



levied CG Environment Cess and Development Cess, each, at ₹ **7.50/Tonne** of coal extracted as on the Cut-off Date, i.e., 26.10.2015. The same now stands revised each at ₹ **11.25/Tonne** of coal extracted with effect from 00:00 hrs of 04.09.2019, which was after the Cut-off Date and was intimated to the Petitioner by SECL vide its Notification No. SECL/BSP/M&S/19-20/1673 dated 11.10.2019 and Notification No. SECL/BSP/M&S/19-20/1704 dated 17.10.2019.

20. The Chhattisgarh Act and its subsequent amendments, mandate the holder of a mining lease to make payments at the stipulated rates towards CG Environment Cess and CG Development Cess respectively. The Petitioner, being engaged in the business of power generation, was not liable to bear the incidence of such levies. However, subsequent to the above Gazette Notifications, SECL served the Notifications dated 11.10.2019 and 17.10.2019 upon the Petitioner and directed the procurer of Coal (in this case, the Petitioner) to pay for the revised rates of CG Environment Cess and CG Development Cess on Coal supplies made from 04.09.2019.
21. The date of 'amendment' of any law unambiguously qualifies as a 'Change in Law' event under the provisions of the NPCL PPA. The relevant excerpts from the NPCL PPA are reproduced hereunder:

"13.1 Definitions

In this Article 13, the following terms shall have the following meanings:

13.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Effective Date:

i. The enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Law; or"

Now the issues arises that whether SECL is entitled to recover these increased charges from the Petitioner.

22. The Hon'ble APTEL has vide its Judgement dated 29.01.2020 in **Appeal No. 284 of 2017 and Appeal No. 09 of 2018: Adani Power Rajasthan Ltd. vs. RERC (Paragraph 46)** concurred with the Orders of the Hon'ble CERC for recognizing the change in the rates of CG Environment Cess and CG Development Cess as 'Change in Law' events. The relevant extract from the above Judgement is reproduced herein below for the ease of reference of this Hon'ble Commission:



"46. 'CG Paryavaran Upkar' and 'CG Vikas Upkar' was introduced by Notification dated 16.06.2015 issued by Chhattisgarh Government under Section 8 of Chhattisgarh Adhosañrachna Vikas Evam Paryavaran Upkar Adhiniyam, 2005. This was followed by order issued by Joint Secretary of MoEF dated 28.04.2016 wherein a direction was given to comply with the said amendments made by State Government or Union Territories. Though not exact levy but in principle such Change in Law event was allowed by this Tribunal in Appeal No. 119 of 2016 by its judgment dated 14.08.2018. In the order dated 15.03.2016, the Commission opined that the said claim for forest tax could not be allowed on the ground that forest tax is in the nature of a fee, which does not amount to Change in Law, but setting aside the said opinion, this Tribunal opined that levy of such fee/tax could not have been factored in by the bidder at the time of submitting bid. In other words, such tax or fee could not have been factored in at the time of submission of the bid, therefore this Tribunal in the above said judgment opined that levy of forest tax or fee cannot be considered as part of pricing mechanism for coal, therefore it cannot form part of CERC escalation rates for coal. Therefore, any such increase in expenses related to coal due to such levy must fall within Change in Law in terms of Article 10.1.1 of PPA, hence, allowed the said claim. Since this Judgment covers the field on this point as on today, we allow the said 'CG Paryavaran Upkar' and 'CG Vikas Upkar' as Change in Law event, in favour of Adani Power."

23. Further, it is pertinent to refer to the Judgment dated 21.12.2018 issued by the Hon'ble Appellate Tribunal of Electricity ("Hon'ble APTEL") in I.A. No. 449 of 2018 and Appeal No. 193 of 2017: GMR Kamalanga Energy Limited vs. CERC & Ors. this Commission has in its Order 29.05.2020 issued in Petition 1440 of 2019: DIL vs. NPCL duly taken into account the aforesaid Judgment of the Hon'ble Tribunal dated 21.12.2018 has observed that Departments, Corporations/Companies like CIL formed under different Statutes are Indian Government Instrumentalities. The relevant excerpts from the afore-mentioned Order dated 29.05.2020 are set out herein below:

"58. The Hon'ble Appellate Tribunal dated 21.12.2018 in Appeal No. 193 of 2017: GMR Kamalanga Energy Ltd. & Anr. vs. CERC &



Ors. has held that departments, corporations / companies like Coal India Limited or Indian Railways formed under different statutes are Indian Government Instrumentality and notifications issues by these Indian Government Instrumentalities have force of law."

