

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 1966 of 2021.**

**In the Matter of:**

**Petition under Section 86 of the Electricity Act, 2003 readwith Article 9 of the Power Purchase Agreement (PPA) dated 22.05.2019 executed between the parties.**

Petitioner : ReNew Sun Energy Private Limited  
Represented By : Ld. Adv. Mr. Sujit Ghosh alongwith Ld. Advocates Mr. M. N. Marfatia, Ms. Mannat Waraich and Ms. Pratiksha Chaturvedi.

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited  
Represented By : Ld. Adv. Ms. Harsha Manav alongwith Parthik Joshi.

**AND**

**IA No. 17 of 2021 in Petition No. 1966 of 2021.**

**In the Matter of:**

**IA for urgent listing of the Petition.**

Applicant : ReNew Sun Energy Private Limited  
Represented By : Ld. Adv. Mr. Sujit Ghosh alongwith Ld. Advocates Mr. M. N. Marfatia, Ms. Mannat Waraich and Ms. Pratiksha Chaturvedi.

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited  
Represented By : Ld. Adv. Ms. Harsha Manav alongwith Parthik Joshi.

**CORAM:**

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

**Date: 09/06/2022.**

**DAILY ORDER**

1. Above matters were heard on 08.03.2022.
2. Ld. Adv. Mr. Sujit Ghosh, appearing on behalf of the Petitioner, submitted that present Petition is filed under Section 86 of the Electricity Act, 2003 read with Article 9 of PPA dated 22.05.2019 seeking declaration by this Commission that imposition of the safeguard duty on import of solar modules qualifies as a Change in Law under Article 9, particularly Article 9.1.1(a) and 9.1.1(b) of the aforesaid PPA dated 22.05.2019 executed between the parties pursuant to the imposition of the safeguard duty vide Notification dated 29.07.2020 issued by the Ministry of Finance, Government of India.
  - 2.1. It is submitted that aforesaid Notification dated 29.07.2020 is second tranche of such notification issued by the Ministry of Finance, Government of India pursuant to introduction of safeguard duty on the import of solar cells and modules at the prescribed rates vide Notification No. 1/2018 – Customs (SG) dated 30.07.2018 which was valid for a period of two years upto 29.07.2020. Since, the aforesaid Notification No. 2/2020 – Customs (SG) dated 29.07.2020 was issued subsequently imposing safeguard duty on the import of solar cells and modules and hence the Petitioner is invoking ‘Change in Law’ provisions for the additional expenditure incurred by the Petitioner on account of aforesaid fresh Notification through this Petition.
  - 2.2. It is submitted that the Respondent Gujarat Urja Vikas Nigam Limited (GUVNL) had invited bids under Competitive Bidding Process followed by reverse e-auction vide Request for Selection (Rfs) No. GUVNL/500 MW/Solar (Phase IV) dated 29.12.2018 for 500 MW grid connected Solar Photovoltaic Power Projects to be setup in Gujarat, wherein, the bid submitted by the Petitioner herein ReNew Sun Energy Private Limited was accepted by the Respondent GUVNL pursuant to emerging as one of the successful bidder for development of 105 MW capacity of Solar Power Project and consequently Letter of Award dated 21.02.2019 was issued to the Petitioner. It is also submitted that the last date for bid submission in aforesaid

tender was 06.02.2019 and thus, the bid deadline as per definition in the PPA is 06.02.2019.

