are not paid by MSEDCL. Further, the Petitioner has claimed such charges for balance period of the EPA. The main constituent of the claim are as follows:

a) Land Lease Charges along with applicable GST thereon; and

b) GST on Water Cess Charges already paid by MSEDCL.

10. Petitioner argued that it is entitled for recovery of the claims as per the provisions of the GoM Policy, EPA, HPDA, RE Tariff Regulations,2015, Commission's past Orders etc. It has raised the claim on MSEDCL vide letters dated 26.7.2021 through supplemental invoice. However, MSEDCL has denied the payment except reimbursement of water royalty charges without taxes.

11. In response to the Petitioner's averments, MSEDCL has contended that the Petitioner is claiming recovery of expenses paid by it to GOMWRD for the period way back from year 2017 which is time barred in terms of the provisions of the Indian Limitation Act 1963. Hence, the Petitioner is not entitled for recovery of the time barred claims. The Petitioner is liable to pay the various charges and duties to GOMWRD, as per contractual arrangements between the Petitioner and GOMWRD. MSEDCL also raised the issue of applicability of RE Tariff Regulations.

12. The Commission notes that the period of claim agitated in the Petition is from December, 2017 to March, 2022.

13. Based on the above background and considering the submissions of the Parties, arguments at the hearing, following issues need to be addressed:

Issue No. I: Applicability of the RE Tariff Regulations and the RE Generic Tariff Order of the Commission in the present Case.

Issue No. II: Whether the Petitioner is entitled to reimbursement of Land Lease Charges along with GST as per the EPA dated 25.07.2016 in addition to the Generic Tariff determined by the Commission in the year 2017 in Case No. 33 of 2017?

Issue No. III: Whether the Petitioner is entitled to the reimbursement of the GST on the Water Cess of which principal amount is already reimbursed by MSEDCL?

Issue No. IV: Other observations on the claims of the Petitioner and necessity of reconciliation and verification of claims thereof?

Accordingly, the Commission has dealt with the above issues in the following part of the Order.

14. ***Issue No. I: Applicability of the RE Tariff Regulations and the RE Generic Tariff Order of the Commission in the present case.***

14.1 MSEDCL in its additional submission has stated that the Petitioner has incorrectly relied on the RE Tariff Regulations,2010 justifying its claims. The Petitioner's claim of Land Lease Charges arose as per the EPA dated 25.07.2016. Hence, RE Tariff Regulations, 2015 as amended in the year 2017 (RE Tariff Regulations,2015) and RE Tariff Regulations,2019 are applicable in the present case.

14.2 The Commission notes that the Petitioner has referred to the provisions of the RE Tariff Regulations,2015 and the Generic Tariff Order in Case No.33 of 2017 which is based on said Regulations.

14.3 The Commission notes upon perusal of the EPA signed between the Petitioner and MSEDCL dated 25.07.2016 that it clearly mentions that the Generic Tariff of Rs. 4.11 /kWh is applicable for entire period of EPA and is accepted by both parties as per the Suo-Motu RE Tariff Order of the Commission dated 28.4.2017 in Case No. 33 of 2017. Further, the said Order is based on the RE Tariff Regulations,2015. The Para 2.9 of the said Order provides that this Order shall be applicable to RE Projects Commissioned in FY 2017-18 (i.e. from 1.4.2017 to 31.3. 2018). Evidently Gosikhurd SHP had been Commissioned on 26.12.2017.

14.4 The Commission further notes that MSEDCL in its reply dated 24.3.2022 while denying the claims of the Petitioner has relied on the provisions of the RE Tariff Regulations,2010 and the Generic Tariff Order in Case No. 20 of 2010 and 39 of 2011 which are as per the RE Tariff Regulations, 2010.

14.5 In view of the above, in terms of the EPA and Generic Tariff accepted by both the Parties, the Commission find that provisions of RE Tariff Regulations, 2015 and Commission’s Generic Tariff Order dated 28.04.2017 in Case No. 33 of 2017 are applicable in the present Case.

