190826	5034646	24.09.2019	2,97,22,096.33	14,86,104.82	59,44,419.27	2,97,220.96	44,65,758	Nhava Sheva	29,72,209.63	29,72,210	2,97,220.96

The explanation made for the BoE No. 4907616 dated 16.09.2019 at page 178-179 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.44,65,758 to the Custom Department as evident from the Custom e-receipt at page 226 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty i.e., Rs.29,72,210 is paid by way of bonds which is mentioned in the said BoE. Further, IGST on safeguard duty i.e., Rs.2,97,220.96 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.62,41,640 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 224 of the petition paper book.

IV) BoE No. 5202020 dated 07.10.2019 at page 201-202 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	TS-1908008-1	5202020	07.10.2019	4,86,94,237.02	24,34,711.85	97,38,847.40	4,86,942.37	73,04,136	Nhava Sheva	48,69,423.70	48,69,424	4,86,942.37

The explanation made for the BoE No. 4907616 dated 16.09.2019 at page 178-179 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.73,04,136 to the Custom Department as evident from the Custom e-receipt at page 233 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.48,69,424 is paid by way of bonds which is mentioned in the said BoE. Further, IGST on safeguard duty i.e., Rs.4,86,942.37 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.1,02,25,790 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in form of cash and bonds. The corresponding entry to the total amount paid to the Custom Department by way of cash is also reflective in the bank statement of the company which is available at page 228 of the petition paper book.

V) BoE No. 5125072 dated 01.10.2019 at page 219-220 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-20190902	5125072	01.10.2019	3,63,27,006.62	18,16,350.33	72,65,401.32	3,63,270.07	54,54,051	Nhava Sheva	36,32,700.66	36,32,701	3,63,270.07

The explanation made for the BoE No. 4907616 dated 16.09.2019 at page 178-179 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.54,54,051 to the Custom Department as evident from the Custom e-receipt at page 232 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.36,32,701 is paid by way of bonds which is mentioned in the said BoE. Further, IGST on safeguard duty i.e., Rs.3,63,270.07 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.76,28,671 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 228 of the petition paper book.

OP No. 80/2019 ACME, GULEDAGUDDA

Sl. No.	Invoice/ Challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	2	3	4	5	6	7	8	9	10	11	12	13
1	ECO-ACME-20190524-1	3690107	17.06.2019	5,70,21,471.67	28,51,073.58	1,42,55,367.92	7,12,768.40	1,78,19,210	Nhava Sheva	1,49,68,136	-	-
2	ECO-ACME-20190526	3690041	17.06.2019	2,01,25,225.00	10,06,261.25	50,31,306.25	2,51,565.31	62,89,133	Nhava Sheva	52,82,872	-	-
3	ECO-ACME-20190606	3863778	29.06.2019	5,37,43,607.81	26,87,180.39	1,34,35,901.95	6,71,795.10	94,29,426	Nhava Sheva	67,17,951	67,17,951	6,71,795.10
4	ECO-ACME-20190817	4830369	09.09.2019	3,93,73,938.24	19,68,696.91	78,74,787.65	3,93,739.38	59,06,091	Nhava Sheva	39,37,394	39,37,394	3,93,739.38
5	ECO-ACME-20190823	4940020	17.09.2019	3,83,67,984.93	19,18,399.25	76,73,596.99	3,83,679.85	57,69,775	Nhava Sheva	38,36,798	38,44,799	3,83,679.85
6	CECEP-20190825-1	5034664	24.09.2019	7,92,58,923.53	39,62,946.18	1,58,51,784.71	7,92,589.24	1,43,78,552	Nhava Sheva	79,25,892	79,25,892	7,92,589.24
7	CECEP-20190825	5034651	24.09.2019	4,62,34,372.06	23,11,718.60	92,46,874.41	4,62,343.72	69,43,957	Nhava Sheva	46,23,437	46,23,438	4,62,343.72
				33,41,25,523.24	1,67,06,276.16	7,33,69,619.87	36,68,480.99	6,65,36,143.71		4,72,92,481	2,70,49,474	27,04,147

The tabular representation summarises the invoices and payment challans (at annexure – P/10) along with the payment due through bonds (at annexure – P/12) in relation to the total SGD payable by the petitioner.

It is clarified that each of the invoices annexed contains primarily 3 components:

- (a) IGST on the total assessment value;
- (b) The safeguard duty payable on the total assessment value; and
- (c) The IGST on safeguard duty payable.

The BOE value is therefore would be summation of (a), (b) and (c).

The petitioner by way of the present petition is only claiming component (b) and (c). The safeguard duty as indicated under each of the BoEs/Invoices, was paid either entirely through cash or partly through cash and creation of bonds by the petitioner in favour of the Custom department. For convenience sake the table below clearly records the same:

Payment of SGD & IGST on SGD by cash (INR)	Payment of SGD & IGST on SGD by bonds (INR)	IGST to be paid as per HC order (INR)	Total Impact of SGD including IGST (INR)
4,72,92,481	2,70,49,474	27,04,147	7,70,46,102

ACME has placed orders for purchase of solar modules from China based company, namely, CECEP Solar Energy Technology (Zhenjiang) Co. Ltd. and Econess Energy Co. Ltd. China and received the solar panels at port Nhava-Sheva port in Mumbai.

- I) BoE No. 3690107 dated 17.06.2019 at page 179-180 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190524-1	3690107	17.06.2019	5,70,21,471.67	28,51,073.58	1,42,55,367.92	7,12,768.40	1,78,19,210	Nhava-Sheva	1,49,68,136	-	-

The Petitioner has paid Rs.1,78,19,210 to the Custom department as evident from the Custom e-receipts at page 182 of the petition paper book which is the summation of IGST on assessment value, safeguard duty and IGST on safeguard duty. However, petitioner is only claiming Rs.1,49,68,136 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner. The corresponding entry to the total amount paid to the Custom department is also reflective in the bank statement of the company which is available at page 250 of the petition paper book.

- II) BoE No. 3690041 dated 17.06.2019 at page 190-191 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190526	3690041	17.06.2019	2,01,25,225	10,06,261.25	50,31,306.25	2,51,565.31	62,89,133	Nhava-Sheva	52,82,872	-	-

The Petitioner has paid Rs.62,89,133 to the Custom department as evident from the Custom e-receipts at page 193 of the petition paper book which is the summation of IGST on assessment value, safeguard duty and IGST on safeguard duty. However, petitioner is only claiming Rs.52,82,872 which is summation of the safeguard duty paid and the

IGST on safeguard duty paid by the petitioner. The corresponding entry to the total amount paid to the Custom department is also reflective in the bank statement of the company which is available at page 250 of the petition paper book.

III) BoE No. 3863778 dated 29.06.2019 at page 201-202 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190606	3863778	29.06.2019	5,37,43,607.81	26,87,108.39	1,34,35,901.95	6,71,795.10	94,29,426	Nhava-Sheva	67,17,951	67,17,951	6,71,795.10

The imposition of safeguard duty by the Government of India and the Notification dated 30.07.2018 along with the final findings dated 16.07.2018 issued by the Director General for Trade Remedies, was challenged in a writ jurisdiction by the holding company of the petitioner before the Hon'ble High Court, Bombay. The holding company of the petitioner brought to the notice of the Hon'ble High Court, Bombay the impending financial prejudice caused to them on account of such imposition of safeguard duty by the Government of India. It was prayed that the payment of the safeguard duty as imposed by the Government of India and being recovered by the Custom department through BoEs be suspended till the final outcome of the writ petition. In reliance with the decision of the Nagpur Bench of this Court of Bombay in Writ Petition No. 3084 of 2019, Hon'ble High Court of Bombay allowed the petitioner herein to pay 50% of safeguard duty under the BoE and provide bonds for

paying the balance 50% together with interest in the event the petitioner is not successful in the writ petition.

The Custom Authorities at the Port, in view Hon'ble High Court Order, allowed 50% payment of liability towards safeguard duty. Therefore, the petitioner was allowed to clear the modules by paying 50% of the total value of safeguard duty payable upon the Total Assessment Value. The IGST on safeguard duty shall be paid at the time of clearing the bonds. Accordingly, the petitioner was notified to pay as under:

50% safeguard duty payable through Cash (Rs.)	50% safeguard duty payable through Bonds (Rs.)
67,17,951	67,17,951

There was no option of charging "50% of the safeguard duty" in the portal/software of Customs department which is allowed as an interim relief by the Hon'ble High Court, the Custom department issued "Provisional BoEs" with safeguard duty mentioned as "Zero" and bond amount mentioned as 50% of the total value of safeguard duty i.e., Rs.67,17,951 and equivalent amount paid by cash in terms of said interim orders of Hon'ble High Court. However, the petitioner has paid the Custom department in terms of the directions of the Hon'ble High Court.

The Petitioner has paid Rs.94,29,426 to the Custom department as evident from the Custom e-receipt at page 203 of the petition

paper book, which is inclusive of IGST on assessment value, 50% safeguard duty. The remaining 50% safeguard duty i.e., Rs.67,17,951 is paid by way of bonds which is mentioned in the said BoEs. Further, IGST on safeguard duty i.e., Rs.6,71,795.10 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.1,41,07,697 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 248 of the petition paper book.

IV) BoE No. 4830369 dated 09.09.2019 at page 211-212 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190817	4830369	09.09.2019	3,93,73,938.24	19,68,696.91	78,74,787.65	3,93,739.38	59,06,091	Nhava Sheva	39,37,394	39,37,394	3,93,739.38

The explanation made for the BoE No. 3863778 dated 29.06.2019 at page 201-202 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.59,06,091 to the Custom department as evident from the Custom e-receipt at page 213 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty i.e.,

Rs.39,37,394 is paid by way of bonds which is mentioned in the said BoEs. Further, IGST on safeguard duty i.e., Rs.3,93,739.38 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.82,68,527 which is summation of the safeguard duty and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 256 of the petition paper book.

V) BoE No. 4940020 dated 17.09.2019 at page 221-222 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190823	4940020	17.09.2019	3,83,67,984.93	19,18,399.25	76,73,596.99	3,83,679.85	57,69,775	Nhava Sheva	38,36,798	38,44,799	3,83,679.85

The explanation made for the BoE No. 3863778 dated 29.06.2019 at page 201-202 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.57,69,775 to the Custom department as evident from the Custom e-receipt at page 224 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.38,44,799 is paid by way of bonds which is mentioned in the said BoE. Further, IGST on safeguard duty i.e., Rs.3,83,679.85 shall be paid

at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.80,57,277 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 256 of the petition paper book.

VI) BoE No. 5034664 dated 24.09.2019 at page 334-335 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-20190825-1	5034664	24.09.2019	7,92,58,923.53	39,62,946.18	1,58,51,784.71	7,92,589.24	1,43,78,552	Nhava Sheva	79,25,892	79,25,892	7,92,589.24

The explanation made for the BoE No. 3863778 dated 29.06.2019 at page 201-202 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.1,43,78,552 to the Custom department as evident from the Custom e-receipt at page 224 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.79,25,892 is paid by way of bonds which is mentioned in the said BoE. Further, IGST on safeguard duty i.e., Rs.7,92,589.24 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.1,66,44,374 which is summation of the safeguard duty

paid and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. It is pertinent to mention here that the modules in BoE No. in 5034664 above are installed in two projects. The cost has been apportioned between two projects i.e., ACME Guledagudda (OP No.80 of 2019) and ACME Hukkeri (OP.No.81 of 2019) and there is no over-lapping of the cost. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 253 of the petition paper book.

VII) BoE No. 5034651 dated 24.09.2019 at page 245-246 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-20190825	5034651	24.09.2019	4,62,34,372.06	23,11,718.60	92,46,874.41	4,62,343.72	69,43,957	Nhava Sheva	46,23,437	46,23,438	4,62,343.72

The explanation made for the BoE No. 3863778 dated 29.06.2019 at page 201-202 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.69,43,957 to the Custom department as evident from the Custom e-receipt at page 254 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.46,23,438 is paid by way of bonds which is mentioned in the said

BoE. Further, IGST on safeguard duty i.e., Rs.4,62,343.72 shall be paid at the time of clearing the said bonds. Therefore, the petitioner is claiming Rs.97,09,218 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 253 of the petition paper book.

OP No. 81/2019-ACME, HUKKERI

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	2	3	4	5	6	7	8	9	10	11	12	13
1	ECO-ACME-20190524-2	3690109	17.06.2019	6,03,75,675.89	30,18,783.79	1,50,93,918.97	7,54,695.95	1,88,67,399	Nhava Sheva	1,58,48,614.92	-	-
2	ECO-ACME-20190609	3863813	29.06.2019	1,67,94,877.44	8,39,743.87	41,98,719.36	2,09,935.97	29,47,041	Nhava Sheva	20,99,359.68	20,99,360.00	2,09,935.97
3	CECEP-20190816	4843933	10.09.2019	5,66,08,289.34	28,30,414.47	1,13,21,657.87	5,66,082.89	85,01,713	Nhava Sheva	56,60,828.93	56,60,829.00	5,66,082.89
4	ECO-ACME-20190821	4886277	13.09.2019	4,47,87,855.36	22,39,392.77	89,57,571.07	4,47,878.55	67,21,860	Nhava Sheva	44,78,785.54	44,78,786.00	4,47,878.55
5	CECEP-2019824-1	4907984	16.09.2019	5,99,38,189.00	29,96,909.45	1,19,87,637.80	5,99,381.89	89,96,886	Nhava Sheva	59,93,818.90	59,93,819.00	5,99,381.89
6	CECEP-20190825-1	5034664	24.09.2019	1,65,12,275.74	8,25,613.79	33,02,455.15	1,65,122.76	1,43,78,552	Nhava Sheva	16,51,227.57	16,51,227.57	1,65,122.76
7	CECEP-20190825-2	5124358	01.10.2019	66,04,910.29	3,30,245.51	13,20,982.06	66,049.10	9,95,738	Nhava Sheva	6,60,491.03	6,60,492.00	66,049.10
				26,16,22,073.06	1,30,81,103.65	5,61,82,942.28	28,09,147.11	6,14,09,189		3,63,93,126.57	2,05,44,513.57	20,54,451.17

The tabular representation summarises the invoices and payment challans (at annexure – P/10) along with the payment due through bonds (at Annexure – P/12) in relation to the total SGD payable by the petitioner.

