



10. Petitioner's affidavit dated 10.5.22 as per Commission's Order 8.2.22

- a. The petitioner has placed agreement dated 1.6.14 and 1.12.19 executed between Azure Power India Pvt. Ltd. and Azure Surya Pvt. Ltd. for O&M for 10 MW solar project.
- b. The O&M agreement dated 1.6.14 was executed after negotiations between petitioner company and Azure Power with fixed fee including consumables and spares. Subsequently on 1.12.19 in suppression of O&M agreement, service agreement was negotiated and executed to provide management services for O&M of project. These services included managerial supervision, performance analysis, legal and compliance services, revenue and cost budgeting and monitoring of process execution and on sight supervision.
- c. The PPA does not have any express or separate provision regarding O&M cost and the PPA stipulates single part tariff for power supplied by petitioner.

11. UPPCL reply 1.6.22 to the petitioner affidavit dated 10.5.22

- a. The O&M agreement dated 1.12.14 and service agreement dated 1.12.19 are not registered, though the Commission had directed to file copy of registered O&M agreement. The agreements have been signed with a group company and not a third party.
- b. There has been no newspaper publication of notice inviting tender for selection of O&M outsourcing company against the petitioners' selection as a successful bidder in competitive bidding.
- c. The tariff determined through competitive bidding process is all inclusive tariff and not divided into component like plants set up under 62 of Electricity Act.
- d. The petitioner has wrongly relied on judgement dated 27.4.21 passed in CGPL vs. CERC in Appeal no.172/17 by Hon'ble APTEL.

12. Petitioner rejoinder dated 7.7.22 to UPPCL reply dated 1.6.22

- a. Petitioner was not required to have O&M agreements registered as per section 17 of Registration Act, 2017.



- b. There is no prohibition in PPA or RFP from outsourcing O&M of the project. The PPA merely requires the petitioner to commence supply of power by schedule date and to continue such supply during the term of PPA. The petitioner was not bound to award O&M agreements only by way of competitive bidding under Electricity Act, 2003.
- c. The phrase 'for supply of power' used in change in law clause has to be construed widely to include all direct and indirect activities undertaken by petitioner for generation and supply of power under the PPA including input cost of generation.
- d. The petitioner has furnished legitimate and binding documents in support of its claim including actual invoices raised upon petitioner showing levy of increased taxes and CA certificate endorsing such increase in tax.

Commission's analysis and decision

13. The captioned petition has been filed by the Petitioner seeking a declaration the following events as 'Change in Law events' in terms of Article 12 of the PPA and a relief in the form of increase in tariff to compensate for the alleged additional expenditure suffered by them because of these change-in-law events:

Old tax law	Old tax rate	New tax law	New tax rate	Applicable period for new tax law
Finance Act, 2012	12.36%	Finance Act, 2015	14%	1.6.2015-14.11.2015
Finance Act, 2015	14%	Imposition of Swachh Bharat Cess by Notification no.21/2015-ST, dated 6.11.15 issued by Ministry of Finance, Government of India	14.5%	15.11.2015-31.5.2016
Finance Act, 2015	14.5%	Imposition of Krishi Kalyan Cess by Finance Act, 2016	15%	1.6.2016-30.6.2017
Finance Act, 2016	15%	The Central Goods and Services Tax, 2017	18%	1.7.2017- till date

- 2.1 Article 12 of the PPA along with the definition of 'Law' there

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under is excerpted below:

""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 an Indian Government Instrumentality pursuant or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions,"

"ARTICLE 12: CHANGE IN LAW

12.1 Definitions

In this Article 12, the following terms shall have the following meanings:

12.1.1 "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/non-recurring expenditure by the SPP or any income to the SPP:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such law:*
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier,*



- *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPP;*
- *any change in tax or introduction of any tax made applicable for supply of power by the SPP as per the terms of this Agreement.*

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SPP or (ii) any change on account of regulatory measures by the Appropriate Commission, including calculation of Availability.

12.2 Relief for Change in Law

12.2.1 *The aggrieved Party shall be required to approach the State Commission for seeking approval of Change in Law.*

12.2.2 *The decision of the Appropriate (State) Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties."*

14. The Commission observes from above that as per Article 12, "Change in Law" means the enactment/adoption/promulgation/ amendment/ modification or repeal of any Law in India; Change in the interpretation of any Law in India; imposition of a requirement for obtaining any consents or Change in tax or introduction of any tax made applicable for supply of power by the SPP as per the terms of this Agreement, resulting into any additional recurring/ nonrecurring expenditure or any income to the SPP.



15. The "GST laws" enacted are not only in the nature of a mere change in the tax having limited applicability on supply of power rather it is in the nature of an enactment having wide ranging implication on the entire indirect taxation regime in India. Various laws were subsumed and repealed.

16. In the instant case the "GST Laws" have been enacted by the Government instrumentalities i.e., by the Act of Parliament and the states. The change in duties/ tax imposed by various Governments instrumentalities at Centre and State level has resulted in the change in cost of the inputs required for supply of power and hence the same is to be considered as "Change in Law".

17. The Commission holds that the events mentioned at Para 13 are the change in law events in the instant case and the Commission has its jurisdiction to adjudicate the issue.

18. The real issue being whether the petitioner is entitled to the benefit of change in law event in the instant case, has been dealt with in the succeeding paragraphs.

Issue: whether the petitioner is entitled to the benefit of change in law event

19. The Petitioner has referred to the Hon'ble APTEL judgment dated 15.09.2022 passed in *Parampujya Solar Energy Pvt. Ltd. and Anr. V. CERC and Ors.*, Appeal No. 256 of 2019 ("**Parampujya Judgment**"), wherein, the Hon'ble APTEL has relied upon the CGPL Judgment to not only hold that the Ld. CERC erred in rejecting the claim of various solar developers towards increase in GST and service tax on outsourced O&M expenses.

20. The relevant paragraphs of the Parampujya Judgment are excerpted below for convenient reference:

"103. The Central Commission by the impugned orders, has kept out the expenditure additionally arising on account of increase in tax liability attributable to Operation & Maintenance ("O&M") contracts from the