15. ***Issue No. II: Whether the Petitioner is entitled to reimbursement of Land Lease Charges along with GST as per the EPA dated 25.07.2016 in addition to the Generic Tariff determined by the Commission in the year 2017 in Case No. 33 of 2017?***

15.1 The Commission notes that while claiming Land Lease Charges alongwith GST from the year 2017 to 2022, the Petitioner has referred to the following provisions:

a) HPDA dated 10.01.2013 signed between the Petitioner and GOMWRD provides for payment of Land Lease Charges along with taxes and duties to GOMWRD.

b) Regulation 25 of the RE Tariff Regulations, 2015 provides that Tariff determined under these Regulations is exclusive of Taxes and Duties on generation and sale of electricity and are pass through on actual basis.

c) Commission’s Generic Tariff Order dated 28.4.2017 provides that Tariff determined under these Regulations is exclusive of Taxes and Duties on generation and sale of electricity and are pass through on actual basis.

d) As per the provisions of the EPA dated 25.07.2016, MSEDCL has to reimburse the Land Lease Charges to the Petitioner. However, MSEDCL has not paid the same stating that the charges require approval of the Commission.

e) The Commission's Order dated 9.11.2005 in Case No. 25 of 2004 (Determination of Tariff for SHP) wherein the Commission while determining the Generic Tariff, has factored Land Lease Charges and Intake Maintenance Charges as part of Generic Tariff as specified in the GoM Policy,2005.

f) The Petitioner also referred to the Commission's project specific RE Tariff Orders dated 26.03.2021 and 17.08.2021 in Case Nos. 208 of 2020 and 63 of 2021 respectively stating that the Commission has allowed the recovery of Land Lease Charges, Intake Maintenance Charges alongwith taxes.

15.2 While opposing the claim of the Petitioner, MSEDCL submitted that:

a) The Commission in its RE Generic Tariff Order dated 14.07.2010 in Case No. 20 of 2010 has ruled that only Water Cess Charges are not factored in the Generic Tariff Order and hence are pass through. The Commission has not allowed recovery of Land Lease Charges and Maintenance Charges in the said Order. Hence, the Petitioner is not entitled for recovery of Land Lease Charges in addition to the generic tariff pass through.

b) The Commission vide its Order dated 29.04.2011 in Case No. 39 of 2011, while determining the generic tariff has factored the land cost as part of capital cost indexation i.e., land lease charges. The Commission's RE Tariff Regulations,2010 and Generic Tariff Order are binding on the Petitioner. Hence, the Petitioner is not entitled for recovery of Land Lease Charges alongwith Taxes.

c) As per the EPA, reimbursement charges require to be approved by the Commission and needs to be billed through supplemental invoices.

d) MSEDCL also contended that the claims of the Petitioner are barred by the Limitation Act as it has belated filed the Petition for past claims since year 2017.

15.3 The Commission notes that the Petitioner has signed the HPDA with GOMWRD on 10.01.2013. It also entered into the EPA with MSEDCL on 25.07.2016 for 13 years from the date of COD dated 26.12.2017 to sell the power at Generic Tariff of Rs.4.11/kWh. The tenure of the EPA is upto December,2030. The EPA between MSEDCL and the Petitioner is as per the Generic Tariff Order of the Commission in Case No. 33 of 2017 and the said Order is based on the provisions of the RE Tariff Regulations,2015. Hence, RE Tariff Regulations, 2015 and Generic Tariff Order in Case No. 33 of 2017 are applicable in the present matter.

15.4 Various statutory provisions in the present matter are summarised as follows:

A) Provisions of the HPDA dated 10.1.2013:

15.5 The provisions of the HPDA in respect of the Land Lease Charges are as follows:

a) Article II of the HPDA defines the responsibility of Generation Company. Clause 2.1.7 of the HPDA provides as follows:

" 2.1.7 The generating company agrees to pay to GOMWRD the land lease charges and other charges at the rate specified in Article IV of this agreement." --(Emphasis added)

b) Further, the clause 2.1.17 of the HPDA provides the responsibility of the Generating Company (Petitioner in present case) as follows:

" 2.1.17 The Generating company shall be responsible for the action and costs arising there from for execution, Commissioning and operation of the Project including the ancillary costs , covering approach , land and evacuation arrangement etc. " --(Emphasis added)

c) Clause 2.1.22 of the HPDA provides that after the commissioning of the Project, the Petitioner is liable to pay to GOMWRD Land Lease Charges, Water Cess and Maintenance Charges at the rate pursuant to Article -IV of the HPDA. The relevant provisions are as follows:

"2.1.22 Upon commissioning of the Project, the Generating Company shall pay to GOMWRD Land Lease Charges, Water Cess and maintenance charges, if applicable at the rate pursuant to Article IV – 'Payment and Billing'." ---(Emphasis added)

d) Article IV of the HPDA provides as follows:

"4.1 The Generating Company shall make the payment of (land lease) lease rent of Re. 1/- *(Rupee One) per kW per annum to be calculated on the basis of Installed Capacity of the Project, approved by GOMWRD in Techno Economic Feasibility Report for the first year".*

The annual lease rent shall be calculated from the first date of the month in which Project Company is intimated by GOMWRD about the Site being ready for delivery, irrespective of the actual physical delivery of the Site Lease Rent thus calculated upto March 31 of the next calendar year shall be paid by the Generating Company within 30 (thirty) days from the date of aforesaid intimation. Thereafter, the Project Company shall make payment of the annual lease rent in advance upto 30th April every Accounting Year till the expiry of the Term of this Agreement. " --(Emphasis added)

15.6 From the foregoing provisions it is clear that HPDA was signed between the Petitioner and GOMWRD. It is a fact on record that MSEDCL was not a party to the HPDA which was signed way back on 10.01.2013. As per the HPDA, it is the responsibility of the Petitioner, being generating company, to make the payment of Land Lease Charges to GOMWRD.

15.7 Further the Commission notes that the Executive Engineer, Gosikhurd Dam Division dated 20.8.2021 has confirmed the receipt of Land Lease Charges paid by the Petitioner to GOMWRD for 2 X 12 MW Gosikhurd SHP. Upon perusal of the said letter it is clear that the Petitioner has been paying Land Lease Charges since 10.01.2013 to the GOMWRD i.e from the date of signing of HPDA. The Petitioner has entered into the EPA with MSEDCL on 25.07.2016. It means that the Petitioner has been paying land lease charges to

GOMWRD even before signing of the EPA with MSEDCL as it is the responsibility of the Petitioner as per HPDA. However, the Petitioner is tacit on these facts. Hence, reliance of the Petitioner on the provisions of the HPDA justifying recovery of Land Lease Charges and taxes thereon from MSEDCL is not tenable.

15.8 In view of the above discussion, it is clear that, as HPDA provides for the payment of Land Lease Charges by the Petitioner to GOMWRD, it does not mean that these charges are recoverable from MSEDCL. The Petitioner has paid the Land Lease Charges to GOMWRD before entering into EPA with MSEDCL dated 25.07.2016.

B) Provisions of the RE Tariff Regulations, 2015 and applicable Commission's Generic Tariff Order dated 28.4.2017 in Case No. 33 of 2017:

15.9 The Commission's Generic Tariff Order dated 28.4.2017 in Case No. 33 of 2017 is based on the provisions of the RE Tariff Regulations, 2015. Regulation 13 of the RE Tariff Regulations,2015 defines the capital cost as follows:

" 13. Capital Cost

*The norms for the Capital Cost as specified in the subsequent RE technology specific Chapters shall be inclusi**ve <u>of all capital works, land cost,</u> plant and machinery, <u>civil work,</u> erection and commissioning, financing costs, preliminary** and pre-operative expenses, interest during construction, and evacuation infrastructure up to inter-connection point.*

Provided that for project specific tariff determination, the generating company shall submit the break-up of capital cost items along with its petition in the manner specified under Regulation 9.-----"

15.10 The above definition of the capital cost clearly specify that land cost is the part of the project including civil works.

15.11 The Commission's RE Tariff Regulations,2015 has provided the normative capital cost of Rs. 550.70 lakh/MW for SHP of greater 1 MW and less than 25 MW. Further, the Regulation 31 of the said Regulations made the provision for Capital Cost Indexation for SHP in each year, in line with CERC RE Tariff Regulations.