- 2.3. It is submitted that subsequently, Power Purchase Agreement dated 22.05.2019 came to be executed between the Petitioner and the Respondent GUVNL for generation & supply of 105 MW power from the Solar PV based project at the tariff of Rs. 2.68 per unit by the Petitioner to the Respondent GUVNL. The Scheduled Commercial Operation Date (SCOD) under the said PPA is 22.01.2020.
- 2.4. Referring to the Notification No. 01/2018-Customs (SG) dated 30.07.2018, it is submitted that the safeguard duty was imposed by the Ministry of Finance, Government of India at prescribed rates in said notification on the import of Solar Cells, whether assembled or not in modules or panels and the validity of said Notification was specified to be for a period of two years i.e., up to 29.07.2020. Thus, the extant law was clear to the extent that safeguard duty to be imposed upto 29.07.2020. The relevant portion of said Notification reads as under:

*"..... hereby imposes on subject goods falling under heading 8541 or tariff item 8541 40 11 of the First Schedule to the Customs Tariff Act, when imported into India, a safeguard duty at the following rate, namely:-*

*(a) 25% ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30.07.2018 to 29.07. 2019 (both days inclusive);*

*(b) 20% ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30.07.2019 to 29.01.2020 (both days inclusive); and*

*(c) 15% ad valorem minus anti-dumping duty payable if any, when imported during the period from 30.01.2020 to 29.07.2020 (both days inclusive).*

*....."*

- 2.5. However, the Ministry of Finance subsequently issued fresh Notification dated 29.07.2020 and extended the applicability of Safeguard Duty on import of solar cells, which reads as under:

*"Now, therefore, in exercise of the powers conferred by sub-sections (1) and (4) of Section 8B of the Customs Tariff Act read with rules 12, 14, 17 and 18 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, after considering the said findings of the designated authority and subject to the*

*provisions of paragraph 2, hereby imposes on subject goods falling under tariff items 8541 40 11 or 8541 40 12 of the First Schedule to the Customs Tariff Act, when imported into India, a safeguard duty at the following rate, namely:-*

*(a) fourteen point nine percent. ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30<sup>th</sup> July 2020 to 29<sup>th</sup> January 2021 (both days inclusive);*

*(b) fourteen point five percent. ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30<sup>th</sup> January 2021 to 29<sup>th</sup> July 2021 (both days inclusive);*

*Nothing contained in this notification shall apply to imports of subject goods from countries notified as developing countries vide notification No. 19/2016-Customs (N.T.), dated the 5<sup>th</sup> February, 2016, except People's Republic of China, Thailand and Vietnam.*

*.....”*

- 2.6. It is argued that the Petitioner in no way could have assumed at the time of bidding that the extant law prevailing on the date of bid deadline may be subsequently amended by independently following requisite procedure or it was nowhere in sight of the Petitioner or expectation that the above Notification dated 29.07.2020 will be issued by the Ministry of Finance, Government of India and extending the levy of safeguard duty after expiry of same on 29.07.2020 in terms of earlier Notification in this regard. Thus, it could not be otherwise anticipated as on bid submission date about such imposition of safeguard duty when as such there is no provision in the earlier Notification that applicability of safeguard duty to be applicable for the imported modules after the sunset date, i.e. 30.07.2020. It is submitted that said Notification was not in sight and could not otherwise be expected in absence of any notice or independent process prior to issuance of same such that at a later date which could not be factored at the time of bidding.
- 2.7. It is argued that as per prudent utility practices under the PPA, the Petitioner is required to follow the best industrial practices and as such solar panels are not imported immediately by the developer immediately after signing the PPA.
- 2.8. It is submitted that the imposition of safeguard duty vide above Notification dated 29.07.2020 falls under Article 9.1.1 (a) as well as 9.1.1 (b) of the PPA and accordingly qualifies as an event of Change in law.

