

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**Appeal No. 210 of 2019 & IA Nos. 2034 and 1241 of 2023  
Appeal No. 211 of 2019 & IA Nos. 2035 and 1240 of 2023  
Appeal No. 212 of 2019 & IA Nos. 1131, 667 and 2036 of 2023  
&  
Appeal No. 213 of 2019 & IA Nos. 2037 and 1239 of 2023**

**Dated: 09<sup>TH</sup> February, 2024**

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**Appeal No. 210 of 2019 & IA Nos. 2034 and 1241 of 2023**

**In the matter of:**

- 1) Southern Power Distribution Company of Andhra Pradesh Ltd.  
D/No. 19-13-65/A, Srinivasa Puram,  
Thiruchanoor Road, Kesavayana Gunta,  
Tirupathi – 517503, Andhra Pradesh.
- 2) Eastern Power Distribution Company of Andhra Pradesh Ltd.  
P&T Colony, SeetammaDhara,  
Vishakhapatnam – 503013. ...Appellant(s)

Vs.

- 1) Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110001  
(Through the Secretary)
- 2) Solar Energy Corporation of India Ltd.  
1<sup>st</sup> Floor, A-Wing, D-3,  
District Centre, Saket,  
New Delhi 110017  
(Through the Chairman & Managing Director)

3) ACME Hisar Solar Power Private Ltd.  
Plot No. 152, Sector – 144,  
Gurugram, Haryana – 122002.  
(Through the Chairman)

...Respondent(s)

Counsel for the Appellant(s) : Mr. Sidhant Kumar  
Ms. Manyaa Chandok

Counsel for the Respondent(s) : Ms. Pritha Srikumar Iyer  
Mr. Sulabh Rewari  
Mr. Arun Sri Kumar  
Ms. Vasudha Sharma  
Ms. Arunima Kedia  
Mr. Kaustav Saha  
Ms. Mansi Binjrajka  
Ms. Neha Mathen for R-1

Mr. M. G. Ramachandran, Sr. Adv.  
Ms. Anushree Bardhan  
Ms. Tanya Sareen  
Ms. Srishti Khindaria  
Ms. Surbhi Kapoor  
Mr. Aneesh Bajaj for R-2

Mr. Aniket Prasoon  
Ms. Shweta Vashist  
Ms. Akanksha Tanvi  
Ms. Priya Dhankar  
Mr. Akash Lamba  
Mr. Shubham Mudgil  
Mr. Rishabh Bhardwaj  
Ms. Aanandini Thakare for R-3

**Appeal No. 211 of 2019 & IA Nos. 2035 and 1240 of 2023**

**In the matter of:**

- 1) Southern Power Distribution Company of Andhra Pradesh Ltd.  
D/No. 19-13-65/A, Srinivasa Puram,  
Thiruchanoor Road, Kesavayana Gunta,  
Tirupathi – 517503, Andhra Pradesh.
- 2) Eastern Power Distribution Company of Andhra Pradesh Ltd.  
P&T Colony, Seetamma Dhara,  
Vishakhapatnam – 503013. ...Appellant(s)

Vs.

- 1) Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110001  
(Through the Secretary)
- 2) Solar Energy Corporation of India Ltd.  
1<sup>st</sup> Floor, A-Wing, D-3,  
District Centre, Saket,  
New Delhi 110017  
(Through the Chairman & Managing Director)
- 3) Azure Power Thirty Six Private Ltd.  
Asset No. 301-4,  
World Mark 3, Aerocity,  
New Delhi – 110017  
(Through the Chairman) ...Respondent(s)

Counsel for the Appellant(s) : Mr. Sidhant Kumar  
Ms. Manyaa Chandok

Counsel for the Respondent(s) : Ms. Pritha Srikumar Iyer  
Mr. Sulabh Rewari  
Mr. Arun Sri Kumar  
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Ms. Arunima Kedia  
Mr. Kaustav Saha  
Ms. Mansi Binrajka

Ms. Neha Mathen for R-1

Mr. M. G. Ramachandran, Sr. Adv.  
Ms. Anushree Bardhan  
Ms. Tanya Sareen  
Ms. Srishti Khindaria  
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Mr. Aniket Prasoon  
Ms. Shweta Vashist  
Ms. Akanksha Tanvi  
Ms. Priya Dhankar  
Mr. Akash Lamba  
Mr. Shubham Mudgil  
Mr. Rishabh Bhardwaj  
Ms. Aanandini Thakare for R-3

**Appeal No. 212 of 2019 & IA Nos. 1131, 667 and 2036 of 2023**

**In the matter of:**

- 1) Southern Power Distribution Company of Andhra Pradesh Ltd.  
D/No. 19-13-65/A, Srinivasa Puram,  
Thiruchanoor Road, Kesavayana Gunta,  
Tirupathi – 517503, Andhra Pradesh.
- 2) Eastern Power Distribution Company of Andhra Pradesh Ltd.  
P&T Colony, SeetammaDhara,  
Vishakhapatnam – 503013. ...Appellant(s)

Vs.