15.12 Further, more clarity on inclusion of land cost as part of SHP and capital cost indexation of the project can be traced in the Commission's Generic RE Tariff Order dated 28.4.2017 in Case No. 33 of 2017 wherein the Commission has ruled as follows:

" Under Regulation 30.1 , the Commission has considered the normative Capital Cost for SHPs for the first year of the Review Period (Base Year) as below:

Project Size	***Capital Cost (Rs. lakh/MW)***
> 1 MW and upto and including 5 MW	*605.28*

> 5 MW and upto and including 25 MW	*550.70*

This Capital Cost has been escalated by applying the indexation mechanism of the CERC RE Tariff Regulations, as stipulated in Regulation 31 of the Commission's Regulations. The computation steps are shown in para. 3.4 of this Order. The normative Capital Cost for FY 2017-18 computed as per the mechanism specified in the CERC RE Tariff Regulations----

15.13 RE Tariff Regulations, 2015, Commission's Generic Tariff Order in Case No. 33 of 2017 and CERC RE Tariff Regulations clarifies that Land Cost including civil works was one of the constituents of the capital cost SHP. It is an undisputed fact that land cost is a part of capital cost. Moreover, if the Land Lease Charges allowed for recovery as sought by the Petitioner, then it will amount to double recovery in terms of additional Land Lease Charges over and above Generic Tariff.

15.14 Further, the Commission's Generic Tariff Order in Case No. 33 of 2017 was issued after public consultation process. Also, during public consultation process, the Petitioner has raised the comments regarding project specific determination of Tarff for SHP. However, the Petitioner did not raise the issue of Land Cost/ Land Lease Charges during the public consultation held at that point of time.

15.15 As per Regulations 25 of RE Tariff Regulations 2015, the tariff determined is exclusive of taxes and duties on generation and sale of electricity as may be levied by the appropriate Government. The relevant provisions are as follows:

"25. Taxes and Duties

Tariff determined under these Regulations shall be exclusive of taxes and duties ***on generation and sale of electricity from RE Project as may be levied by the appropriate Government****.*

Provided that the taxes ***and duties levied by the appropriate Government on generation, and sale of electricity from RE Project, such as Electricity Duty and Water Royalty, shall be allowed as pass-through to the extent actually incurred. ."****—(Emphasis added)*

15.16 The above provisions of the RE Tariff Regulations clarify that the taxes and duties on the generation and sale of electricity as may be levied by the Government are excluded from the RE project to the extent of Electricity Duty and Water Royalty. This provision is not applicable for the taxes levied on payment of Land Lease Charges as claimed by the Petitioner. Hence, it is clear that taxes claimed on the payment of Land Lease Charges are part of applicable generic tariff determined by the Commission.

C) The Petitioner's reliance on the Commission's past project specific RE Tariff Orders in Case No. 208 of 2020 and 63 of 2021 and 25 of 2004:

15.17 The Petitioner in support of its claim relied on the Commission's project specific Tariff Orders in Case No. 208 of 2020 (land lease charges allowed by the Commission in determining project specific tariff for 1 MW Hydro Project at Morna Dam) and Case No.

63 of 2021 (Tariff determination for Mahati Veer Hydro 2 x 4.5 MW Nira Right Bank Canal, SHP after carrying out renovation and modernisation) wherein the Commission has allowed the Land Lease Charges.

15.18 In this respect the Commission notes that the Petitioner's Gosikhurd SHP project is based on the Commission's Generic Tarif Order of 2015 and accordingly the EPA has been signed accepting the Generic Tariff as determined by the Commission. Generic Tariff concept is different from the project specific tariff. While determining the project specific tariff the Petitioner has to submit the detailed breakup of the project cost in the Petition itself with justification whereas the Generic Tariff get derived considering all normative expenses required for the project including Land Cost, O&M cost, Interest on Loan , Equity etc., as per the prevalent RE Tariff Regulations. Hence, the reliance of the Petitioner on these Commission's project specific Order will not help the Petitioner to justify its claim.

15.19 Further, the Petitioner's reliance for recovery of Land Lease Charges based on the Commission's Order dated 9.11.2005 in Case No. 25 of 2004 (Determination of Tariff for SHP) is not tenable as the Petitioner's project is based on the provisions of the RE Tariff Regulations, 2015 and the Commission's Generic Tariff Order in Case No. 33 of 2017. Accordingly, the Petitioner has signed the EPA accepting the generic tariff. Further, the Petitioner in its Petition (Para 3.12 above) has submitted that reimbursement claim to MSEDCL was made on the basis of the provisions of the EPA. Hence, reliance of the Petitioner on the Commission's old Order dated 9.11.2005 is not tenable.