- 2.9. It is also submitted that the power to levy safeguard duty vests with the Central Government in terms of Section 8-B (*Powers of the Central Government to impose safeguard duty*) of the Customs Tariff Act, 1975, which provides that the Central Government may impose safeguard duty by way of a notification on the import of any article into India, if it is satisfied that the said article is being imported in such increased quantities and under such circumstances so as to cause or threaten to cause serious injury to the domestic industry. It is argued that under sub-Clause 4 of the Section 8-B of the said Act, it is mentioned that the duty imposed under the said Section shall unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition provided that if the Central Government is of the opinion that the domestic industry has taken the appropriate measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition. Further, it is also provided that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed. Accordingly, it was not in anticipation that imposition of safeguard duty will be extended since there was already a sun-set clause up to 29.07.2020 provided in the first Notification. As per the Section 3 of the Customs Tariff Act, 1975, it is submitted that levy of additional duty equal to excise duty, sales tax, local tax and other charges.
- 2.10. It is submitted that above subject to the Rules and Regulations of the Central Government. Referring to the said Rules titled '*Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997*', it is submitted that under Rule 18 of the said Rules, the Director General has the power to review the continuation of the imposition of the safeguard duty from time to time, on being satisfied that on the basis of information received. Moreover, sub-rule (3) mentions that provisions of Rules 5, 6, 7 and 11 shall *mutatis mutandis* apply in the case of review.
- 2.11. It is further submitted that Rule 5 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 pertains to 'Initiation of Investigation', whereby except as provided in sub-rule (4), the Director General on receipt of a written application by or on behalf of the domestic producer of like article or directly competitive article, initiate an investigation to determine the existence of



"serious injury" or "threat of serious injury to the domestic industry caused by the import of an article in such increased quantities, absolute or relative to the domestic production. However, it is also necessary for the Director General to examine the accuracy and adequacy of the evidence prior to any such investigation. It is further submitted that Rule 6 of the aforesaid Customs Tariff Rules pertains to 'Principles governing investigations' and provisions pertaining thereto are provided. Rule 7 of the said rules deals with 'Confidential Information', which is not of much concern whereas; Rule 11 is regarding 'Final Findings' and provides that the Director General to also give recommendations regarding amount of duty, details of facts and law, reasons which have led to the conclusion, issuance of public notice recording final findings with copy of to the Central Government.

- 2.12. It is argued that as noted above 'Review' under Rule 18 of the *Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997* is an independent process to be undertaken in accordance with relevant applicable provisions under the statute and Rules & Regulations made thereunder. Accordingly, it is not an original process and referring to the Initiation Notification No. F. No. 22/1/2020-DGTR dated 03.03.2020 in Case No. (SG) 01/2020 of the Additional Secretary & Directorate General of Trade Remedies, Department of Commerce, Ministry of Commerce & Industry, Government of India which pertains to 'Initiation of Review' Investigation for continued imposition of Safeguard Duty on imports of Solar Cells whether or not assembled in modules or panels into India, it is submitted that an application for review and extension being filed under Rule 18 of the *Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997* by certain applicants, said review was initiated, wherein Period of Investigation, Source of Information, Submission of Information, address to submitting the same, time limit, confidentiality, inspection of public file etc. is mentioned. It is argued that at the time of bid submission, such review was not contemplated by the Petitioner.
- 2.13. After issuance of above 'Initiation of Review', an Order is passed in that regard. Referring to the 'Final Findings' of review investigation vide Notification dated 18.07.2020 in Case No. (SG) 01/2020 of the Ministry of Commerce & Industry, Department of Commerce (Directorate General of Trade Remedies), Government of India. Referring to para 7, it is submitted that the Directorate General on basis of written application referred in para 1 initiated a review investigation in accordance