It is clarified that each of the invoices annexed contains primarily 3 components:

- (a) IGST on the total assessment value;

- (b) The safeguard duty payable on the total assessment value; and
(c) The IGST on safeguard duty payable.

The BOE value is therefore would be summation of (a), (b) and (c). The petitioner by way of the present petition is only claiming component (b) and (c). The safeguard duty as indicated under each of the BoEs/Invoices, was paid either entirely through cash or partly through cash and creation of bonds by the petitioner in favour of the Custom department. For convenience sake the table below clearly records the same:

Payment of SGD & IGST on SGD by cash (INR)	Payment of SGD & IGST on SGD by bonds (INR)	IGST to be paid as per HC order (INR)	Total Impact of SGD including IGST (INR)
3,63,93,127	2,05,44,514	20,54,451	5,89,92,091

ACME has placed orders for purchase of solar modules from China based company, namely, CECEP Solar Energy Technology (Zhenjiang) Co. Ltd. and Econess Energy Co. Ltd. China and received the solar panels at port Nhava-Sheva port in Mumbai.

- l) BoE No. 3690109 dated 17.06.2019 at page 170-171 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190524-2	3690109	17.06.2019	6,03,75,675.89	30,18,783.79	1,50,93,918.97	7,54,695.95	1,88,67,399	Nhava-Sheva	1,58,48,614.92	-	-

The Petitioner has paid Rs.1,88,67,399 to the Custom department as evident from the Custom e-receipts at page 174 of the petition

paper book which is the summation of IGST on assessment value, safeguard duty and IGST on safeguard duty amount. However, is only claiming Rs.1,58,48,615 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner. The corresponding entry to the total amount paid to the Custom department is also reflective in the bank statement of the company which is available at page 239 the petition paper book.

II) BoE No. 3863813 dated 29.06.2019 at page 182-183 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190609	3863813	29.06.2019	1,67,94,877.44	8,39,743.87	41,98,719.36	2,09,935.97	29,47,041	Nhava-Sheva	20,99,359.68	20,99,360	2,09,935.97

The imposition of safeguard duty by the Government of India and the Notification dated 30.07.2018 along with the final findings dated 16.07.2018 issued by the Director General for Trade Remedies, was challenged in a writ jurisdiction by the holding company of the petitioner before the Hon'ble High Court, Bombay. The holding company of the petitioner brought to the notice of the Hon'ble High Court, Bombay the impending financial prejudice caused to them on account of such imposition of safeguard duty by the Government of India. Petitioner prayed that the payment of the safeguard duty as imposed by the Government of India and being recovered by the Custom department through BoEs be suspended till the final outcome of the writ petition. Relying on the decision of

the Nagpur Bench of Hon'ble High Court of Bombay in Writ Petition No. 3084 of 2019, the Bombay High Court allowed the petitioner to pay 50% of safeguard duty under the BoE and provide bonds for paying the balance 50% together with interest in the event the petitioner is not successful in the writ petition.

The Custom Authorities at the Port, in view Hon'ble High Court Order, allowed 50% payment of liability towards safeguard duty. Therefore, the petitioner was allowed to clear the modules by paying 50% of the total value of safeguard duty payable upon the Total Assessment Value. The IGST on safeguard duty shall be paid at the time of clearing the bonds. Accordingly, the petitioner was notified to pay as under:

50% safeguard duty payable through Cash (Rs.)	50% safeguard duty payable through Bonds (Rs.)
20,99,359.68	20,99,360

There was no option of charging "50% of the safeguard duty" in the portal/software of Customs department which is allowed as an interim relief by the High Court, the Custom department issued "Provisional BoEs" with safeguard duty mentioned as "Zero" and bond amount mentioned as 50% of the total value of safeguard duty payable i.e., Rs.20,99,360 and equivalent amount paid by cash in terms of said interim orders of Hon'ble High Court. However,

the petitioner has paid the Custom department in terms of the directions of the Hon'ble High Court.

The Petitioner has paid Rs.29,47,041 to the Custom department as evident from the Custom e-receipt at page 184 of the petition paper book, which is inclusive of IGST on assessment value and 50% safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.20,99,360 is paid by way of bonds which is mentioned in the said BoEs. Further, IGST on safeguard duty i.e., Rs.2,09,935.97 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.44,08,655 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 241 of the petition paper book.

III) BoE No. 4843933 dated 10.09.2019 at page 192-193 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-20190816	4843933	10.09.2019	5,66,08,289.34	28,30,414.47	1,13,21,657.87	5,66,082.89	85,01,713	Nhava-Sheva	56,60,828.93	56,60,829	5,66,082.89

The explanation made for the BoE No. 3863813 dated 29.06.2019 at page 182-183 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.85,01,713 to the Custom department as evident from the Custom e-receipt at page 195 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.56,60,829 is paid by way of bonds which is mentioned in the said BoE. Further, IGST on safeguard duty i.e., Rs.5,66,082.89 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.1,18,87,741 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 234 of the petition paper book.

IV) BoE No. 4886277 dated 13.09.2019 at page 203-204 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190821	4886277	13.09.2019	4,47,87,855.36	22,39,392.77	89,57,571.07	4,47,878.55	67,21,860	Nhava Sheva	44,78,785.54	44,78,786	4,47,878.55

The explanation made for the BoE No. 3863813 dated 29.06.2019 at page 182-183 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.62,71,860 to the Custom department as evident from the Custom e-receipt at page 206 of the petition paper book, which is inclusive of IGST on Assessment value and 50%

safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.44,78,786 is paid by way of bonds which is mentioned in the said BoE. Further, IGST on safeguard duty i.e., Rs.4,47,878.55 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.94,05,450 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 234 of the petition paper book.

V) BoE No. 4907984 dated 16.09.2019 at page 212-213 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-2019824-1	4907984	16.09.2019	5,99,38,189	29,96,909.45	1,19,87,637.80	5,99,381.89	89,96,886	Nhava Sheva	59,93,818.90	59,93,819	5,99,381.89

The explanation made for the BoE No. 3863813 dated 29.06.2019 at page 182-183 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.89,96,886 to the Custom department as evident from the e-cheque receipt at page 214 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.59,93,819 is paid by way of bonds which is mentioned in

the said BoE. Further, IGST on safeguard duty i.e., Rs.5,99,381.89 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.1,25,87,019.79 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 234 of the petition paper book.

VI) BoE No. 5034664 dated 24.09.2019 at page 223-224 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-20190825-1	5034664	24.09.2019	1,65,12,275.74	8,25,613.79	33,02,455.15	1,65,122.76	1,43,78,552	Nhava Sheva	16,51,227.57	16,51,227.57	1,65,122.76

The explanation made for the BoE No. 3863813 dated 29.06.2019 at page 182-183 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.1,43,78,552 to the Custom department as evident from the e-cheque receipt at page 245 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.16,51,227.57 is paid by way of bonds which is mentioned in the said BoEs. Further, IGST on safeguard duty i.e., Rs.1,65,122.76 shall be paid at the time of clearing the said bonds. Therefore, petitioner is

claiming Rs.34,67,578 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in form of cash and bonds. The modules in BoE No. 5034664 above are installed in two projects. The cost has been apportioned between two projects i.e., ACME Guledagudda (OP No. 80/2019) and ACME Hukkeri (OP. No.81/2019) and there is no over-lapping of the cost. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 244 of the petition paper book.

VII) BoE No. 5124358 dated 01.10.2019 at page 230-231 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-20190825-2	5124358	01.10.2019	66,04,910.29	3,30,245.51	13,20,982.06	66,049.10	9,95,738	Nhava Sheva	6,60,491.03	6,60,492	66,049.10

The explanation made for the BoE No. 3863813 dated 29.06.2019 at page 182-183 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.9,95,738 to the Custom department as evident from the e-cheque receipt at page 233 of the petition paper book, which is inclusive of IGST on Assessment value and 50% safeguard duty. The remaining 50% safeguard duty amount i.e., Rs.6,60,492 is paid by way of bonds which is mentioned in

the said BoE. Further, IGST on safeguard duty i.e., Rs. 66,049.10 shall be paid at the time of clearing the said bonds. Therefore, petitioner is claiming Rs.13,87,031 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 246 of the petition paper book.

OP No. 82/2019-ACME, SANDUR

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	2	3	4	5	6	7	8	9	10	11	12	13
1	ECO-ACME-20190530	3792443	24.06.2019	4,03,07,705.86	20,15,385.29	1,00,76,926.47	5,03,846.32	1,25,96,158	Nhava Sheva	1,05,80,773	-	-
2	ECO-ACME-20190826	5035986	24.09.2019	9,76,23,569.40	48,81,178.47	1,95,24,713.88	9,76,235.69	1,51,31,969	KPCT	1,02,50,475	1,02,50,790	-
3	ECO-ACME-20190904	5036020	24.09.2019	4,29,54,370.54	21,47,718.53	85,90,874.11	4,29,543.71	66,57,928	KPCT	45,10,209	45,10,209	-
4	BDLW-CI-2019-09-001	5131236	01.10.2019	3,35,03,168.16	16,75,158.41	67,00,633.63	3,35,031.68	51,92,991	KPCT	35,17,833	35,17,833	-
5	BDLW-CI-2019-09-002	5131233	01.10.2019	1,67,51,584.08	8,37,579.20	33,50,316.82	1,67,515.84	25,96,495	KPCT	17,58,916	17,58,916	-
6	TS-1908008-2	5199668	07.10.2019	4,86,94,237.02	24,34,711.85	97,38,847.40	4,86,942.37	75,47,607	KPCT	51,12,895	51,12,895	-
7	CECEP-20190902-2	5131235	01.10.2019	5,28,39,281.60	26,41,964.08	1,05,67,856.32	5,28,392.82	81,90,089	KPCT	55,48,125	55,48,125	-
					1,66,33,695.83	6,85,50,168.63	34,27,508.43	5,79,13,237.08		4,12,79,225	3,06,98,768	

The tabular representation summarises the invoices and payment challans (at annexure – P/10) along with the payment due through bonds (at annexure – P/12) in relation to the total SGD payable by the petitioner.

It is clarified that each of the invoices annexed contains primarily 3 components:

- (a) IGST on the total assessment value;
- (b) The safeguard duty payable on the total assessment value; and
- (c) The IGST on safeguard duty payable.

The BOE value therefore, would be summation of (a), (b) and (c). The petitioner by way of the present petition is only claiming component (b) and (c). The safeguard duty as indicated under each of the BoEs/Invoices, was paid either entirely through cash or partly through cash and partly by creation of bonds by the petitioner in favour of the Custom department. For convenience sake the table below clearly records the same:

Payment of SGD and IGST on SGD by cash (INR)	Payment of SGD and IGST on SGD by bonds (INR)	Total Impact of SGD including IGST (INR)
4,12,79,225	3,06,98,768	7,19,77,993

ACME has placed orders for purchase of solar modules from China based company, namely, Econess Energy Co. Ltd., China, Baoding Lightway Green Energy Technology (Zhenjiang) Co. Ltd., China, CECEP Solar Energy Technology (Zhenjiang) Co. Ltd. and Zhehang Trunsun Solar Co. Ltd. and received the solar panels at two ports i.e., Krishnapatnam port in Andhra Pradesh and Nhava-Sheva port in Mumbai.

- I. BoE No. 3792443 dated 24.06.2019 at page 172-173 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190530	3792443	24.06.2019	4,03,07,705.86	20,15,385.29	1,00,76,926.47	5,03,846.32	1,25,96,158	Nhava-Sheva	1,05,80,773	-	-

The Petitioner has paid Rs.1,25,96,158 to the Custom department as evident from the Custom e-receipts at page 176 of the petition paper book which is the summation of IGST on assessment value, safeguard duty amount and IGST on safeguard duty amount. Petitioner is only claiming Rs.1,05,80,772 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 269 the petition paper book.

II) BoE No. 5035986 dated 24.09.2019 at page 184-185 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190826	5035986	24.09.2019	9,76,23,569.40	48,81,178.47	1,95,24,713.88	9,76,235.69	1,51,31,969	KPCT	1,02,50,475	1,02,50,790	-

The imposition of safeguard duty by the Government of India and the Notification dated 30.07.2018 along with the final findings dated 16.07.2018 issued by the Director General for Trade Remedies, was challenged in a writ jurisdiction by the holding company of the petitioner before the Hon'ble Andhra Pradesh High Court. The holding company of the petitioner brought to the notice of the

Hon'ble High Court the impending financial prejudice caused to them on account of such imposition of safeguard duty by the Government of India. It was prayed that the payment of the safeguard duty as imposed by the Government of India and being recovered by the Custom department through BoEs be suspended till the final outcome of the writ petition. The Hon'ble High Court vide its interim order dated 26.08.2019 allowed the petitioner herein to pay 50% of safeguard duty under the BoE and provide bonds for paying the balance 50% together with interest in the event the petitioner is not successful in the writ petition.