15.20 It is a fact that on one hand the Petitioner has signed EPA accepting the provisions of the Generic Tariff Order,2015 and on other hand is seeking the recovery of Land Lease Charges over and above generic tariff determined by the Commission in the year 2017. Hence, stand of the Petitioner is deviating from the RE Tariff Regulations 2015, Generic Tariff Order of 2017, post signing of the EPA is an afterthought and is not tenable.

D) Provisions of the EPA dated 25.07.2016 between the Petitioner and MSEDCL:

15.21 The Commission notes that the provisions of the clause 6.1.1 of the EPA dated 25.07.2016 in respect of levy of taxes and duties on the generation and sale of electricity from the RE project are similar to the provision of the Regulation 25 of the RE Tariff Regulations,2015. Relevant provisions are as follows:

> *"6.1.1 Tariff determined under these Regulations shall be exclusively of taxes and duties on generation and sale of electricity from renewable energy project as may be levied by the appropriate Government.*
>
> *6.1.2 Provided that, the taxes and duties levied by the appropriate Government on generation and sale of electricity from renewable energy project shall be allowed as pass through by on actual incurred basis only after the same is allowed as a pass through in tariff by MERC."--- Emphasis provided*

15.22 The Clause 6.3 of the EPA, in respect of the Water Royalty payable to the GOMWRD provides as follows:

" The Water Royalty payable to GOMWRD against the Electricity Output in accordance with the terms of the HPDA shall be paid to the Seller by the Purchaser as pass through charges which shall be included in the Monthly Tariff Invoice." --- *Emphasis provided.*

15.23 Further the Clause 6.5 and 6.6.2 of the EPA, in respect of the payment to the Seller (Petitioner) by the Purchaser (MSEDCL) provides as follows:

" 6.5 Any other charges and amounts payable to the Seller, including but not limited to Water Cess payable to GOMWRD and any other fees and reimbursements which the Purchaser is liable to pay to the Seller as approved by MERC (where required), shall be billed through a Supplemental Invoice, giving details thereof to the Purchaser in accordance with MERC Order/ MERC RE Tariff Regulation, 2015.-----

6.6.2 Supplemental Invoice:

A supplemental invoice shall also be prepared monthly by seller and shall generally have following terms:

(a) Details of Water Cess paid by the Seller to GoMWRD. In this regard, the Seller shall submit to the Purchaser relevant documentary proof of such payment.

(b) Details of any tax, duty, cess or any other charge that may be levied by GOI, the State, or any other statutory body on generation of electricity, as approved by MERC."

15.24 Joint readings of above provisions of the EPA made it clear that the Petitioner is entitled for the recovery of the Water Cess/Royalty paid to GOMWRD, or any other charge levied by GOI, State or any other statutory body on generation of electricity.

15.25 It is worth to noting that that there is no specific provision in the EPA for pass through of Land Lease Charges as sought by the Petitioner akin to Water Cess Charge.

15.26 Further the reliance of the Petitioner on the provisions of Regulation 25 of the RE Tariff Regulations, 2015 and the Clause 6.1.1 of the EPA stating that the Generic Tariff determined shall be exclusive of taxes and duties on generation and sale of electricity from renewable energy project is not tenable. These provisions are applicable in terms of Electricity Duty and Water Royalty and not for the taxes and duties on the Land Lease charges as claimed by the Petitioner.

15.27 In view of the foregoing, the Commission is not inclined to allow reimbursement of the Land Lease Charges alongwith applicable taxes.

15.28 On the issue of applicability of Limitation Act for Land Lease Charges, the Commission notes that the Petitioner through supplementary invoice dated 26.7.2021 , kept on record, shows that the Petitioner is paying the Land Lease Charges regularly to GOMWRD since 10.1.2013. Accordingly, it has claimed the amount of Rs. 3,01,873/- for the period from 10.01.2013 to 31.3.2022. The same fact is also reflected in the Executive Engineer, Gosikhurd Dam Division's letter dated 28.8.2021. Hence, contradicting its own invoice dated 26.7.2021 and letter dated 28.8.2021, the Petitioner, in the Petition at Para 3.8 above, has sought the recovery of Land Lease Charges from 26.12.2017 to 31.3.2022. Further, the amount mentioned in the Petition as well in the invoice are same i.e. Rs. 3,01,873/-.