with Section 8B of the Act, read with Rule 18 of the Rules for examining the need for continued imposition of safeguard duty on the 'Product Under Consideration' after having satisfied itself on the basis of prima facie evidence submitted by the applicants regarding evidence of serious injury and that the domestic industry is adjusting positively. The Notice of Initiation (NOD No. F.NO.22/1 /2020-DGTR dated 03.03.2020 was issued and in accordance with Rule 18 read with sub-rules (2) and (3) of Rule 6 of the said Rules, a copy of the NOI dated 03.03.2020 with copy of a Non-confidential version of the application dated 15.01.2020 filed by the Domestic Industry were forwarded to the Central Government. Further, a questionnaire seeking information from the interested parties as prescribed under Rule 6 (4) was forwarded to the interested parties with a request to make their views known in writing within 30 days from the date of issue of the NOI. Referring to para 9, it is submitted oral hearing was kept and list of submission received from different parties is stated after hosting the list of all the interested parties. Moreover, hearing was held on 03.07.2020. Accordingly, it is submitted that principles of natural justice were followed. Referring to 'Conclusion' and 'Recommendations' it is submitted that the Directorate General of Trade Remedies having examined and analysed made its recommendations and submitted that it needs to be noted that till this stage it is merely at recommendation stage. Thereafter, with consideration of said recommendations of the Director General, the Central Government issued Notification No. 02/2020 dated 29.07.2020 whereby; Safeguard Duty was imposed at the rate 14.90%, *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 30.07.2020 upto 29.01.2021 (both days inclusive) and at the rate 14.05%, *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 30.01.2021 upto 29.07.2021 (both days inclusive).

- 2.14. It is further submitted that thus safeguard duty was continued and made applicable from 30.07.2020 as per the new Notification by the Central Government although as per previous Notification dated 30.07.2018 it was to end on 29.07.2020. Referring to said Notification dated 30.07.2018, it is submitted that in first para it is clearly stated "*..... of the First Schedule to the Customs Tariff Act for period of two years at the rate specified hereinbelow.....*". Hence, it was very clear that vide above Notification safeguard duty that was imposed was for 2 years and thereafter, no safeguard duty applicable on the import of Solar Cells. Ld. counsel for the Petitioner

also further referred the said Notification regarding different rates of safeguard duty for different periods as under:

*"..... hereby imposes on subject goods falling under heading 8541 or tariff item 8541 40 11 of the First Schedule to the Customs Tariff Act, when imported into India, a safeguard duty at the following rate,*

*namely:-*

*(a) 25% ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30.07.2018 to 29.07. 2019 (both days inclusive);*

*(b) 20% ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30.07.2019 to 29.01.2020 (both days inclusive); and*

*(c) 15% ad valorem minus anti-dumping duty payable if any, when imported during the period from 30.01.2020 to 29.07.2020 (both days inclusive).*

*....."*

2.15. Thus, as per above Notification dated 30.07.2018, legal status with regard to safeguard duty prevailing on bid deadline date being 06.02.2019 was transparent & clear that safeguard duty is applicable upto 29.07.2020.

2.16. However, pursuant to new legislative enactment vide Notification in July-2020, the Petitioner has incurred additional cost and details of same are already provided in the Petition. It is also submitted that as per annexure to CA certificate dated 10.06.2021 providing details of Customs duty, Challan Number, date of payment, total quantity in Watt of modules, Exchange Rate, Assessable Value, Safeguard Duty amount, GST on SGD as well as Modules are provided and thereby the Petitioner has paid total actual amount of Rs. 48,83,10,075/- and after adjustment, it works out to Rs. 48,80,59,455/-. It is also submitted that the proof of payment of the same till the date of filing of the present Petition is also filed. It is also submitted that any subsequent imports that may be made pursuant to the imports already captured and on which the safeguard duty shall be payable. the same may be also considered for claim under change in law. It is also submitted that all the requisite documentary proofs evidencing the payment of safeguard duty in relation to the said imports shall be reconciled by the Respondent.

2.17. It is also submitted that the imposition of the safeguard duty is also covered under Article 9.1.1 (a) of the PPA, being enactment of law and hence the Petitioner is entitled to relief under Article 9.2.1 of the PPA. It is also submitted that the costs of



the Petitioner have increased and hence they are entitled to reimbursement for the increased costs either as one-time amount or by way of tariff increase.