The Custom Authorities at the Krishnapatnam Port at Nellore, in view of interim order of Hon'ble High Court of Andhra Pradesh allowed the petitioner to pay 50% of the total value of safeguard duty and IGST on safeguard duty payable upon the total assessment value. Accordingly, the petitioner was notified to pay as under:

50% SGD and 50% IGST on SGD payable through Cash (Rs.)	50% SGD and 50% IGST on SGD payable through Bonds (Rs.)
1,02,50,475	1,02,50,790

It is contended by the petitioner that there was no option of charging "50% of the safeguard duty" in the portal/software of Customs department which is allowed as an interim relief by the Hon'ble Andhra Pradesh High Court, the Custom department issued "Provisional BoEs" with safeguard duty mentioned as "Zero" and bond amount mentioned as 50% of the total value of safeguard

duty and IGST on safeguard duty payable i.e., Rs.1,02,50,790 and equivalent amount paid by cash in terms of said interim orders.

The Petitioner has paid Rs.1,51,31,969 to the Custom department as evident from the Custom e-receipt at page 188 of the petition paper book, which is inclusive of IGST on assessment value, 50% safeguard duty and 50% IGST on safeguard duty. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount, Rs.1,02,50,790 is paid by way of bonds which is mentioned in the said BoEs. Therefore, the petitioner is claiming Rs.2,05,01,265 which is the summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 256 of the petition paper book.

III) BoE No. 5036020 dated 24.09.2019 at page 196-197 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	ECO-ACME-20190904	5036020	24.09.2019	4,29,54,370.54	21,47,718.53	85,90,874.11	4,29,543.71	66,57,928	KPCT	45,10,209	45,10,209	-

The explanation made for the BoE No. 5035986 dated 24.09.2019 at page 184-185 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.66,57,928 to the Custom department as evident from the Custom e-receipt at page 200 of the petition paper book, which is inclusive of IGST on Assessment value, 50% safeguard duty and 50% IGST on safeguard duty. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount i.e., Rs.45,10,209 is paid by way of bonds which is mentioned in the said BoE. Therefore, petitioner is claiming Rs.90,20,418 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 256 of the petition paper book.

IV) BoE No. 5131236 dated 01.10.2019 at page 213-214 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	BDLW-CI-2019-09-001	5131236	01.10.2019	3,35,03168.16	16,75,158.41	67,00,633.63	3,35,031.68	51,92,991	KPCT	35,17,833	35,17,833	-

The explanation made for the BoE No. 5035986 dated 24.09.2019 at page 184-185 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.51,92,991 to the Custom department as evident from the Custom e-receipt at page 217 of the petition paper book, which is inclusive of IGST on Assessment value, 50%

safeguard duty and 50% IGST on safeguard duty. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount i.e., Rs.35,17,833 is paid by way of bonds which is mentioned in the said BoE. Therefore, petitioner is claiming Rs.70,35,665 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in the form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 256 of the petition paper book.

V) BoE No. 5131233 dated 01.10.2019 at page 228-229 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	BDLW-CI-2019-09-002	5131233	01.10.2019	1,67,51,584.08	8,37,579.20	33,50,316.82	1,67,515.84	25,96,495	KPCT	17,58,916	17,58,916	-

The explanation made for the BoE No. 5035986 dated 24.09.2019 at page 184-185 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.25,96,495 to the Custom department as evident from the e-cheque receipt at page 266 of the petition paper book, which is inclusive of IGST on Assessment value, 50% safeguard duty and 50% IGST on safeguard duty. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount i.e., Rs.17,58,916 is paid by way of bonds which is mentioned in the said

BoEs. Therefore, petitioner is claiming Rs.35,17,833 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 256 of the petition paper book.

VI) BoE No. 5199668 dated 07.10.2019 at page 240-241 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	TS-1908008-2	5199668	07.10.2019	4,86,94,237.02	24,34,711.85	97,38,847.40	4,86,942.37	75,47,607	KPCT	51,12,895	51,12,895	-

The explanation made for the BoE No. 5035986 dated 24.09.2019 at page 184-185 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.75,47,607 to the Custom department as evident from the e-cheque receipt at page 267 of the petition paper book, which is inclusive of IGST on Assessment value, 50% safeguard duty and 50% IGST on safeguard duty. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount i.e., Rs.51,12,895 is paid by way of bonds which is mentioned in the said BoE. Therefore, petitioner is claiming Rs.1,02,25,790 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the

petitioner in form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement of the company which is available at page 256 of the petition paper book.

VII) BoE No. 5131235 dated 01.10.2019 at page 252-253 of the petition paper book:

Sl. No.	Invoice/ challan No.	BOE No.	BOE Date	Assessment value	IGST on Assessment value	SGD Amount	IGST on SGD	Custom E-Receipt Amount	Port Details	Change in Law		
										Cash	Bond	IGST to be paid as per HC order
1	CECEP-20190902-2	5131235	01.10.2019	5,28,39,281.60	26,41,964.08	1,05,67,856.32	5,28,392.82	81,90,089	KPCT	55,48,125	55,48,125	-

The explanation made for the BoE No. 5035986 dated 24.09.2019 at page 184-185 of the petition paper book is relied here and not repeated for the sake of brevity.

The petitioner has paid Rs.81,90,089 to the Custom department as evident from the e-cheque receipt at page 268 of the petition paper book, which is inclusive of IGST on Assessment value, 50% safeguard duty and 50% IGST on safeguard duty. The remaining 50% safeguard duty and 50% IGST on safeguard duty amount i.e., Rs.55,48,125 is paid by way of bonds which is mentioned in the said BoE. Therefore, petitioner is claiming Rs.1,10,96,249 which is summation of the safeguard duty paid and the IGST on safeguard duty paid by the petitioner in form of cash and bonds. The corresponding entry to the total amount paid to the Custom department by way of cash is also reflective in the bank statement

of the company which is available at page 256 of the petition paper book.

8. The petitioners, in all the rejoinders further contended as under:
- a) The bonds executed by the petitioners attracts interests to the tune of 15-18% from the date of execution of bonds. Therefore, the petitioners must be compensated for the amount paid towards safeguard duty by way of cash and bonds including interest on bonds.
 - b) The safeguard duty applicable upon the total assessment value, IGST at the rate of 5% is applicable on solar modules as per Notification No.1/2017 integrated tax (rate) dated 28.06.2017, issued by the Government of India, Ministry of Finance. The said total IGST is calculated upon the aggregate amount of invoice value plus SGD as provided under section 3(7) and 3(8) of the Customs Tariff Act, 1975.
 - c) The petitioners are claiming the following as an impact due to change in law event i.e., imposition of safeguard duty by the Government of India:

Sl. No.	OP. No.	Payment of SGD & IGST on SGD by cash (INR)	Payment of SGD & IGST on SGD by bonds (INR)	IGST to be paid as per HC Order (INR)	Total Impact of SGD including IGST (INR)
1	78/2019	3,68,95,243	3,24,86,587	-	6,93,81,830
2	79/2019	2,34,04,339	2,34,04,340	23,40,434	4,91,49,113
3	80/2019	4,72,92,481	2,70,49,474	27,04,147	7,70,46,102
4	81/2019	3,63,93,127	2,05,44,514	20,54,451	5,89,92,091
5	82/2019	4,12,79,225	3,06,98,768	-	7,19,77,993

- d) The holding company of the petitioner namely, ACME Solar Holding Limited is the identified procurer for the solar modules and considering the smaller capacities of each of the all five projects, the holding company has proceeded to procure the entire quantum of solar modules itself. It is clarified that on certain occasions the BoEs for few projects may be common, however, for avoidance of ambiguity, the petitioner herein is only claiming the safeguard duty along with the IGST on safeguard duty corresponding to each of the project capacities and there is no duplication of the claims. The BoEs are annexed as a common document, however, there is no duplication of the claim made by the petitioners.
- e) This Commission has already held that the imposition of safeguard duty by the Government of India is a change in law event under the PPA dated 22.03.2018. The petitioners are therefore entitled to seek compensation in terms of Article 15 of the PPA and is accordingly seeking this Commission to allow an increase in tariff due to the aforementioned amount along (plus the interest payable on the bonds) with carrying cost and direction to the respondent to make immediate payments.
- f) In their statement of objections of the Respondents have contended that ACME has not deducted the anti-dumping duty as per the SGD Notification dated 30.07.2018. It is pertinent to mention

here that the respondents have failed to acknowledge the documents submitted by the petitioners.

- g) A bare perusal of the Customs challans submitted by ACME along with accompanying petition, demonstrate that there was no anti-dumping duty applicable on the solar modules at the time of the import of modules. Therefore, the submission of respondents that the petitioners has approached the Commission with unclean hands is strongly refuted as being wrong and baseless. It is further clarified and confirmed that anti-dumping duty has not been levied on the import of solar modules. There was no anti-dumping duty that was either applicable on solar modules at the time of bidding or at the time of imports.
- h) Hence, the submission of BESCOM/ HESCOM regarding the claim of compensation on the deduction of the anti-dumping duty from the safeguard duty is baseless and irrelevant.
- i) Although, PPA does not mention the restitution clause to put back the developer in the same economic position as if the alleged change in law had not been incurred, the claim of interest is an integral part of implementing the concepts of time value of money.
- j) The Hon'ble Supreme Court of India in a catena of judgements has held that award of interest is an integral part of implementing the concepts of time value of money. One such judgement is in the

case of Indian Council Enviro-legal action v. Union of India reported in (2011) 8 SCC 161 wherein the Hon'ble Supreme Court has held that interest has to be awarded in order to do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of time value of money.

- k) It is also relevant to note that the Hon'ble Appellate Tribunal for Electricity ("Hon'ble APTEL") also in its Order dated 20.02.2012 in the case of SLS Power Limited v. Andhra Pradesh Electricity Regulatory Commission bearing Appeal No. 150, 166,168,172,173,Of 2011 and 9, 18, 26, 29, and 38 of 2012 has observed that the principle of awarding carrying cost was well established through the various judgements passed by it. The Hon'ble Tribunal held that carrying cost is the compensation for time value of money or for money denied at the appropriate time and paid after a lapse. Further, it went on to hold that the developers were entitled to carrying costs on the differential amount due to them as a consequence of re-determination of tariff.
- l) Therefore, keeping in mind the restitution principles, the petitioners submits that in addition to compensation for the increase in capital cost, it is also entitled to carrying cost on the additional cost incurred by them as a result of introduction of safeguard duty and the same will have to be paid for the following two periods:

Period 1 – from when the petitioner incurred the additional cost on account of introduction of safeguard duty till the approval of change in law by this Commission. And

Period 2 – from the date of approval of change in law actual reimbursement of the claim amount.

The delay on account of the finality of the petition has resulted in substantial carrying cost.

m) In light of the above, it can be stated that the delay caused by the respondents in filing of statement of objection has resulted in delay in disposal of this petition. The delay is causing irreparable harm to the petitioner, as the additional cost accrued to the project due to the levy of safeguard duty has a huge financial impact on the petitioners and the approval for the carrying cost along with the compensation relief provided by this Commission will be a positive step for the petitioners.

n) The petitioners are entitled to be compensated for the entire impact of the safeguard duty that in either of the following manner:

Option A: Payment of entire aggregate principal amount claimed in these petitions as a lump sum amount paid up front, together with carrying cost. The rate of carrying cost shall be as per provisions of late payment surcharge in the PPA which is 1.25% per month. The carrying cost shall be calculated for the period from the date of the financial liability on account of the SGD till the amounts are paid by the beneficiary. Notably, this structure has been

awarded by the CERC in diverse cases of SGD as change in law, in respect of projects under the CERC's jurisdiction.

Option B: Payment of entire aggregate principal amount claimed in these petitions, together with LPS, as an equated monthly instalments (EMIs), spread over a pre-determined period of time, starting from the COD. The applicable annuity rate for calculating EMIs shall be on the basis of provisions of late payment surcharge in the PPA which is 1.25% per month. The period of annuity payment could be 13 years, starting from COD, as has been accepted in principle by SECI in respect of diverse PPAs executed by it. Also, the accrued amounts corresponding to the period from the date of commissioning till the date of commencement of the actual monthly payment, to be paid in lump sum to ACME by respondents along with the LPS specified in the PPA;

Option C: Payment of entire aggregate principal amount claimed in these petitions, in the form of tariff increment which can be determined as per KERC norms considered in KERC determination of Tariff in respect of solar power projects, FY20 dated 01.08.2019. Fundamentally, the said aggregate principal amount, is in the nature of additional capex in the project. Since the principal amount is a determinate amount, the KERC may calculate the tariff increment specific to this determinate amount claimed in these petitions by applying the normative financial principles set out in the KERC solar tariff

determinations dated 01.08.2019. Therefore, this supplementary tariff on a per unit of electricity basis, can be paid against supplementary monthly invoices and calculated in respect of the number of units of electricity supplied for the month. The incremental tariff so determined should be paid from the date of COD of these projects. Also, the accrued amounts corresponding to the period from the date of commissioning till the date of commencement of the payment, to be paid in lump sum to ACME by respondents along with the LPS specified in the PPA.