15.29 With these observations, the Commission notes that the Petitioner first time approached MSEDCL on 26 July, 2021 and then to the Commission through this Petition in January, 2022. It is not the case that GOMWRD first time raised the invoice in recent past against which payment made by the Petitioner. The chronology of the event clearly shows that the Petitioner has delayed in submission of such claim to MSEDCL by about 8 years since inception in the year 2013 and about 5 years from the date of EPA dated 25.07.2016. Further, EPA provides that the Petitioner has to submit the claims monthly through supplemental invoices. Hence, the Commission finds merit in the submission of MSEDCL that the claim of Land Lease Charges is also barred by the Limitation Act, besides its non-entitlement on the merit as discussed above.

15.30 In view of the above, and perusal of the provisions of the HPDA, RE Tariff Regulations, 2015, Commission's Generic Tarif Order in Case No. 33 of 2017, Past project specific RE Tariff Orders, the Commission rules that the Petitioner is not entitled to reimbursement of Land Lease Charges alongwith applicable taxes, as an additional pass-through amount over and above generic tariff determined by the Commission in 2017.

16. ***Issue No. III: Whether the Petitioner is entitled to the reimbursement of GST on the Water Cess Charge of which principal amount is already reimbursed by MSEDCL?***

16.1 The Commission notes that as per the EPA dated 25.07.2016, Water Cess Charge is pass through over and above generic tariff determined by the Commission in Case No. 33 of 2017 for SHP. Accordingly, MSEDCL has paid the Water Cess Charge without GST as claimed by the Petitioner time to time which is also accepted by the Petitioner. Hence, it is undisputed fact that Water Cess Charge is pass through over and above the Generic Tariff. Hence, only reimbursement of GST on the Water Cess Charge is disputed issue, as it requires Commission's approval.

16.2 The Petitioner has claimed reimbursement of GST on Water Cess from 26.12.2017 to 31.3.2022. Further, the Petitioner also sought the recovery of GST for balance period of the EPA.

16.3 MSEDCL's argument is that the Petitioner, seeking recovery of various claims first time approached MSEDCL on 26.7.2021 in terms of supplemental invoice. However, the claim of the Petitioner was rejected by MSEDCL vide its letter dated 13.10.2021, as the claim was not approved by the Commission and the Petitioner was not entitled to reimbursement. It is not the case that the Petitioner has paid the claim amount continuously and thereafter claimed from MSEDCL. As per the provisions of the Limitation Act, claim of the Petitioner beyond three years from the date of rejection by MSEDCL (i.e.,13.10.2021) is barred by the Limitation Act. Hence, the Petitioner is not entitled to recovery of the time barred claims.

16.4 In justification of the delay, the Petitioner's argument is that the Central Government as well as State Government has introduced GST Act in the year 2017. As per GST Act, Service Tax was replaced with GST from 01.07. 2017. Accordingly, GST liability accrued from December, 2017 onwards which is payable under Reverse Charge Mechanism (RCM) for various payments made to GOMWRD, such as Land Lease Charges, and Water Cess along with applicable GST. Hence, GST paid by the Petitioner is Change in Law. Hence, the Petitioner is entitled for recovery of GST on Water Cess Charges paid to GOMWRD from 26.12.2017 to 31.3.2022.

16.5 It is important to note that the Petitioner in the present Case, has not raised the issue of dispute with the Central Excise Department regarding applicability of GST on the various charges such as Water Cess, Land Lease, Maintenance Charges etc. to its Goshikhurd SHP in the present Case. Also, the Petitioner has not sought any relief based on this count.

16.6 In this regard it is worth a while to review the modalities of claim of the dues, due date of payment, mechanism of payment, time period of the payment etc in terms of the EPA based on which the Petition is filed.