- 2.18. It is further submitted that the Ministry of Power vide its letter dated 27.08.2018 has issued the directives Under Section 107 of the Electricity Act, 2003 to the Central Electricity Regulatory Commission that, any change in the domestic duties, levies, cesses and taxes imposed by the Central Government, State Government or Union territories or any Governmental instrumentality which leads to corresponding changes in cost may be treated as 'Change in Law' and be allowed as pass through. Thus, the basis of such letter as issued by the Ministry of Power, safeguard duty being a domestic duty ought to be treated as pass through and thereby allowed as a change in law.
- 2.19. With regard to the objection raised by the Respondent that no documents / details are provided by the Petitioner against the claim raised in this Petition, it is submitted that the same is not correct and referring to table filed in the Petition it is pointed out that details such as copy of EPC contract, copy of invoices, copy of material supply, copy of invoices for modules, Auditor's certificate, copy of certificate issued by Chartered Engineer, original Solar module procurement plan considered at the time of submission of the bid, SGD payment challans, bills of entries, invoices for loading / transportation, unloading bills/receipts etc. are already provided to the Respondent. Hence, it is not correct on part of the Respondent that data / details / documents are not provided.
- 2.20. Referring to the Clause No. 5.7.1 of the *"Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects"* issued by the Ministry of Power vide Resolution No. 23/27/2017-R&R-I dated 03.08.2017, it is submitted that as per the guidelines provide that in the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator 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 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 and shall be effective from such date as may be decided by the Appropriate

Commission. Thus, the Petitioner is required to be placed in same economic position as it would have been in case Change in Law event has not occurred. Therefore, the Petitioner is also entitled to carrying cost for the period from actual payments made till decision by this Commission.

2.21. In response to 152 MW DC capacity Solar modules installed against supply of 105 MW AC contracted capacity, it is submitted that the very nature of Solar generation is such that technically for supply of 105 MW AC capacity, higher DC capacity is required. Moreover, during the day period there is no consistent generation. The Petitioner is able to install / setup higher DC capacity so as to generate the Solar energy up to CUF committed by the Petitioner and agreed to provide technical details in this regard through affidavit. It is further submitted that the Petitioner has provided all the details regarding DC capacity of the solar modules already purchased and the safeguard duty paid on the module imported by the Petitioner, which needs to be considered as pass through as per the provisions of the 'Change in law'. Referring to judgment dated 16.11.2021 passed by the Hon'ble APTEL in Appeal No. 163 of 2020 in *Nisagra Renewable Energy Private Limited v. MERC & Ors.*, it is submitted that said aspect is decided by the Hon'ble APTEL.

2.22. With regard to query of the Commission about approval by Board of Directors of the Petitioner company regarding timelines for procurement of solar modules, approval of capital cost projections including funding, approval of bidding parameters, its assumptions, other evidences of planning regarding import of solar modules after 29.07.2020, it is submitted that it was decided by the Petitioner to consider & factor the taxes prevailing at the time of bid submission on 06.02.2019 and in so far as procurement plan for import of solar modules, the same is done as per the 'Prudent Utility Practice', whereby solar panels are procured near to the Commercial Operation date and not earlier. With regard to evidence that safeguard duty was not considered at time of bidding, it is submitted that the SCOD as per PPA executed was 22.11.2020 and therefore, it was clearly known to the Petitioner at time of bid submission that even if Solar modules are procured after 29.07.2020 it will be possible to achieve commissioning in time and also Safeguard duty as per earlier notification was upto 29.07.2020, the same will not be applicable. Further the Petitioner referring to definition of 'Prudent Utility Practices' as mentioned in the PPA, which reads as under:

“ ....

*Prudent Utility Practices" shall mean those practices, methods, techniques and standards that are generally accepted for use in electric utility industries taking into account conditions in India and commonly used in prudent electric utility engineering and operations to design engineer, construct, test, operate and maintain equipment lawfully, safely, efficiently and economically as applicable to power stations of the size, service and type of the Project and that generally conform to the manufacturers ' operation and maintenance guidelines.*

....”

2.23. It is submitted that the Petitioner issued Letter of Intent dated 13.09.2019 to M/s ReNew Solar Energy (Jharkhand One) Private Limited followed by execution of Supply Agreement dated 26.11.2020 for supply of equipment & materials for ground mounted solar PV plant with capacity of 105 MW<sub>AC</sub> / 152.25 MW<sub>DC</sub>.