9. Learned Counsel for the petitioners filed an amendment application on 26.02.2021 in each cases, amending the payer specifying the reimbursement SGD and IGST amount as detailed in the para 2 and the same is allowed by this Commission.

a) Determine the appropriate and proportionate increase in tariff due to imposition of safeguard duty of Rs.6,93,81,830 in OP 78/2019, Rs.4,91,49,113 in OP No. 79/2019, Rs.7,70,46,102 in OP No. 80/2019, Rs.5,89,92,091 in OP 81/2019 and Rs.7,19,77,993 in OP 82/2019, which include the payments made through bonds and accordingly, allow such compensatory payments to be paid to the petitioners herein in terms of its proposal as mentioned in above paragraphs or amend the tariff specified in the PPA dated 22.03.2018 in respect of BESCO and PPA dated 27.03.2018 in respect of HESCO by allowing incremental tariff increase and pass such consequential orders including allowing carrying cost to financially and commercially retribute the petitioners

herein. The Commission has considered and allowed the amendment applications.

10. The respondent filed additional statement of objection on 17.03.2021 denying the contents of amendment application.
11. We have heard the learned counsels for the parties. The learned counsels for the petitioner and the respondent relied on certain rulings. We have dealt with them wherever necessary.
12. From the above pleadings and rival contentions raised by the parties, the following issues arise for our consideration:

Issue No.1: Whether it would be necessary for this Commission not to proceed with the present petitions till the disposal of the SLP No.24009-24010/2018 pending before the Hon'ble Supreme Court of India?

Issue No.2: Whether the petitioners prove that the imposition of Safeguard Duty vide Notification No.01/2018 Custom-(SG) dated 30.07.2018 issued by the Ministry of Finance, Government of India, on import of Solar Modules amounts to 'Change in Law' as per Article 15 of PPAs?

Issue No.3: Whether the petitioners are entitled to interest/carrying cost from the date of incurring expenses to the date of actual payment on additional expenditure incurred by them as claimed in the petition?

Issue No.4: Whether the respondents proved that the petitioners have imported Solar Modules in excess of the requirement and claimed excess SGD thereon?

Issue No.5: Whether the petitioners are entitled for appropriate and proportionate increase in tariff due to imposition of safeguard duty and consequently amend tariff specified in the PPAs dated 22.03.2018 & 27.03.2018?

Issue No.6: What order?

13. On consideration of the entire pleadings and the documents produced by the parties and the submissions made by them, our findings on the above Issues are as follows:

14. **Issue No.1:** Whether it would be necessary for this Commission not to proceed with the present petitions till the disposal of the SLP No.24009-24010/2018 pending before the Hon'ble Supreme Court of India?

a) The respondents have contended that the decision on the validity of the Safeguard Duty Notification No.01/2018- Customs (SG) dated 30.07.2018, is pending before the Hon'ble Supreme Court of India in SLP(C) No.24009-24010/2018 filed by the Government of India, between Union of India vs. ACME Solar Holdings Limited. This fact is not denied by the petitioners. The respondents have relied upon the decision cited in D.K. Trivedi & Sons and Others Vs. State of Gujarat and Others (1986) Supp SCC 20 to contend that when the same or similar matters are pending before a superior court, the lower court ought to stay the hearing of the matter until the superior court disposes of the matter. Further, the petitioners in their additional affidavit dated 28.08.2020 contended that the imposition of

safeguard duty by the Government of India and the Notification dated 30.07.2018 along with the Final Findings dated 16.07.2018 issued by the Director General for trade remedies, was challenged in a writ jurisdiction by the holding company of the petitioners before the Hon'ble Andhra Pradesh High Court/ Hon'ble High Court of Bombay, Nagpur Bench. The holding company of the petitioners brought to the notice of the Hon'ble High Court the impending financial prejudice caused them on account of such imposition of safeguard duty by the Government of India and prayed that the payment of safeguard duty as imposed by the Government of India and being recovered by the Custom department through BoEs be suspended till the final outcome of the writ petition. The Hon'ble High Courts vide its Interim Order dated 26.08.2019/ 11.07.2019 (Annexure-3 produced by the petitioners along with additional affidavit dated 28.08.2020) allowed the petitioners to pay 50% of the safeguard duty under the BoE and provide bonds for paying the balance 50% together with interest in the event the petitioners are not successful in the writ petition.

- b) In the decision of D.K. Trivedi & Sons and Others Vs. State of Gujarat and Others (1986) Supp SCC 20 at Paragraph 83, the Hon'ble Supreme Court of India has stated as follows:

“Civil Appeals 1525 and 1526 of 1982 are directed against the order of the Gujarat High Court dismissing the writ petitions filed by the appellants challenging

the constitutionality of Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, and the validity of Notification No.GU-81/75/MCR 2181/ (168)-4536-CHH dated June 18, 1981, and directing the appellants to approach the Supreme Court as similar matters were pending there. In our opinion, the course adopted by the High Court was not correct. If the High Court thought that the point raised by the appellants was the same as was pending in this Court, it ought to have stayed the hearing of the writ petitions until this Court disposed of the other matters. As we have, however, held Section 15 and the amendments made by the said notification dated June 18, 1981, to be valid and constitutional, both these appeals are, therefore, dismissed."

- c) The Commission has noted the ruling of Hon'ble Supreme Court in the case of Atma Ram properties (P) Limited vs. Federal Motors(P) Limited reported in (2005)1 SCC 705 and Madan Kumar Singh vs. District Magistrate, Sultanpur reported in (2009) 9 SCC 79 which confirm that mere pendency of a matter before a superior court, does not operate as stay of the lower court's proceedings. Moreover, the Hon'ble Supreme Court has not stayed and/ or issued any orders which preclude this Commission from disposing of the present petitions. The same has also been admitted by the Counsels for respondents.
- d) On consideration of the Paragraph 83 of the decision rendered by the Hon'ble Supreme Court in D.K. Trivedi & Sons and Others Vs.

State of Gujarat and Others (1986) Supp SCC 20, we are of the considered opinion that the staying of the present proceedings, till the disposal of SLP (C) Nos.24009-24010/2018 before the Hon'ble Supreme Court, is not necessary for the following reasons:

- (i) The perusal of Paragraph 83 of the above said Hon'ble Supreme Court decision would show that the constitutional validity of Section 15 of the Mines & Minerals (Regulation & Development) Act, 1957 and the validity of Notification issued under the said Section 15 were under challenge before the Hon'ble High Court of Gujarat in two Writ Petitions. It appears as the same question was already pending before the Hon'ble Supreme Court, the Hon'ble High Court of Gujarat directed the writ petitioners to approach the Hon'ble Supreme Court dismissing the writ petitions. As against the dismissal of the writ petitions, civil appeals were filed before the Hon'ble Supreme Court. In such circumstances, the Hon'ble Supreme Court has observed that the course adopted by the Hon'ble High Court was not correct and if the Hon'ble High Court thought that the point raised by the appellants was the same as was pending in this Court, it ought to have stayed the hearing of the writ petitions till this Court disposed of the said matter.
- (ii) In the present proceedings before us, the validity of the Safeguard Duty Notification No.01/2018-Customs (SG) dated 30.07.2018 issued by the Ministry of Finance, Government of India is not in dispute or it cannot be disputed before this Commission.

(iii) The learned Counsel for the petitioners have relied on the judgment reported in (2005) 1 SCC 705 Atma Ram Properties (P) Limited Vs. Federal Motors (P) Limited, wherein the Hon'ble Supreme Court held as under: -

“It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate court and the appellate court has discretion to grant an order of stay or to refuse the same. The only guiding factor, indicated in Rule 5 aforesaid, is the existence of sufficient cause in favour of the appellant on the availability of which the appellate court would be inclined to pass an order of stay. Experience shows that the principal consideration which prevails with the appellate court is that in spite of the appeal having been entertained for hearing by the appellate court, the appellant may not be deprived of the fruits of his success in the event of the appeal being allowed. This consideration is pitted and weighed against the other paramount consideration: why should a party having succeeded from the court below be deprived of the fruits of the decree or order in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum. Still the question which the court dealing with a prayer for the grant of stay asks itself is: why the status quo prevailing on the date of the decree and/or the date of making of the application for stay be not allowed to

continue by granting stay, and not the question why the stay should be granted."

- e) The learned Counsel for petitioners contended that respondents have relied upon the judgment of the Hon'ble Supreme Court in case of D.K. Trivedi & Sons and Others vs. State of Gujarat & Others, when same /similar matters are being before a superior court, the lower court ought to stay the hearing of the matter until the superior court disposes off the matter. They submit that the ratio in the D.K. Trivedi case is totally inapplicable to the present petitions. In the D.K. Trivedi case, the Hon'ble Supreme Court has clarified that an objection can only be raised if a party raises the 'same' point before the lower court and superior forum. Moreover, the petitioners are not objecting disposal of the present petitions.
- f) In the judgment reported in (2009) 9 SCC 79 Madan Kumar Singh (Dead) through LRs Vs. District Magistrate, Sultanpur & Others, the Hon'ble Supreme Court at para 14 held as under: -

"It is trite to say that mere filing of a petition, appeal or suit, would by itself not operate as stay until specific prayer in this regard is made and orders thereon are passed. There is nothing on record to show that any stay was granted in favour of any party, restraining the respondents not to deliver the papers of the truck to the appellant. It would go to show that the respondents were unlawfully holding back the papers with them, for which, otherwise they were not entitled to do so."

- g) There are other issues involved in these petitions, which require detail hearing and examination for consideration of prayers made by the petitioners. If these proceedings are stayed awaiting the decision of the Hon'ble Supreme Court on the validity of the safeguard duty Notification dated 30.07.2018, the hearing of these proceedings would be unnecessarily delayed. In the event of the Hon'ble Supreme Court, holding invalidity of the said Safeguard Duty Notification No.01/2018-Customs (SG) dated 30.07.2018 issued by the Government of India, then the petitioners would not be entitled to any relief prayed for in the present proceedings.
- h) It may be noted that the Hon'ble Supreme Court has not issued any specific or general direction to this Commission, not to proceed to hear the claims for reimbursement of safeguard duty made by the petitioners in the event of Change in Law due to safeguard duty Notification dated 30.07.2018 issued by the Government of India. In view of above facts, we are of the view/opinion that it would not be appropriate to stop the hearing/proceedings of these petitions.
- i) It is pertinent to mention here that the learned Counsels for the respondents have not objected to the undertaking given by the petitioners on 19.01.2021 stating in para 3 that, in an event the Hon'ble Supreme Court set aside the Safeguard Duty Notification No.01/2018- customs-SG dated 30.07.2018 issued by the Department of Revenue, Ministry of Finance, Government of India,

which is a subject matter of an appeal before it in SLP (C) No. 24009-24010- Union of India vs, ACME Solar Holdings & Ors, by virtue of which the imposition of Safeguard Duty by the Central Government is set aside, the Petitioner undertakes to refund the amount corresponding to the amounts paid by the Respondent Distribution Company BESCO/HESCO.

j) Therefore, Issue No.1 is held in negative.

15. **Issue No.2:** Whether the petitioners prove that the imposition of Safeguard Duty vide Notification No.01/2018 Custom-(SG) dated 30.07.2018 issued by the Ministry of Finance, Government of India, on import of Solar Modules amounts to 'Change in Law' as per Article 15 of PPA?

a) It is not in dispute that the petitioners have entered into Power Purchase Agreements on 22.03.2018 and 27.03.2018, with the respondents to setup Solar Power Projects at Siddhalgatta, Kittur, Guledagudda, Hukkeri and Sandur in Karnataka State. The Solar power projects are commissioned within the schedule commissioned within the Schedule Commissioning period/date. Now, the petitioners sought from this Commission to declare, acknowledge and hold that the imposition of Safeguard Duty on import of solar modules/cells on the basis of Safeguard Duty Notification No.01/2018- customs (SG) dated 30.07.2018 issued by the Ministry of Finance, Government of India, under Article 15 of PPA, as a "Change in Law" event. The Petitioners placed reliance

on the orders passed by this Commission in OP No.100 of 2019 dated 17.09.2020, wherein, the imposition of safeguard duty is allowed as "Change in Law" under the PPA. Therefore, the petitioners have sought for a similar kind of relief as provided under the existing Article 15.2.1 of PPAs.

- b) As a counter to this argument of the petitioners, the Counsel for respondents submitted that the prayers urged by the petitioners in these petitions would be additional burden foisted upon the respondents for seeking the imposition of safeguard duty vide Notification No.01/2018-Customs(SG) dated 30.7.2018 by the Government of India, to be declared as an event constituting a "Change in Law" under Article 15 of the Power Purchase Agreement(PPA) and also seeking from this Commission to determine the appropriate and proportionate increase in tariff and carrying costs as well. The petitioners are not entitled for any relief of change in law under Article 15 of PPA as the grievances of the petitioners are based on facts and circumstances that could have easily been avoided by the petitioners. The petitioners could have imported solar modules/cell from the developing countries except China and Malaysia, which were notified on 05.02.2016 vide Notification No.19/2016 by the Government of India, where there is no safeguard duty leviable on import of Solar cells whether assembled or not assembled in modules or panels. The petitioners

were in full cognisance of the contents of the safeguard duty notifications and exemptions on the levy of safeguard duty on solar panels imported from developing countries and proceeded to import solar panels from China knowing the same will attract the levy and placed purchase orders, after the safeguard duty notification was issued. It was entirely possible for the petitioners to avoid the payment for safeguard duty by importing the solar panels/cells from countries notified as developing countries, in which event the safeguard duty would not have been levied and no change in law event would have occurred. The respondents further contend that the petitioners are seeking the benefit of change of law despite wilfully attracting the levy of safeguard duty in spite of knowing the contents of the notification and then seeking to pass on the burden of the same to the respondents herein who were not consulted prior to such a decision being made.