Provisions of the EPA between the Petitioner and MSEDCL:

a) Para 1.1, Definitions , of the EPA provides the Due Date of the Payment as follows:

*" Due Date of Payment " means the date on which the invoice amount for the Billing Month or any Supplementary Invoice or claim becomes due and payable, which **shall be 60 Days from Date of Receipt and duly acknowledgement of bill or Invoice in the of office of Superintending Engineer, O&M Circle** Bhandara -----" Emphasis Added*

b) Further, the Clause 6.3 of the EPA provides that Water Royalty payable to the GOWRD shall be paid to the Petitioner by MSEDCL as pass through charges which shall be included in the Monthly Tariff Invoice.

c) The Clause 6.4 of the EPA regarding the raising of the Invoice provides as follows:

*" Starting with the date of **Commissioning of the project , the Petitioner shall submit Invoice to the Nodal Officer within fifteen (15) days** after the end of each billing month---"*

d) Clause 6.8 of the EPA provides that all the amounts due and payable to the Petitioner under any monthly Tariff Invoice or supplemental Invoice shall be paid by MSEDCL preferably within 60 days from the date of receipt of Bill / Invoice complete in all respect as per the EPA.

16.7 The above provision of the EPA specifies that the Petitioner has to raise the Invoice to Nodal Office of MSEDCL within 15 days after the end of each billing month. Further, MSEDCL has to make the payment within 60 days from the date of receipt of Bill from the Petitioner complete in all respect.

16.8 It is worth noting that perusal of the documents kept on record by the Petitioner shows that the Petitioner has not provided any documentary proof showing that:

a) The Petitioner has submitted the Invoices to MSEDCL claiming the GST on Water Cess from MSEDCL for the disputed period from 26.12.2017 to 31.12.2022.

b) MSEDCL has not paid the GST on Water Cess to Petitioner inspite of raising Invoices time to time by the Petitioner within due date as per EPA.

16.9 Further, GOI has introduced the GST Act 2017 with effect from 01.07.2017. Similarly, Maharashtra GST Act,2017 came into force on the 01.07.2017. Hence, it is clear that GST on Water Cess is applicable since 01.07.2017. Also, MSEDCL has paid the principal amount towards Water Cess.

16.10 In the present Case, the EPA with MSEDCL for Gosikhurd SHP was signed on 25.07.2016 and SHP has been commissioned on 26.12.2017 i.e. Post enforcement of GST Act. Inspite of this, the Petitioner has not raised the Invoices on MSEDCL claiming GST on Water Cess.

16.11 In absence of the Invoice raised by the Petitioner towards GST on Water Cess Charges and first time approached MSEDCL on 26.7.2021, i.e. after 4 years from the enforcement of the GST, clearly shows the delay on part of the Petitioner in claiming GST on Water Cess. Hence, it is in contravention of the provisions of EPA by the Petitioner. Hence, it would be unfair to MSEDCL if, the Commission allows the claim retrospectively of which, even Invoices were not raised by the Petitioner.

16.12 In view of the above Commission finds merit in the submission of MSEDCL that the claim of the Petitioner towards GST on Water Cess is barred by Limitation Act.

16.13 Further, considering that the Petitioner approached MSEDCL on 26.07.2021, and the Water Cess along with GST is applicable for entire period of the EPA, the Commission is inclined to approve reimbursement of the GST on Water Cess from 26.07.2021 onward.

16.14 The Commission's Order dated 24.11.2020 in Case No. 168 of 2020 (Case of MSPGCL seeking recovery against demand of Service Tax liability claimed by GOMWRD) and Order in Case No. 132 of 2021(Case of MSPGCL for payment of Service Tax and GST on lease rent for Hydro Power Stations) is based on different premise from the one in the instant Petition, SHP has been Commissioned on 26.12.2017, post enforcement of GST Act with effect from 01.07.2017. Further, the Petitioner never raised the invoice for GST on Water Cess for past period. Hence, the reliance of the Petitioner on the said Orders is not tenable. In any case the Commission is allowing the claim of the Petitioner to recover GST on Water Cess Charge under the provisions of the EPA from 26.07.2021 (date of first time approach of the Petitioner to MSEDCL) onwards as per GST Act.