2.24. In response regarding the commissioning date (COD) of the project and extensions, if any, allowed by the Respondent, it is submitted that originally as per the PPA the SCOD was 22.11.2020 but subsequently an extension has been granted by the Respondent GUVNL due to COVID and the actual date of commissioning of the project is 10.04.2021. Moreover, the actual imports of Solar modules by the Petitioner is during 11.01.2021 to 16.02.2021. It is also agreed to provide details as may be required by the Commission to demonstrate that the Petitioner proceeded on the basis that Solar modules to be imported after 29.07.2020 alongwith other details as may be required.

3. Ld. Adv. Ms. Harsha Manav on behalf of the Respondent referring to Notification dated 30.07.2018 issued by the Department of Revenue, Ministry of Finance, Government of India submitted that safeguard duty was applicable on 16.02.2019, which was the last date of bid submission / bid deadline and although rates of safeguard duty were stated upto 29.07.2020 but thereafter, vide Notification dated 29.07.2020, there is reduction in rates of safeguard duty. It is also submitted that the definition of 'Change in law' is stated in Article 9.1 of the PPA, whereas, Article 9.2 provides for the relief in regard to any 'Change in Law' event, which read as under:

" .....

*9.1.1. Change in Law" shall refer to the occurrence of any of the following events after the Bid Deadline*

*a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties, charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.*

*b) Introduction / modifications / changes in rates of Safeguard Duty and/or Antidumping Duty which have direct effect on the project cost.*

*....”*

## *9.2 Relief for Change in Law*

*9.2.1 In case Change in Law on account of 9.1.1 (a) above results in the Power Producer's costs directly attributable to the Project being decreased or increased by one percent (1%) of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Power Producer shall be appropriately increased or decreased with due approval of GERC.*

*9.2.2 In case of Change in Law on account of 9.1.1 (b) above, the Power Producer shall be allowed an increase/ decrease in tariff of 1 paise / unit for every increase / decrease of Rs. 2 Lakh per MW in the Project Cost which shall be allowed upon submission of proof of payment made by the Power Producer towards safeguard duty and/or anti-dumping duty to the concerned Authority and with due approval of GERC.*

*.....”*

- 3.1. Since, the Petition filed by the Petitioner is related to above Article 9.1.1 read with Article 9.2.2 and 9.2.3 of the PPA, it is necessary for the Petitioner to provide all relevant details including documentary evidence and hence, the Respondent in its reply has sought various details. It is submitted that original module procurement plan considered at the time of submission of bid, copies of EPC Contract/Agreement with material supplier, original delivery schedule for supply of modules substantiating that the scheduled delivery date with conclusive proof that such delivery was outside the operative period of Government of India Notification dated 30.07.2018 is required. However, all relevant details are not filed in support of the claim raised in this matter.