- c) It is further contended that the solar modules of Tata Power Solar and Adani Solar Modules are more economical at the rate of Rs.18 per watt and Indian manufacture of solar modules would also be eligible for Government subsidy on the same, which would make more economical than those are purchased from China. From the quality perspective, top Indian brands manufacturing solar panels rival those manufactured internationally are good and more competitive from the cost perspective, even without the imposition

of safeguard duty. The safeguard duty is levied on the foreign products, primarily during periods of import surge in order to protect the domestic solar manufacturers and not to encourage the purchase of products from the foreign entities. The petitioners are in full cognisance of this fact and have chosen to disregard the contents of the safeguard duty notification, by wilfully entering into an agreement for the import of solar modules from Chinese firms after coming into effect of the safeguard duty notification issued by the Government of India. The claims for reimbursement of safeguard duty from the respondents would be a burden on the finances of the power distribution companies which are public undertakings owned by the state government. Therefore, Commission may not consider to declare the Safeguard Duty Notification No.01/2018-Customs (SG) issued by the Government of India as "Change in Law" event under the PPA.

- d) In response to the above contentions of the respondents, the petitioners submitted that there is no bar under the PPA on import of solar modules, in fact Article 15.1.1(e) of PPA provides that any change in law pertaining to taxes, duties and cess after the date of submission of Techno Commercial Bid shall be to the account of the ESCOMs and appropriate change in tariff, either increase or decrease in proportionate, due to the change in taxes, duties and cess shall be as per clause 15.2 (Relief for Change in Law) of PPA.

Further stated that, this is a commercial decision of the petitioners to import solar modules/cell from China and the respondents cannot impose conditions that petitioners could have purchased solar modules/ cell from domestic manufacturers and avoided the attraction of safeguard duty on import of solar module/ cell from China. Therefore, the petitioners are seeking the Commission to declare, acknowledge and hold that the imposition of Safeguard Duty vide Notification dated 30.07.2018 as a change in law event as per PPA paras with effect from 30.07.2018.

- e) On the basis of examination of written submission/statement of objections and rejoinders submitted by the parties, we proceed to examine as to whether the Safeguard Duty Notification No.01/2018-customs (SG) dated 30.07.2018 issued by the Ministry of Finance, Government of India, imposing the safeguard duty on imported solar cells, whether or not assembled in modules or panels, is covered under the scope of 'Change in Law' event or otherwise under the provisions of PPAs of the solar projects. Whether to consider the prayers made by the petitioners on the basis of averments in these petitions, we proceed to examine the various definitions and relevant clauses/articles under the PPAs of petitioners, the Guidelines, Notifications and rulings of various authority and Superior Courts.

- f) The terms "Law" and "Government Instrumentality" are defined under definitions clause of Article 21.1 of the aforesaid PPAs as here under:

"Government Instrumentality" means any department, division or sub-division of the Government of India or the State Government and includes any commission board, authority, agency or municipal and other local authority or statutory body including panchayat under the control of Government of India or the State Government, as case may be, and having jurisdiction over all or any part of the project facilities or the performance of all or any of the services or obligations of the developer under or pursuant to this Agreement."

"Law" shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Government Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by any an Indian Government Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the KERC."

- g) Article 15.1.1 of PPA, defines the term 'Change in Law' means the occurrence of any of the following events after the submission of online Techno Commercial Bid resulting into any additional recurring/non-recurring expenditure by the solar power developer

or any income to the developer. The sub-clauses of Article 15.1 read as under:

- a) The enactment coming into effect, adoption, promulgation, modification Regulation framed pursuant to such Law;
 - b) A change in the interpretation or application of any law by Indian Government Instrumentality having legal power to interpret or apply such Law.
 - c) -----
 - d) -----
 - e) Any change in the rates of tax duties, and cess or introduction of any taxes cess and duties made applicable for setting up of the project and supply of power by the developer as per the terms of agreement----- any change in law pertaining to taxes, duties and cess after the date of submission of Technical Bid shall be to the account of the ESCOM and appropriate change in tariff, either increase in proportionate, due to change in taxes, duties and cess shall be as per clause 15.2 (Relief for change in Law) of PPA.
- h) Article 15.2 stipulates relief for 'Change in Law' and Article 15.2.1 stipulates that the aggrieved party shall be required to approach KERC for seeking approval of 'Change in Law'. Further, Article 15.2.2 states that the decision of the State Commission, to acknowledge a 'Change in Law' and the date from which it will become effective and to provide relief for the same, shall be final and governing on both the parties.
- i) The Commission notes that, no record is placed by the respondents which could show that they have denied to recognise the

imposition of safeguard duty notification as a 'Change in Law' event. The Commission, further notes that Article 15.2.1 of the PPA, stipulates that the aggrieved party shall be required to approach the KERC for seeking approval of change in law. This Commission while deciding OP No.100/2019 dated 17.09.2020, OP No. 6 - 11/2019 dated 15.06.2021 had held that imposition of safeguard duty notification dated 30.07.2018 issued by the Government of India is a "Change in Law" event.

- j) The reliance is placed on the proceedings of the Directorate General of Trade Remedies dated 16.07.2018, while deciding the similar case claiming safeguard duty on import of solar modules from China, wherein the Director General (Safeguard) has conducted proceedings under the Customs Tariff Act, 1975 and the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 and recorded his findings and recommended on the imposition of safeguard duty on import of solar modules from China PR and Malaysia. The extract of recommendation is produced below: -

Para 76 "The increase imports of Product Under Consideration "PUC" into India, have caused serious injury and threaten to cause serious injury to the domestic products of "PUC" and it will be in the public interest to impose safeguard duty on imports of "PUC" into India in terms of Rules 12 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 for a period of two years. Considering the average cost of production of" PUC" of the domestic producers after allowing the reasonable

return on cost of production minus interest, safeguard duty as indicated below which is considered to be adequate to protect the interest of domestic industry on PUC being imported falling under sub-heading 8541 4011 of the First Schedule of the Customs Tariff act,1975, is recommended to be imposed. The Item mentioned herein is indicative only and the description of the imported goods will determine the applicability of the recommended Safeguard Duty."

Year	Safeguard Duty Recommended
First Year	Safeguard Duty @25% ad valorem
Second Year (For first 6 months)	Safeguard Duty @20% ad valorem
Second Year (for next 6 months)	Safeguard Duty @15% ad valorem

The Commission notes that on the basis of final findings of DGRT in F.No.22.01.2018 dated 16.07.2018 and as per its recommendations, the safeguard duty was levied on import of "solar cells whether or not assembled in modules or panels" from China PR and Malaysia. Accordingly, the Ministry of Finance, Government of India has issued the Safeguard Duty Notification No.01/2018- Customs (SG) dated 30.07.2018.

- k) We have relied upon the order dated 14.08.2018 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No.111 of 2017 in GMR Warora Energy Limited Vs. Central Electricity Regulatory Commission and others, wherein it is held that any tax levied through an Act of Parliament after cut-off date which results in additional expenditure by the petitioners, same is covered as "Change in law". In the same judgement, it is held that any tax or application of new tax on 'supply of power' covers the taxes on inputs required for such

generation and supply of power to the Distribution Licensees. In the instant case, solar modules/cell are essential items to set up a generating station in order to supply power to the respondents as per terms of PPAs. The impose of safeguard duty on imported solar modules/cells from China by the Government of India has resulted in the change in cost of inputs required for generation and hence the same is to be considered as "Change in Law".

l) This Commission has also held in OP. Nos.98-103/2018 in case of ACME Guledagudda Solar Energy Private Limited Vs. BESCO & Others and OP No.48 to 52 of 2019 of Fortum Solar India Private Limited Vs. BESCO & Others and in OP No.6 to 11 of 2019 in case of Adyah Solar Energy Private Limited Vs. Bangalore Electricity Supply Company Limited stating that "the Safeguard Duty Notification NO.01/2018 Customs (SG) dated 30.07.2018 issued by the Ministry of Finance, Government of India, imposing safeguard duty qualifies as a Change in Law event."

m) It could be seen from the available records that petitioners have participated in Competitive bidding for the aforesaid solar power projects and KREDL has accepted their bids and PPAs were entered with respondents on 22.03.2018 and 27.03.2018 earlier to the Safeguard Duty Notification No.01/2018- Customs (SG) dated 30.7.2018 issued by the Ministry of Finance, Government of India. Article 15.1.1(e) of aforesaid PPA clearly provides that any change

in law pertaining to taxes, duties and cess after the dates of submission of the Techno Commercial Bid shall be to the account of the BESCO / HESCO and appropriate change in tariff, either increase or decrease in proportionate, due to the change in taxes, duties and cess shall be as per clause 15.2 of PPA. In the instant cases, the safeguard duty levied on import of solar cells whether or not assembled in modules or panels falls under the category of duty as envisaged under the clause 15.1.1 (e) of PPA.

- n) Keeping in view of definitions of 'Government instrumentality', "Law", provisions of Article 15.1.1 (e) of PPA dated 22.03.2018/ 27.03.2018 and various rulings of Hon'ble Appellate Tribunal for Electricity, this Commission is of the view that the Safeguard Duty Notification No.01/2018-Customs (SG) dated 30.07.2018 imposing Safeguard Duty on import of "Solar Cells, whether or not assembled in modules or panels" from China PR and Malaysia is covered as an event of 'Change in Law' under the provisions of Article 15 of the PPAs. The Commission notes that no record is placed by the respondents which could show the denial to recognize the imposition of the Safeguard Duty Notification No.01/2018-Customs (SG) dated 30.07.2018 as Change in Law event. Therefore, contention of the respondent has no force and is liable to be rejected.

- o) Therefore, we hold that Safeguard Duty Notification No.1/2018-Customs (SG) dated 30.7.2018 issued by the Ministry of Finance, Government of India, imposing of safeguard duty on import of solar cells/ panels modules is an event of 'Change in law' in terms of Article 15 of the PPA.
- p) The Learned Counsels for respondents contended that the Safeguard Duty Notification No01/2018-Customs (SG), dated 30.7.2018 envisages that twenty-five %, ad valorem minus anti-dumping duty is payable, if any, but in the instant case(s), the petitioners have not deducted any anti- dumping duty from the claims made for reimbursement of safeguard duty, therefore, their claims shall not be considered. To counter the contention of the respondents, the petitioners have argued that there was no anti-dumping duty levied on import of solar modules from China. In the rejoinder filed by the petitioners on 08.09.2020, it is stated that there was no anti-dumping duty payable on import of solar modules/cells from the China on the date of the imports of solar modules. Therefore, the question of deducting anti-dumping or any other duty on import of solar module does not arise. It may be noted that Learned Counsels for respondents have failed to substantiate their contention that there was an anti-dumping duty levied on solar modules, before issuance of the safeguard duty notification dated 30.07.2018 by the Government of India. The Commission has gone through the relevant provisions of the First Schedule to the Customs

Tariff Act, 1975 and observed that Chapter-85, Section-XVI, Tariff Item- heading 8541 4011- Solar cells whether or not assembled in modules or panels are shown as "duty free" so it is presumed that there was no anti- dumping duty levied on solar modules.

- q) For the reasons mentioned in above paras, we hold and declare that the Safeguard Duty Notification NO.01/2018-Customs (SG) dated 30.07.2018 issued by the Ministry of Finance, Government of India, is a "Change in Law" under Article 15.1 of the PPA entered into by the petitioners and respondents.
- r) Therefore, we answer Issue No.2 in the affirmative.

16. **Issue No.3:** Whether the petitioners are entitled to interest/carrying cost from the date of incurring expenses to the date of actual payment on additional expenditure incurred by them as claimed in the petition?

- a) The petitioners have filed interlocutory application on 26.02.2021 for amendment to the main petition, especially in prayer (b) & (c) with the request to direct respondents to make payment of safeguard duty and IGST on safeguard duty, amounting to
- i) OP No. 78/2019 Rs.6,93,81,830 ii) OP No.79/2019 Rs.4,91,49,113
- iii) OP No.80/2019 Rs.7,70,46,102 iv) OP No.81/2019 Rs.5,89,92,091
- v) OP No.82/2019 Rs.7,19,77,993 on account of change in law event, in the form of lump sum or in the form of annuity basis and evolve a suitable mechanism in this regard. This Commission has allowed an

amendment application. Accordingly, the Counsel for respondents have filed additional statements of objections thereafter.

- b) The petitioners in their amended petition / rejoinder submitted that they have placed the orders for purchase of solar modules from vendors namely, i) Econess Energy Co. Ltd., China, ii) Baoding Lightway Green Energy Co. Ltd., iii) CECEP Solar Energy Technology (Zhenjiang) Co. Ltd. and iv) Zhehang Trumsum Solar Co. Ltd., China and received all the solar panels at Nhava-Sheva/ Krishnapatnam port during the period from June 2019 to October 2019, thereby attracting the imposition of safeguard duty at the rate of 25% of the value of solar modules and petitioners have incurred additional cost due to the introduction of imposition of safeguard duty for which they must be compensated along with the carrying cost for the period starting from the date of which they have incurred the additional cost to the date of actual reimbursement by respondents. It is not in dispute that the Government of India issued safeguard duty Notification dated 30.07.2018 and the said notification introduced safeguard duty at the following rates on the import of solar cells (whether or not assemble in modules or panels) from certain countries including China.