16.15 The Commission further notes that the tenure of the EPA is 13 years from the COD dated 26.12.2017 i.e. upto 12.12.2030. The recovery of the Water Cess over and above generic tariff is for entire period of the EPA. Hence, the Commission rules that the Petitioner is entitled to recovery of GST on Water Cess for the balance period of the EPA. No separate approval of the Commission is required for this.

17. ***Issue IV: Other observations on the claims of the Petitioner and necessity of reconciliation and verification of claims thereof?***

17.1 While scrutinizing the claims of the Petitioner as submitted in the Petition and earlier correspondences with MSEDCL to recovery of these claims through supplemental invoice, the Commission observed that there are some discrepancies in the amount of claim , period of claim and shortfalls in the submission etc. The details of discrepancies observed are summarised as follows:

Sr. No.	Claim as submitted in the Petition as summarised at Para 3.15 of this Order			Claim as per earlier correspondence with MSEDCL appended to the Petition.			Remark
	Description of claim	Period	Amt. (Rs.)	Description of claim	Period	Amt. (Rs.)	
1	Land Lease Charges	26.12.2017 to 31.3.2022	3,01,873	Land Lease Charges	10.01.2013 to 31.3.2022	3,01,873	Not entitled for recovery as per rulings at Para (15) above
2	GST on Land Lease Charges and Water Cess	26.12.2017 to 31.03.2022	30,02,663	GST on Land Lease Charges and Water Cess	No invoice raised on MSEDCL is provided. Also no document proof is provided sowing that payment is made to GOMWRD. Only period of claim is submitted in the Petition		Entitled to recovery of Service Tax on Water Cess only as per rulings at Para (16) above.

17.2 As shown in the above Table, in the Petition, the Petitioner has claimed GST on Land Lease Charges and Water Cess Charges amounting Rs.30,02,663/- from 26.12.2017 to 31.03.2022. However, as elaborated at Para 16 above neither invoice raised on MSEDCL, nor the details of the payment made to GOMWRD are provided by the Petitioner supporting the claim. Hence, this ambiguity in the submission needs to be verified and removed before making the payment and reimbursement of these charges by MSEDCL.

17.3 Hence, reconciliation and verification of the claim of GST towards Water Cess Charges is necessary before effecting the payment. Hence, the Commission directs the Petitioner and MSEDCL to carry out the reconciliation and verification within one months from the date of this Order.

17.4 The Commission notes that the Petitioner sought reimbursement of the principal amount only against claim without any interest /carrying cost.

17.5 In view of the above discussion and considering dispensation provided under Para 16 of this Order above, Commission deems it appropriate to allow claim towards GST to the extent of Water Royalty Charge from 26.7.2011 to 31.3.2022 as well as balance period of the EPA subject to reconciliation and verification of the claim.

17.6 Accordingly, the Commission directs MSEDCL to make the payment towards GST from 26.07.2021 to 31.3.2022 on Water Cess Charge within two (2) months after the reconciliation/verification without any interest/carrying cost. Further, for balance period of the EPA, MSEDCL shall pay GST on Water Cess Charge along with the principal amount.

17.7 The Petitioner has claimed the amount towards GST on Water Cess Charges, first time in the Petition and was not part of the ARR of MSEDCL. Hence, MSEDCL is at liberty to claim the reimbursed amount in its upcoming MTR Petition.

18. **Hence, the following Order.**

ORDER

1. **The Case No. 13 of 2022 is partly allowed.**
2. **The Petitioner and Maharashtra State Electricity Distribution Co. Ltd. shall carry out the reconciliation/verification of the claim within one month from the date of this Order.**
3. **Maharashtra State Electricity Distribution Co. Ltd. shall make the payment towards Goods and Service Tax from 26.07.2021 to 31.3.2022 on Water Cess Charge within two months after the reconciliation and verification, without any interest/carrying cost subject to Rulings at Para 16 above. Further, for balance period of the Energy Purchase Agreement, Maharashtra State Electricity Distribution Co. Ltd. shall pay the Goods and Services Tax on Water Cess Charge, alongwith the principal amount.**
4. **Maharashtra State Electricity Distribution Co. Ltd. is at liberty to claim the reimbursed amount in its upcoming Mid Term Review Petition.**

Sd/-	**Sd/-**
(Mukesh Khullar)	**(Sanjay Kumar)**
Member	**Chairperson**