- 3.2. It is further submitted that as per the provisions of the PPA, the Petitioner was required to achieve financial closure within 12 months and Commercial Operation Date within 18 months from the date of signing PPA. Accordingly, the Petitioner ought to have planned and arranged its affairs in order to meet the aforesaid timelines for which necessary details & documents for substantiating / evidencing the same is necessary but all such details along with other details are not submitted by the Petitioner. It is very clear that timelines of import of Solar modules is very important and hence details regarding scheduled date of delivery and actual date supported by bill of entry is required to establish the fact that the solar panels are procured on such dates.
- 3.3. Accordingly, there is an apprehension that with consideration of very limited period of 3 months between delivery after 30.07.2020 and Scheduled Commercial Operation date (SCOD) of the project on 22.11.2020 and import of solar panels having substantial capacity itself makes it clear that the actual date of import cannot be after 29.07.2020 because otherwise it cannot reasonably be assumed that SCOD can be achieved within the given time period. Hence, what was the planned date of import which would not have caused any impact to the Petitioner in terms of Notification No. 01/2018 dated 30.07.2018 needs to be ascertained as substantial capacity installation & commissioning of same appears to be planned by the Petitioner within a gap of 3-4 months or whether some part of it was already considered in the computation while quoting tariff requires detailed submissions of facts for verification by the Respondent to enable filing further submissions.
- 3.4. It is further submitted that the risk factored by the Petitioner at the time of quoting tariff and submission of its bid needs to be provided alongwith other details sought by the Respondent in para 18 of its reply for which necessary directions need to be passed by the Commission for filing of same by the Petitioner.
- 3.5. The details that are sought by the Respondent are:
- (a). *Copy of EPC contract executed between the Petitioner and M/s ReNew Solar Energy (Jarkhand One) Pvt Ltd. and copy of Invoices raised by the M/s ReNew Solar Energy (Jarkhand One) Pvt Ltd. under the EPC contract*
  - (b). *Copy of Material Supply Agreement of the ReNew Solar Energy (Jarkhand One) Pvt Ltd with original suppliers i.e. Jinko and Longi.*



- (c). *Copy of invoices raised by above Chinese supplier(s) for material supplied.*
- (d). *Auditors Certificate of a practicing Chartered Accountant substantiating and supporting the claim of the Petitioner regarding Safeguard Duty and clearly certifying that the payment of total duty claimed in the present petition is in respect of modules installed in the 105 MW Solar Project under PPA dated 22.05.2019 signed between GUVNL and the Petitioner. There is no reference of PPA in Chartered Accountant certificate submitted through additional affidavit;*
- (e). *The certificate of independent Engineer / Chartered Engineer empanelled by MNRE certifying one to one correlation between modules imported and installed at project site i.e. the same modules which are imported and on which the payment of safeguard duty has been claimed have been installed at the project site. There is no reference of Bill of Entry or PPA in the certificate of chartered engineer submitted through additional affidavit.*
- (f). *Original Solar Module procurement plan considered at the time of submission of bid, copies of EPC Contract / Agreement with material supplier, original delivery schedule for supply of modules substantiating that the scheduled material procurement / delivery was outside the operative period of Government of India notification dated 30.07.2018;*
- (g). *Safeguard Duty Payment Challans, Bills of Entry, Invoices, Loading-Transportation-Unloading Bills/receipts etc. for substantiating the Petitioner's claims along with traceability (i.e. one to one correlation)*
- (h). *Whether the petitioner has benefited due to reduction in other applicable taxes/ duties/ cess etc. or not.*

3.6. In response to the query of the Commission pertaining to any deviation(s) and approval of the Commission, it is submitted by the Respondent GUVNL that all prospective bidders were informed and it is left to them for consideration of same prior to bidding.

4. Responding to above submissions / contentions raised by the Respondent GUVNL, Ld. counsel for the Petitioner submitted that the Petitioner has already filed bill of entry wherein safeguard duty amount is shown as Rs. 1,13,03,574/- as well as Rs. 44,62,963/- towards IGST @ 5% on said amount totaling to Rs. 1,57,66,537/-.

Moreover, corresponding challans as well as 'Payment transaction status receipt' is also filed.