Time Period	Safeguard Duty
From 30.07.2018 to 29.07.2019	25%
From 30.07.2019 to 29.01.2020	20%
From 30.01.2020 to 29.07.2020	15%

- c) The petitioners in this regard in their additional affidavit dated 28.08.2020 had furnished details of impact of imposition of safeguard duty. They have claimed the following sums:

Sl. No.	OP. No.	Payment of SGD and IGST on SGD by cash (INR)	Payment of SGD and IGST on SGD by bonds (INR)	IGST to be paid as per HC Order (INR)	Total Impact of SGD including IGST (INR)
1	78/2019	3,68,95,243	3,24,86,587	-	6,93,81,830
2	79/2019	2,34,04,339	2,34,04,340	23,40,434	4,91,49,113
3	80/2019	4,72,92,481	2,70,49,474	27,04,147	7,70,46,102
4	81/2019	3,63,93,127	2,05,44,514	20,54,451	5,89,92,091
5	82/2019	4,12,79,225	3,06,98,768	-	7,19,77,993

- d) The petitioners have stated that, as per directions of the Hon'ble High Court of Andhra Pradesh/ High Court of Bombay vide order dated 26.08.2019 and 11.07.2019 (Annexure-4 submitted along with rejoinders) they have to pay 50% of the safeguard duty under each BoE along with IGST and provide Bonds for the balance 50% together with interest in the event the petitioners are not successful in the writ petitions.
- e) According to the petitioners, they have imported the solar modules from China during June 2019 to October 2019. As per safeguard duty Notification dated 30.07.2018, petitioners have paid safeguard duty at the rate of 25% and IGST at 5% on SGD and the petitioners have claimed in the petitions as mentioned at para (c) above, which is due to the introduction of/ imposition of safeguard duty. The petitioners contended that they have incurred additional

expenditure on account of change in law event and prayed for reimbursement of additional expenditure along with interest on additional working capital deployed for execution of their solar power project.

- f) The learned Counsel for the petitioners submits that during course of hearing the Commission sought details of bills of entries and payments of safeguard duty. Therefore, on 28.08.2020 the petitioners counsel filed affidavit on behalf of the petitioners duly signed by the authorized signatory along with copy of the statements incorporating BoE-wise explanation showing payment of safeguard duty (either by cash or through bonds).
- g) The learned Counsel for the petitioners contended that the petitioners are seeking reimbursement of safeguard duty paid/ remitted by them to Custom Department, while importing solar modules/cells/panels from China on account of safeguard duty levied by safeguard duty Notification No.01/2018-Custom (SG) dated 30.07.2018 issued by the Government of India along with carrying cost from the date of incurring expenses to the date of actual payment. The petitioners have incurred additional expenditure on account of change in law event and prayed for reimbursement of additional expenditure along with interest on additional working capital deployed for their solar project as envisaged under the Article 15.1 and 15.2 of the PPA.

- h) The learned Counsel for petitioners further contended that petitioners are entitled to carrying cost under principles of *quantum meruit* as statutorily enshrined in Section 70 of the Indian Contract Act and the petitioners would be entitled to carrying cost. Section 70 of the Indian Contract Act 1972 provides that where a person lawfully does anything for another person and does not do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered such person is entitled for carrying cost compensation/interest.
- i) The Counsel for petitioners contended in their rejoinders stating that Article 15.1.1 provides that a change in law events is any event listed thereunder “resulting into any additional recurring/ non-recurring expenditure by the SPD”. The usage of words “resulting into any additional...expenditure” signifies the parties’ intent to allow change in law relief, to cases where additional expenditure would be subsequently incurred by the parties. Had the parties’ intent being to restrict the relief for change in law only for actual expenditure incurred, the parties would have used the word “resulted into any additional ...expenditure”.
- j) The petitioners further contended that, carrying cost is a compensation for the time value of money and is an inherent provision under the change in law clause of the PPA. Since, the

Change in Law clause is based on principles of restitution, relief of carrying cost on the additional cost incurred on account of change in law is implicit in the PPA. The 'economic position which is sought to be restored in terms of the change in law clause does not limit itself to a simple correlation of increased expenditure and the corresponding compensation amount but ought to also include compensation in terms of carrying cost incurred in respect of said change in law events. The learned counsel for the petitioners referred to judgement of Hon'ble Appellate Tribunal for Electricity (Hon'ble ATE) order dated 20.12.2012 in the case of SLS power limited Vs. Andhra Pradesh Electricity Regulatory Commission in Appeal Nos.150,166,168,172,173 of 2011 and 9,18,26,29 and 38 of 2012. Hon'ble ATE observed that the principle of awarding carrying cost well established through various judgements passed by it and carrying cost is the compensation for time value of money or money denied at the appropriate time and paid after a lapse. The learned Counsel for the petitioners relied on judgement of Hon'ble ATE in Appeal No.210.2017, Appeal No.193/2017 and Appeal No. 111/2017 and contended that the Hon'ble Appellate Tribunal for Electricity has allowed carrying cost upon the amount allowed as compensation for change in law event.

- k) The learned Counsel for the petitioners have relied upon the Hon'ble Supreme Court Judgement reported in (2010) 10 SCC 341

between Yadav Kumar Vs. National Insurance Co. Ltd. and Indian Counsel for Enviro - Legal Action Vs. Union of India reported in (2011) 8 SCC 161. We have perused said judgments, the facts of the case are not akin to the cases on hand.

- l) Per contra, the learned Counsels for respondents have submitted with regard to carrying cost, that the law stands settled that only if there is a provision in the PPA for restoration of developer to same economic position as if the change in law event has not occurred, the developer / seller is eligible for carrying cost for such allowed change in law event from the effective date of change in law until the same is paid by respondents and the same is allowed by the appropriate authority by an order/ judgment. In the present cases, neither does the PPA entered into between the parties contain a single provision that permits/ stipulates restoring the solar power generator to the same financial position as prior to the event of change in law, nor does it contemplate the payment of carrying cost or interest of any kind to the aggrieved party on account of change in law. In view of above, the petitioners herein are not entitled to relief of restoration to the previous financial position, by way of interest/ carrying cost from the date of incurring till the date of reimbursement, as the PPA entered into by the parties contains no provision for such relief. The PPA is a legally binding contract

entered into by the parties, reflecting the intention of both the parties and they are bound by the terms of the same.

- m) The respondents further contended that the provision under Article 5.1.1(g) of the PPA cast obligation upon the solar power developer that they shall be responsible for all payments related to any taxes, cesses, duties or levies imposed by the Government Instrumentalities or competent statutory authority on land, equipment, material or works of the project or on the electricity consumed by the project by itself or on the income or assets owned by them. It is clear from the above stated clause of the PPA that the petitioners are responsible for the payment of all taxes and duties imposed by the Government in relation to all works connected to the project. It is in cognizance of this fact that the petitioners had bid in response to the respondents herein. The bid of an eligible bidder has to quote an all-inclusive bid that includes the cost of any existing foreseeable taxes and duties as stipulated in the above said article such as taxes, cesses, anti-dumping duty etc. The safeguard duty Notification dated 30.7.2018 stipulates the safeguard duty@25% ad valorem minus anti-dumping duty if any. In view of the fact that the anti-dumping duty payable by it, was included in the cost of the petitioner's bid as agreed in terms of the PPA. The only change in law benefit, if any, payable to the petitioners would be the

difference in the rates stated in the safeguard duty notification and the anti-dumping duty payable.

- n) At the cost of repetition, we would like to state that the petitioners are seeking reimbursement of safeguard duty paid/remitted by them to Customs Department by way of cash or through bonds, while importing solar modules/ cells/ panel from China on account of safeguard duty levied due to Safeguard Duty Notification No.01/2018-Customs (SG) dated 30.7.2018 issued by the Government of India along with carrying cost from the date of incurring expenses to the date of actual payment. The petitioners are seeking reimbursement of safeguard duty and IGST on safeguard duty on import of solar module/panels from China which they have paid through Bank challans or through bonds while getting customs clearance at Nhava-Sheva and Krishnapatnam Ports. The petitioners have incurred additional expenditure on account of change in law event and claimed reimbursement of safeguard duty and IGST along with interest on additional working capital deployed for its solar project as envisaged under Article 15.1 and 15.2 of the PPA.
- o) The Commission notes that petitioners have imported solar modules/cells from China and incurred additional expenditure due to imposition of safeguard duty @ 25% on import of solar modules/cell (whether or not assembled in modules or panels)

within the period specified i.e., from 30.7.2018 to 29.7.2019. This Commission, while answering the Issue No.2 & 4 has held that the Safeguard Duty Notification No.01/2018 dated 30.7.2018 is a "Change in Law" event, thus the petitioners are entitled to get relief under the provisions of Article 15.2 of the PPA, but it should be restricted to the number of solar modules/ cells imported and safeguard duty and IGST paid thereon with reference to minimum contracted energy as per provisions of PPA.

- p) Now, we proceed to examine whether the prayer of petitioners seeking carrying cost/ interest on working capital is permissible for reimbursement under the provisions of the PPA entered with the respondents or otherwise.
- q) The petitioners contended in their petitions, stating that restitution is an integral part of compensation granted for 'change in law' and carrying cost in simple terms is the compensation for time value of money.
- r) The learned Counsels for respondents submitted that in the absence of the express provision in the PPAs, it is not open for the petitioners to claim relief under principles of equity. Therefore, the petitioners are not entitled to interest on incremental working capital at normative interest rate or otherwise, in order to put the petitioners to the same economic position as if change in law has not occurred.

- s) The Commission observed that under clause 5.7.1 of the Competitive Bidding Guidelines which envisages that in the event a change in law result in any adverse financial loss/ gains to the solar power developer then, in order to ensure that the solar power generator is placed in the same financial position as it would have been had it not been for the occurrence of the change in law, the solar power developer shall be entitled to compensation by the other party, as the case may be, subject to condition that quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission. This Commission notes that when aforesaid provision is existed there in the competitive bidding guidelines then why the petitioners have not insisted to incorporate such provisions in the PPA while entering into PPA dated 22.03.2018 and 27.03.2018 with the respondents and had accepted the terms and conditions of the PPA. In view of above facts, we are of the considered opinion that the PPA having signed by both the parties, now it is a binding document, and no claim could be made by the petitioners which dehors the provisions of the PPA. Therefore, the averments made by the petitioners are untenable and liable to be rejected.
- t) The Commission notes that in the Judgment of Hon'ble ATE dated 13.4.2018 in Appeal No.210 of 2018 in the case of Adani Power Limited vs. CREC & Others, it was held that since Gujrat Bid-01 PPA

has no provision for restoration to the same economic position as if the change in law has not occurred, the question of allowing carrying cost does not arise. The relevant portion of the judgment dated 13.4.2018 reads as under:

Para 12 d) x. "further, the provisions of Article 13.2 i.e., restoring to the same economic position as if Change in Law has not occurred is in consonance with the principles of 'restitution' i.e., restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principles of restitution and judgment of the Hon'ble Supreme Court in case of Indian Council for Environ-Legal Action vs. Union of India & Others., we are of the considered opinion that the Appellant is eligible for carrying cost arising out of approval of the change in law events from the effective date of change in law till the approval of the said event by the appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if the Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid-01 PPA."

- u) The Commission placed reliance on the judgement of Hon'ble Supreme Court in the case of Union of India vs. Tulasiram Patel (1985) 3 SCC 398, wherein it was held that" when express inclusions are specified, anything which is not mentioned explicitly is excluded." In

this regard, the Commission further notes the decision rendered by the Hon'ble CERC in the Petition No.188/MP/2017, wherein upon analysing this issue in depth, it came to the reasoned decision that unless carrying cost is stipulated in the PPA, the aggrieved party is not entitled to it. Therefore, the Commission notes that there are no explicit or implicit provisions available in the instant PPAs entered by both the parties which allows the carrying cost/interest on incremental working capital as sought by the petitioner to compensate to them.

- v) The learned Advocate for respondent relied upon the following rulings:
- i. APTEL order dated 25.10.2018 in Appeal No.185 of 2015 – Kalani Industries Pvt. Ltd. Vs. Rajasthan Electricity Regulatory Commission and others.
 - ii. KERC order dated 28.05.2019 in OP No.9 of 2018 – Koppal Green Power Ltd. Vs. GESCO.
 - iii. KERC order dated 31.12.2020 in OP No.48 of 2019 and batch – 5 Fortum Solar India Pvt. Ltd Vs. BESCO.

We have gone through above stated court rulings. We have considered the principles laid down in above rulings wherever necessary.

- w) In view of decisions of the Hon'ble Appellate Tribunal for Electricity, and the existing provisions of the PPA dated 22.03.2018 and 27.03.2018 entered into by the parties and reasons mentioned in

above paras, the Commission holds that the claims made by the petitioners for grant of carrying cost/interest on additional working capital on payment of safeguard duty and IGST on safeguard duty paid are not sustainable and liable to be rejected.

x) Hence, we answer, Issue No. 3 accordingly.

17. **Issue No.4:** Whether the respondents proved that the petitioners have imported Solar Modules in excess of the requirement and claimed excess SGD thereon?