24. Therefore, the Notifications dated 11.10.2019 and 17.10.2019 pertaining to the revision in the rates of CG Environment Cess and CG Development Cess, issued by SECL, being a Government Instrumentality, pursuant to the Gazette Notification dated 04.09.2019, has the force of law and qualify as 'Change in Law' events and 04.09.2019 is to be considered for the implementation of such amendment and/or revision in the rates. Accordingly, the Petitioner is entitled for compensation as per the provisions of Article 13 of the NPCL PPA.

The second issue to be dealt with is whether Coal price increase through index cover the Change in law impact covered by SECL Notifications.

25. The Hon'ble APTEL in its Judgment dated 12.08.2021 in **Appeal No. 22 of 2019: TANGEDCO vs CERC & Ors.** and **Appeal No. 58 of 2019: BALCO vs CERC & Ors.** has clarified that the Escalation Indices cover only the base price of Coal and freight and do not cover any component of taxes, duties or cess. The relevant excerpts from the above Judgment are reproduced below:

"45....

In view of the aforesaid, It is submitted that the escalation index does not factor at all any component of taxes/ duties/ cess. Instead, the said index is only based upon the base price of coal. The change in the base price of coal is not allowed as change in law, and as such there is no correlation between compensation under escalation index and compensation under change in law. As such, TANGEDCO cannot be permitted to take the aforesaid argument.

...

Findings and analysis

....

51. We note the submission of the BALCO that Article 15.8.1 of the PPA only mandates that BALCO to make payment of statutory taxes, duties, levies and cess. However, this does not mean that after making the said payment of statutory charges BALCO is not entitled to claim compensation under change in law, as per Article 10, in the event of

✱
/

2

2



increase in, or introduction of, any change in law component after the cut-off date.

...
ORDER

In view of the foregoing, we pass the following order:

i) The decision of the Central Commission to allow compensation in respect of the following seven (7) items on account of change in law is as per the relevant provisions of the PPA, regulations on the subject and is as per law.

- ...
3. Increase in Environment Cess /Paryavaran Upkar;
4. Change in Infrastructure Development Cess;

26. Therefore, the Commission is of the view that the CERC Escalation Indices applicable for domestic Coal are derived from the base price of the domestic Coal and do not include any component of taxes, duties, levies etc.

Commission's View

27. Therefore, the Commission upholds that the Notification No. SECL/BSP/M&S/19-20/1673 dated 11.10.2019 and Notification No. SECL/BSP/M&S/19-20/1704 dated 17.10.2019 as issued by SECL; thereby increasing the CG Environment Cess and CG Development Cess applicable of Coal charges as 'Change in Law' events within the meaning of Article 13 of the NPCL PPA and allow compensation on account of 'Change in Law' w.e.f. 04.09.2019 for FY 2019-20 and onwards.

28. In view of the above, the Commission approves the claim for FY 2019-20 due to increase in CG Environment Cess and Development Cess (including carrying cost) is as shown in the table below:

Table 43: Total compensation claimed on account of Change in Law Events (Rs. Crore)

Particulars	FY 2019-20
Claim due to increase in CG Environment Cess & Development Cess	0.27
Applicable carrying cost on above till 30.09.2020	0.02
Total amount claimed	0.30

29. The summary of total approved amount under all 'Change in Law' events for FY 2019-20 is as shown in the following table:



Table 4: Total approved Claim under Change in Law during FY 2019-20 (Rs. Crore)

Particulars	FY 2019-20
Clean Energy/Environmental Cess	11.24
DMF @ 30% on Royalty	2.25
NMET @ 2% on Royalty	0.15
Stowing Excise Duty	-0.56
CG Environment Cess	0.14
CG Development Cess	0.14
Excise Duty	-3.22
Central Sales Tax	-1.36
IGST for Coal Charges	3.87
Busy Season Charges	-6.51
Development Surcharge	-3.22
Coal Terminal Surcharge	0.00
Service Tax/IGST on Freight Charges	0.65
Claim for Cost of use & Procurement of Washed Coal	0.37
Total approved Claim under Change in Law events	3.93

The Petition is disposed off in terms of above.

(Vinod Kumar Srivastava)
Member

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow

Dated: 02.08.2022

64

100