- 4.1. With regard to planning / schedule for import of solar panels, the Petitioner has submitted the EPC contract and Schedule 8 of the EPC contract provides the implementation schedule of the project alongwith other details. In response to query from the Commission that the location is mentioned in Sr. No. 0 under 'Task Name' of above Schedule as "*Jaisalmer Rajasthan / GUVNL*", Ld. counsel for the Petitioner submitted that it being an inadvertent typographical error needs to be rectified by the Petitioner and agreed to file the same through affidavit.
- 4.2. Referring to para 15 of the Order dated 05.03.2021 passed by the Maharashtra Electricity Regulatory Commission (MERC) in Case No. 218 of 2018, it is submitted that the MERC, while allowing the said Petition has granted relief to the Petitioner in a similar matter of 'Change in Law'.
- 4.3. It is submitted that considering the present Petition filed due to Change in Law Event pursuant to imposition of Safeguard Duty through new / fresh Notification by the Government of India, the Commission may admit the matter.
5. Heard the Ld. counsels appearing for both the parties. We note that the Petitioner and the Respondent GUVNL have entered into Power Purchase Agreement dated 22.05.2019 for generation and supply of 105 MW AC power from Solar PV based project of the Petitioner.
- 5.1. The Petitioner has filed present Petition under Section 86 of the Electricity Act, 2003 readwith Article 9 of aforesaid PPA, seeking declaration that imposition of safeguard duty on the import of Solar modules as 'Change in Law' in terms of the PPA leading to an increase in project cost.
- 5.2. We note that in the present matter, the Petitioner M/s ReNew Sun Energy Private Limited is a developer for setting up 105 MW Solar PV based Power Project after being selected as successful bidder by the Respondent GUVNL under Competitive Bidding Process and the Petitioner has entered in to Power Purchase Agreement (PPA) dated 22.05.2019 with the Respondent GUVNL. Accordingly, the Petitioner is a generating company under Section 2 (28) of the Electricity Act, 2003. We also

note that the Respondent GUVNL is a licensee which is to procure power from the aforesaid 105 MW Solar PV based Power Project of the Petitioner in terms of PPA executed between the parties. Thus, the issue involved in the present matter between the Petitioner and the Respondent pertains to the terms & conditions of the PPA executed between them pertaining to 'Change in Law' events. Thus, the issue involved in present matter is between a Generating Company and licensee and hence, this Commission has jurisdiction to decide the same under Section 86 of the Electricity Act, 2003. Hence, we decide to admit the Petition.

5.3. We note that the Respondent has sought certain details but according to the submissions made by the Petitioner, relevant details are already filed. However, any details that are not filed needs to be filed by the Petitioner alongwith relevant details agreed to be filed by the Ld. counsel for the Petitioner. Moreover, while filing the same, the Petitioner is also required to submit the following documents / evidence for verification of the claim of the Petitioner, if not already filed:

- (i) RFID Details
- (ii) CEIG certificate
- (iii) Commissioning Certificate
- (iv) Project specific documents;
- (v) Detailed breakup of the project cost incurred with item-wise break-up for the project;
- (vi) Detailed Calculations sheet with Safeguard duty and GST calculations;
- (vii) Details of interest cost with (a) Details of debt, (b) Details of Equity, (c) Details of Debt sanctioned along with the terms and conditions of Debt approval, (d) Release of Debt/Debt availed, (e) Original documents of the assumption while bidding carried out by the Petitioner with consideration of different items considered including Solar Module cost, Inverter cost, balance of plant cost etc. and the same was approved by Board or Management of the Petitioner company and it is part of loan documents etc.
- (viii) Capacity in DC of Solar Modules actually installed and commissioned for Solar generation on which safeguard duty is paid including GST paid thereon,
- (ix) Entire copy of the Original Contracts consisting of different clauses including Performance guarantees, delivery schedule, liquidated damages etc. and any amendments made thereto between (a) the Petitioner company and EPC Contractor & (b) EPC contractor with Equipment suppliers;

6. Since, the matter is heard by the Commission, the prayer in IA No. 17 of 2021 in Petition No. 1966 of 2021 regarding listing the said Petition is satisfied and hence, IA No. 17 of 2021 filed by the Applicant/Petitioner is accordingly, disposed of.
7. Next date of hearing will be intimated separately.
8. Order accordingly.

**Sd/-**  
**[S. R. Pandey]**  
**Member**

**Sd/-**  
**[Mehul M. Gandhi]**  
**Member**

**Sd/**  
**[Anil Mukim]**  
**Chairman**

Place: Gandhinagar.  
Date: 09/06/2022.