From the above submissions of petitioners and the respondent's objections, we note that:

- a) As per the submission of petitioners, PPAs have been entered into between the petitioners and respondents (BESCOM/ HESCOM) for setting up of 15/20 MWAC capacity of solar PV ground-mounted project in Siddhalgatta, Kittur, Guledgudda, Hukkeri, Sandur. These projects were required to be commissioned within 18 months from the effective date.
- b) From the details submitted by the petitioners and confirmed by the respondents, all the solar projects have achieved CoD within the due date of commissioning
- c) The petitioners have claimed the following amounts being the SGD including IGST on SGD incurred on procurement of the solar modules, in pursuance of GoI Notification No.1/2018 (SG) dated 30.07.2018:

Sl. No.	OP No.	Place	Contracted capacity In MW	Installed capacity as per rejoinder	Safeguard duty incurred by the petitioners (in Rs.)
1	78/ 2019	Siddhalagatta	20	20.96	6,62,04,036
2	79/ 2019	Kittur	15	15.06	4,89,53,299
3	80/ 2019	Guledagudda	15	21.83	5,29,40,519
4	81/ 2019	Hukkeri	15	16.99	5,20,82,481
5	82/ 2019	Sandur	20	21.39	6,73,00,601

- d) The respondents in their statement of objections have contended that the petitioners have installed excess solar modules to generate more energy than the minimum quantum of energy required to be supplied as agreed in the PPAs.
- e) The petitioners submit that as per Clause 1.4.1 of Request of Proposal (RfP) issued by the KREDL for these present projects, the solar power developers shall mention the maximum capacity utilization factor (CUF) at the time of signing of the PPA. The RfP also said that there is no cap on the maximum CUF. The petitioners proceeded to declare a higher CUF of 26% which is bound to increase the capacity of modules at the DC end. Such higher CUF effectively leads to greater optimization of the project against a contracted AC capacity and thereby leads to more competitive tariff being offered by the petitioners. In these present cases, for offering a competitive tariff, the petitioners have declared a CUF of 26% thereby it was imperative for the petitioners to add the additional modules at DC end to optimize the DC capacity in order to maintain the said CUF. Therefore, the competitive tariff is the outcome of additional cost incurred by the petitioners and any such increase in cost due to

safeguard duty on the import of modules is bound to be reimbursed to the petitioners. In this regard, the petitioners placed reliance on the Order passed by the Hon'ble Maharashtra Electricity Regulatory Commission (MERC), whereby the MERC on due appreciation of necessity to install higher capacity of DC modules to achieve greater efficiency has allowed reimbursement of safeguard duty for capacity of module which are in proportionate to CUF declared by the generator.

- f) The learned Counsel for petitioners submitted rejoinder in reply to the statement of objections filed by the respondents, stating that the petitioners in order to fulfil their obligations under Article 5.6 of the PPA, have to ensure supply of minimum contracted energy as detailed below:

Sl. No.	OP No.	Minimum contracted energy in MU	Maximum contracted energy in MU	Minimum CUF (%)	Maximum CUF(%)	Tariff in Rs.
1	78/ 2019	22.0752	40.9968	14	26	2.97
2	79/ 2019	18.396	34.164	14	26	2.98
3	80/ 2019	17.1696	45.552	14	26	2.99
4	81/ 2019	18.396	34.164	14	26	3.15
5	82/ 2019	24.528	45.552	14	26	3.09

Therefore, it was imperative for the petitioners to add the additional solar modules at the DC end to optimize the DC capacity in order to maintain the minimum CUF.

- g) The learned Counsel for the respondents contended in their statement of objections that in some of the bill of entries show safeguard duty imposed is "ZERO" and amount stated in respect of

safeguard duty in the bill of entries, challans do not correlate. Further, it is contended that the documents produced by the petitioners do not support the claims made by the petitioners.

- h) The learned Counsel for the petitioners in their rejoinder clarified the reasons for mentioning of "ZERO" in bill of entries. According to the petitioners, since there was no option of charging "50% of the safeguard duty" in the portal/ software Customs Department which is allowed, as per interim relief by the Hon'ble Andhra Pradesh High Court / Hon'ble High Court of Bombay, the Customs Department issued "Provisional BoEs" with safeguard duty mentioned as "ZERO" and bond amount mentioned as 50% of the total value of safeguard duty and IGST on safeguard duty payable in Rupees and equivalent amount paid by the cash in terms of the said interim orders of Hon'ble High Court of Andhra Pradesh / Bombay. The petitioners have clarified on 04.08.2021 the factual position of each bill of entries and it is not denied by the respondents.
- i) During the course of argument, the learned counsel for the petitioners argued that, Hon'ble Maharashtra Electricity Regulatory Commission (MERC) in case No.259/2019 between Azure Power Thirty-Four Private Limited Vs. Maharashtra State Electricity Distribution Company Limited has set-out a rational for calculating the permissible extent of DC solar modules that could be installed by solar power developers to meet the contracted capacity

requirement in AC terms and allowed excess DC capacity in the range of approximately 41% to 57%. The learned counsel for the respondents countered that the facts mentioned in the Order of MERC, is not similar to these cases and therefore, not applicable to these petitions. We observe that the reliance placed on the MERC decision by the petitioners are not applicable to the instant cases as facts of aforesaid case is not similar to the instant case.

- j) The Counsel for respondents further contended that the competitive bidding warrants the lowest bid price and it never dependent on CUF. The petitioners were able to quote the lower bid price by installing excess modules to achieve higher CUF against the developer who have quoted higher tariff and intended to use better quality of panels. Therefore, any payment of safeguard duty towards installation of additional modules, to the petitioners will cause injustice to those solar developers who intended to use good quality solar panels and quoted higher bids than these petitioners and same defeats the object of competitive bidding.
- k) To examine this issue as to how much quantity/number of solar modules imported from China by the petitioners could be reasonable to set up 15/20 MW solar power plant and can be allowed for reimbursement of safeguard duty, under the provisions of the PPA entered into by both the parties, it would be appropriate

to go through the relevant provisions of the PPA in the instant case.

The relevant portion of the PPA is reproduced below:

- a) *Article 21.1 of PPAs defines "Contract Capacity"
"Contract Capacity" shall mean capacity contracted by the BESCO/ HESCO for supply by the Developer to BESCO/ HESCO at the delivery point from the solar power project."*
- b) *Article 21.1 defines Contract Year; "Contract Year" shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31."*
- c) *Article 21.1 also defines "Capacity Utilization Factor" or "CUF". "CUF" shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from the Renewable Energy Sources) Regulations, 2009 as amended from time to time. Here, the CUF is expressed in AC terms.*
- d) *Article 5 of PPAs of OP 78,79,80,81,82 of 2019 stipulates the Obligation of the Developer and Article 5.6 states about Right to Contract Capacity & Energy.*

The Article 5.6 says that BESCO/ HESCO, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the Developer beyond 40.9968/34.164/45.552/34.164/45.552 Million kWh (MU) [corresponding to a maximum CUF of 26% (twenty-six %) for solar PV projects (new projects)]. If for any Contract Year, it is found that the Developer has not been able to generate minimum energy of

22.0752/18.396/17.1696/18.396/24.528 Million kWh (MU) [corresponding to a CUF of 14% (fourteen %) for solar PV (new project)], on account of reasons solely attributable to the Developer, the non-compliance by Developer shall make Developer liable to pay the compensation to the BESCO/HESCO. The amount of compensation shall be computed at the rate equal to 50% of the applicable tariff.

In case of purchase of any excess energy:

Purchase of any excess energy, beyond the energy generated corresponding to a maximum CUF of 26% (twenty-six %) for solar PV (new projects) shall be charged at a rate equivalent to 75% of PPA tariff or 75% of the applicable APPC charges, whichever is less, provided first right of refusal will vest with the BESCO/HESCO.

- l) The Central Electricity Regulatory Commission (Terms and Conditions for Tariff Determination from Renewable Sources) Regulations, 2009 also define the CUF for Solar PV project. The extract of Regulation 58 is given below:

Regulation 58 (1) "The Capacity Utilization factor for solar PV Project shall be 19%."

- m) As per CERC (Terms & Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2009 and PPA Article 21.1, the CUF allowed is 19% for Solar PV projects. But in these cases, both the parties have agreed in the contract for supply of minimum

energy at 14% of CUF, which are binding on both the petitioners and respondents.

- n) The contention of the petitioners that there was no need to intimate/ inform to BESCO / HESCO or KREDL or the concerned authority, before importing solar modules from China for setting up of 15MW_{AC} and 20 MW_{AC} capacity in order to generate additional energy beyond mentioned in the clause 5.6 of the PPA at CUF of 26%, because there is not cap put on the capacity utilization factor in RfP document and bidder is allowed to select the DC capacity of the project subject to the prudent utility practices prevailing in the State of Karnataka. Thus, the petitioners have procured additional quantity of solar modules and moreover, the petitioners have filed petitions before this Commission for seeking reimbursement of safeguard duty and IGST paid thereon, and this fact is well known to the respondents and now it cannot be questioned at this juncture. Further, they contends that PPA is a binding contract and would prevail over the RfP and PPA does not contemplate any condition to inform the respondents regarding installation of additional modules for setting up of their solar power project.
- o) We have examined the averments and counter arguments of both the parties on the issue of reimbursement of safeguard duty and IGST on additional quantity of solar modules procured by the petitioners over the minimum contracted capacity as envisaged

under clause 5.6 of the PPA dated 22.03.2018 and 27.03.2018, which puts onus on the petitioners to generate minimum contracted energy agreed in the PPA, and non-compliance of this provision, would make solar power developer liable to pay the compensation to BESCO & HESCO as provided in the PPA. Further, this clause also stipulates that the BESCO & HESCO, at any time during a contract year, shall not be obliged to purchase any additional energy from the solar power developer beyond maximum CUF of 26% mentioned in the clause 5.6 of PPA. It also stipulates that, in case BESCO & HESCO purchases any excess energy, beyond the energy generated corresponding to maximum CUF, the solar power developer shall charge it at concessional tariff/ rate.

- p) A plain reading of the clause 1.4.1, 1.4.2 and 1.4.3 of RfP and abovementioned clauses of Article 5.6 of PPA clearly point out that the obligation on the petitioners are to generate minimum contracted energy as per the PPA at a minimum CUF of 14% in terms of PPA. In the present cases, the petitioners have voluntarily taken a business decision to install additional modules, this fact can be noted from the petitions and statement of objections of the respondents and rejoinders. The inference that can be drawn from submissions that the petitioners have installed excessive solar modules to setup 15/20 MW solar plants. The respondents contended in their statement of objection and affidavits that the

petitioners have installed excess number of solar modules over the required number of modules for setting up of 15/20 MW capacity considering the minimum contracted energy at CUF of 14% and have claimed excess reimbursement as safeguard duty and IGST thereon. Thus, the said burden cannot be foisted on the respondents which in turn will be passed on to the consumers as additional tariff. We are of the opinion that the line of arguments submitted by the respondents are acceptable.

- q) The petitioners have contended that, they have mentioned the number of excess solar modules installed in DC capacity and this fact is known to respondents since the same is mentioned in the petitions.
- r) We have examined the relevant provisions of the PPA which deals with the matter. Article 20.12 describes various methods for issuance of notice and how communications shall be made to the concerned parties. This Article stipulates that any notice or other communication to be given by any party to the other party under or in connection with any matters contemplated by this agreement shall be in writing as per procedure prescribed under this Article. The clause 1.4.1 of RfP also says that the bidder is allowed to select the DC capacity of the project subject to the prudent utility practices in the State of Karnataka, but shall intimate the same to KREDL, ESCOMs, CEIG and any other concerned authority. In the instant

cases, petitioners have not placed any documentary evidence before this Commission to show that it had informed the respondents before importing the excess numbers of solar modules from China which are going to be used for their solar project's. Therefore, we can clearly say the petitioners have not followed the mandatory requirements as stipulated in clause 1.4.1 of RfP. Further, clause 20.7 of the PPA states that "this agreement and schedules together constitute and exclusive statement of the terms of the agreement between the parties...xxxxxxx", the parties hereto agree that the obligations of the developer arising from the Request of Proposal (RfP) shall be deemed to form part of this Agreement and treated as such." The perusal of the Article would clearly show that the intention of the parties to read the terms of the RfP and PPA together. Therefore, we are of the considered opinion that having agreed by both the parties to the provisions of RfP and PPA, the contention now being raised by the petitioners for the first time stating that the RfP is not binding on them and it is completely untenable and opposed to law. Moreover, there is no reliable document or record placed before this Commission by the petitioners which could show that petitioners have informed the respondents before importing the exact quantity of solar modules from China to set up their power plant. Therefore, the contention of the petitioners that the respondents are aware of the facts of

installation of excess/ additional solar modules of their project, is untenable and liable to be rejected.

- s) The clause 5.7.1 of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of power from Grid Connected Solar PV Power Project, stipulates that in the change in law event, the solar power generator/ procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined by the appropriate Commission and shall be effective from the date of order as may be decided by the appropriate Commission.
- t) Article 15.2 of the PPA dated 22.03.2018 & 27.03.2018, deals with relief for change in law. Article 15.2.1 states that the aggrieved party shall be required to approach the KERC for seeking approval of change in law. Further, Article 15.2.2 says that the decision of KERC to acknowledge a change in law shall be final and governing on the both parties.
- u) The learned Counsel for the petitioners relied on letter dated 05.11.2019 issued by the Ministry of New and Renewable Energy, Government of India, and submitted that it has allowed generators to install DC capacity more than the contracted capacity. The Commission on perusal of the said letter, notes that it only states that the generators are free to install DC capacity more than the

contracted capacity, but nowhere the said advisory letter has dealt with issue of DC capacity to be considered for change in law event. The Commission notes that the PPA has stipulated minimum CUF of 14% which has to be maintained throughout the year and minimum contracted energy have to be supplied by the petitioners to the respondents in a contract year. Thereby the generator has to provide additional DC capacity to take care of losses in inverters, evacuation infrastructure and also degradation factor of solar modules. Such higher capacity has to be provided by the generator and no compensation of reimbursement of safeguard duty and IGST thereon, on installation on additional modules can be allowed due to change in law event as it is a commercial decision of the project developers, this fact has been admitted by the petitioners in their petitions and rejoinders.

- v) In view of above facts and relevant provisions of Request for Proposal (RfP) and PPA dated 22.03.2018 & 27.03.2018 taking into consideration, the Commission is of the opinion that the decision of petitioners of importing additional solar module from China with the intention of optimize performance of the solar PV plant of installed DC capacity by achieving higher CUF of 26% as against the minimum threshold of CUF of 14% as mentioned in the PPA is a commercial decision of the petitioners.

w) Keeping the above facts in view, the claims made for reimbursement of safeguard duty and IGST on installation of additional solar modules would be an additional financial burden which cannot be foisted on the respondents being a wholly owned government company providing essential service to the public at large and in turn, it would pass on the consumers as additional tariff. Therefore, we are of the considered opinion that the claims for reimbursement of safeguard duty on installation of excess modules is not allowed and it is hereby rejected. Therefore, this Commission relying upon the petitions, statement of objections, rejoinder and affidavit filed, in which it is stated that the petitioners have installed excess modules and safeguard duty paid is (i) 6,93,81,830 in respect of OP No.78 of 2019; (ii) Rs.4,91,49,113 in respect of OP No.79 of 2019; (iii) Rs.7,70,46,102 in respect of OP No.80 of 2019; (iv) Rs.5,89,92,091 in respect of OP No.81 of 2019; and (v) Rs.7,19,77,993 in respect of OP No.82 of 2019.

The petitioners in their rejoinders/ additional affidavits dated 28.08.2020 have furnished the details of payment of safeguard duty and IGST in the form of cash and bonds, as detailed below:

Sl. No.	OP No.	Payment of SGD and IGST on SGD by cash (INR)	Payment of SGD and IGST on SGD by bonds (INR)	IGST to be paid as per HC Order (INR)	Total impact of SGD including IGST (INR)
1	78/2019	3,68,95,243	3,24,86,587	-	6,93,81,830
2	79/2019	2,34,04,339	2,34,04,340	23,40,434	4,91,49,113
3	80/2019	4,72,92,481	2,70,49,474	27,04,147	7,70,46,102
4	81/2019	3,63,93,127	2,05,44,514	20,54,451	5,89,92,091
5	82/2019	4,12,79,225	3,06,98,768	-	7,19,77,993

Therefore, this Commission holds that the claims for reimbursement of safeguard duty and IGST thereon, on account of change in law event, could be considered in proportion to the minimum agreed contracted energy during a contract year at the rate of minimum CUF of 14% and solar modules. The amounts claimed by the petitioners in these petitions are considered after due analysis as in above paras and arithmetical corrections and the petitioners are entitlement for reimbursement of SGD & IGST as follows:

Sl. No.	OP No.	Place	Contracted capacity In MW	Installed capacity in MW claimed as per invoice	SGD + GST on SGD as per Invoice (in Rs.)	SGD + GST on SGD amount Admissible (6 x 4/ 5) (in Rs.)	Excess amount Claimed (6 – 7) (in Rs.)
1	2	3	4	5	6	7	8
1	78/2019	Siddhalgatta	20	20.92	6,93,81,830.02	6,6330,621.43	30,51,208.586
2	79/2019	Kittur	15	15.06384	4,91,49,111.61	4,89,40,819.48	2,08,292.1277
3	80/2019	Guledagudda	15	21.83466	7,70,38100.94	5,29,23,723.75	2,41,14,377.19
4	81/2019	Hukkeri	15	16.992765	5,89,92,089.39	5,20,74,005.66	69,18,083.726
5	82/2019	Sandur	20	21.3912	7,19,77,677.06	6,72,96,530.41	46,81,146.655

Thus, as per the above computations the petitioners are entitled to the amounts as indicated in column-7 of the above table.

x) In view of the above discussion, we answer Issue No.4 accordingly.

18. **Issue No.5:** Whether the petitioners are entitled for appropriate and proportionate increase in tariff due to imposition of safeguard duty and consequently amend tariff specified in the PPAs dated 22.03.2018 & 27.03.2018?

a) The tariff in these cases have been discovered through competitive bidding process as per the Guidelines issued by the Central

Government u/s 63 of the Electricity Act, 2003. The petitioners are not required to indicate the financial and technical parameters while quoting the tariff by them, in the bidding documents. The lowest tariff discovered is Rs.2.85 per unit and the Commission has adopted the above tariff. Accordingly, the PPA has been entered into between the parties on 22.03.2018 & 27.03.2018. The Commission has approved the PPAs on 04.05.2018. The Solar Power Project was required to be commissioned within 18 months from the date of approval of the PPAs. Considering the time schedule, the petitioners have procured/ imported the solar panels for commissioning the project.

- b) Consequent on the imposition of SGD and IGST on the imported solar panels subsequent to the last day of the submission of bids, the petitioners had to incur the additional expenditure which could not be factored, while quoting the lowest tariff in the bidding process. Therefore, in such cases, this additional expenditure has to be reimbursed by way of incremental tariff to the petitioners.
- c) In Issue No.4, the Commission has held that the petitioners are entitled to additional capital cost incurred by them as follows:

Sl. No.	OP No.	Amount
1	78/2019	6,63,30,621.43
2	79/2019	4,89,40,819.48
3	80/2019	5,29,23,723.75
4	81/2019	5,20,74,005.66
5	82/2019	6,72,96,530.41

- d) As per the approved PPA, Article-15 provides for change in law and Article 15.1.1 (e) specifies as under:

“15.1.1 (e) any change in taxes and duties or introduction of any taxes and duties made applicable for setting up of the Project and supply of power by the Developer as per the terms of this Agreement. The Bidder shall consider all the prevailing taxes and duties applicable on the date of submission of Technical Bid while submitting the Bid for the Project(s). If any such above prevailing taxes and duties are not considered or omitted or ignored, then it shall be accepted that the Bidder has considered all such taxes and duties in its Bid. Any change in law pertaining to taxes and duties after the date of submission of Technical Bid shall be to the account of the BESCO HESCO and appropriate change in tariff, either increase or decrease in proportionate, due to the change in taxes and duties shall be as per clause 15.2 (Relief for Change in Law) of PPA.

But shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Developer, or (ii) any change on account of regulatory measures by the KERC, or (iii) any change in the KERC approved Tariff as compared to the approved tariff exist as on the Bid Due Date.

- e) As seen from the above Article 15.1.1 (e) of the PPA read with the RfP conditions, for any increase in taxes and duties due to change in law, this Commission has to determine the incremental tariff.

- f) Article 15 of the PPA dealing with the Change in Law or any other Article of the PPA does not provide for any financial and technical parameters to determine the incremental tariff due to incurring the additional capital cost. Therefore, we are of the considered opinion that any additional expenditure towards safeguard duty and GST incurred on the project on account of change in law shall have to be considered as additional capital expenditure forming part of the project. Hence for determining the incremental tariff on the additional cost, the Commission has adopted the parameters as per the Generic Tariff Order dated 01.08.2019, in the matter of "Determination of Tariff in respect of solar power plants (Including Solar rooftop photovoltaic projects) for FY20, issued by this Commission.
- g) In determination of the incremental tariff in respect of these projects, the Commission has considered the parameters as per the above generic tariff order dated 01.08.2019, as applicable on the basis of Bill of Entry raised and submitted for having paid the amounts to concerned authorities.
- h) The following are the relevant parameters adopted for computation of incremental tariff as considered in the Generic Tariff Order dated 18.05.2018:
- i. Debt: Equity Ratio;
 - ii. Interest on Capital loan;
 - iii. Tenure for repayment of loan;
 - iv. Return on Equity;

- v. Depreciation;
 - vi. Interest on working capital at 2 months' receivables;
 - vii. Discount Rate to factor in the time value of Money to arrive at levelised tariff for the life of the plant.
- i) The quantum of generation of energy in a contract year would be directly proportional to the CUF. In the Generic Tariff Order dated 18.05.2018, the normative CUF of 19% was considered. In the present case, the maximum CUF was left to the discretion of the petitioners at the time of entering into the PPA. Accordingly, the petitioners have quoted maximum CUF of 26%. As per the terms of the PPA, the minimum CUF works out to 14% corresponding to generation of minimum contracted energy in a contract year. For recovery of additional cost incurred by the petitioners, we have considered the CUF of 14% corresponding to the generation of minimum contracted energy in a contract year, thereby the petitioners are able to recover the additional capital cost on account of Change in Law, as reckoned in para 17 (w) of this Order for determining incremental tariff, on minimum contracted energy over the term of the PPA.
- j) Accordingly, the Commission has considered the following parameters for computation of incremental tariff as per the Generic Tariff Order dated 18.05.2019:

Sl. No.	Parameters	Normative Values Adopted
1	Debt: Equity Ratio	70:30
2	Debt Repayment in years	13
3	Interest on capital loan	10.50% per annum

4	Return on Equity	14% per annum
5	Depreciation	5.38% for first 13 years and remaining depreciation spread equally over the balance years of the useful life of the plant
6	Interest on working capital at two month's receivables	11.50% per annum
7	Discount Rate to arrive at time value of money	11.55% per annum (WACC)

- k) As per Article 5.6 of the PPA, the CUF has been considered at 14% corresponding to generation of minimum contracted energy of a contract year, which is reckoned for determination of incremental tariff.
- l) While considering the above parameters, the Commission has not reckoned the following parameters for the reasons explained against each:
- (i) Degradation factor & Auxiliary Consumption: While computing minimum contracted energy of a contract year, the degradation factor and Auxiliary Consumption has been considered for the life of the project and hence the same has not been factored in for determining the incremental tariff.
 - (ii) As per the norms, the O & M expenses are linked to the capacity of the plant in MW (4.50 lakhs per MW) and not dependent on the capital cost of the project. Hence the same has not been factored in for determining the incremental tariff.
- m) The incremental tariff has been determined by this Commission, on the basis of the above parameters. The Commission has arrived at an average tariff for 25 years life of the project. Considering the

Discount Rate being the Weighted Average Capital Cost (WACC) of 11.55% per annum, the levelled tariff for 25 years cover the life of the project is arrived at as detailed below:

OP No.	Additional Capital Cost (Amount of Safeguard duty & IGST allowed. (Amount in Rs.))	Minimum contracted Energy @ minimum CUF as per PPA, in MU	Average Tariff-Paise per unit	Discount Rate-Weighted Avg. Cost of Capital (WACC) %	Levelled Incremental Tariff Paise per unit
(1)	(2)	(3)	(4)	(5)	(6)
78/2019	6,63,30,621.43	22.0752	30	11.55	38
79/2019	4,89,40,819.48	18.396	26	11.55	34
80/2019	5,29,23,723.75	17.1696	31	11.55	39
81/2019	5,20,74,005.66	18.396	28	11.55	36
82/2019	6,72,96,530.41	24.528	27	11.55	35

- n) On the basis of Minimum CUF, the generation of minimum contracted energy as indicated in Article 5.6 of the PPA, of each of solar power project is reckoned. The petitioner is allowed reimbursement of additional capital cost as shown above, during the term of PPA, as per the above parameters by way of incremental tariff, on the minimum contracted energy per year and is limited to the minimum contracted energy only. Therefore, in any contract year, if the petitioner supplies more than the minimum contracted energy, it would not be entitled to the incremental tariff.
- o) Hence, Issue No.5 is decided accordingly.

19. **Issue No.6:** What order?

For the foregoing reasons, we pass the following:

ORDER

- a) The petitions are partly allowed.
- b) The petitioners are entitled to levellised incremental tariff per unit in each of these cases as per column 6 of Table in para 18 (m) in Issue No.5 of this Order.
- c) The incremental levellised tariff so determined shall be applicable on the quantum of minimum contracted energy generation, as per column-3 of Table of para 18 (m) in Issue No.5 of this Order, supplied/to be supplied to BESCO/ HESCO during a contract year from the date of COD till the expiry date of the PPA, in addition to tariff as provided in Article 12.1 of the PPA on the said quantum.
- d) It is made clear that for the energy supply exceeding minimum contracted energy in any contract year, the petitioners are not entitled to the incremental tariff.
- e) Before executing a Supplemental PPA, the petitioners shall submit necessary documents to the BESCO/ HESCO for having paid amounts towards the Bonds (for having cleared the bonds by paying cash) to the Customs Department for getting the Bonds released.
- f) The petitioners are entitled to raise the supplementary bill for the arrears of the incremental tariff as ordered above in sub-para (b) of this Order from the date of COD till the date of this Order. The amount found to be due under the supplementary bill shall be paid by the respondents in three equal monthly installments, with single default clause.
- g) The petitioners are not entitled to interest/ carrying cost.