- 1) Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110001  
(Through the Secretary)

- 2) Solar Energy Corporation of India Ltd.  
1<sup>st</sup> Floor, A-Wing, D-3,  
District Centre, Saket,  
New Delhi 110017  
(Through the Chairman & Managing Director)
- 3) ACME Bhiwadi Solar Power Private Ltd.  
Plot No. 152, Sector – 44,  
Gurugram, Haryana – 122002,  
(Through the Chairman) ...Respondent(s)

Counsel for the Appellant(s) : Mr. Sidhant Kumar  
Ms. Manyaa Chandok

Counsel for the Respondent(s) : Ms. Pritha Srikumar Iyer  
Mr. Sulabh Rewari  
Mr. Arun Sri Kumar  
Ms. Vasudha Sharma  
Ms. Arunima Kedia  
Mr. Kaustav Saha  
Ms. Mansi Binjrajka  
Ms. Neha Mathen for R-1

Mr. M. G. Ramachandran, Sr. Adv.  
Ms. Anushree Bardhan  
Ms. Tanya Sareen  
Ms. Srishti Khindaria  
Ms. Surbhi Kapoor  
Mr. Aneesh Bajaj for R-2

Mr. Aniket Prasoon  
Ms. Shweta Vashist  
Ms. Akanksha Tanvi  
Ms. Priya Dhankar  
Mr. Akash Lamba  
Mr. Shubham Mudgil  
Mr. Rishabh Bhardwaj

Ms. Aanandini Thakare for R-3

**Appeal No. 213 of 2019 & IA Nos. 2037 and 1239 of 2023**

**In the matter of:**

- 1) Southern Power Distribution Company of Andhra Pradesh Ltd.  
D/No. 19-13-65/A, Srinivasa Puram,  
Thiruchanoor Road, Kesavayana Gunta,  
Tirupathi – 517503, Andhra Pradesh.
- 2) Eastern Power Distribution Company of Andhra Pradesh Ltd.  
P&T Colony, SeetammaDhara,  
Vishakhapatnam – 503013. ...Appellant(s)

Vs.

- 1) Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110001  
(Through the Secretary)
- 2) Solar Energy Corporation of India Ltd.  
1<sup>st</sup> Floor, A-Wing, D-3,  
District Centre, Saket,  
New Delhi 110017  
(Through the Chairman & Managing Director)
- 3) ACME Karnal Solar Power Private Ltd.  
Plot No. 152, Sector – 44,  
Gurugram, Haryana – 122002,  
(Through the Chairman) ...Respondent(s)

Counsel for the Appellant(s) : Mr. Sidhant Kumar  
Ms. Manyaa Chandok

Counsel for the Respondent(s) : Ms. Pritha Srikumar Iyer

Mr. Sulabh Rewari  
Mr. Arun Sri Kumar  
Ms. Vasudha Sharma  
Ms. Arunima Kedia  
Mr. Kaustav Saha  
Ms. Mansi Binrajka  
Ms. Neha Mathen for R-1

Mr. M. G. Ramachandran, Sr. Adv.  
Ms. Anushree Bardhan  
Ms. Tanya Sareen  
Ms. Srishti Khindaria  
Ms. Surbhi Kapoor  
Mr. Aneesh Bajaj for R-2

Mr. Aniket Prasoon  
Ms. Shweta Vashist  
Ms. Akanksha Tanvi  
Ms. Priya Dhankar  
Mr. Akash Lamba  
Mr. Shubham Mudgil  
Mr. Rishabh Bhardwaj  
Ms. Aanandini Thakare for R-3

## **JUDGEMENT**

### **PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. The captioned batch of Appeals have been filed by Distribution Licensees of the State of Andhra Pradesh i.e. the Southern Power Distribution Company of Andhra Pradesh Limited (in short "SPDCL" or "Appellants") and the Eastern Power Distribution Company of Andhra Pradesh Limited (in short "EPDCL" or "Appellants") challenging the Order dated 09.10.2018 (in short "Impugned Order")

passed by the Central Electricity Regulatory Commission (in short "CERC" or "Central Commission") in Petition No. 190/MP/2017, the Appellants are aggrieved by the decision of the Central Commission declaring introduction/implementation of Goods and Service Tax (in short "GST") laws as change in law event and the direction to the Appellants to pay/compensate/pass over GST charges on back-to-back basis.

2. The Appellants additionally questioned the jurisdiction of the Central Commission in the matter.

3. The Appellants i.e., Southern Power Distribution Company of Andhra Pradesh and Eastern Power Distribution Company of Andhra Pradesh are the wholly owned companies of Government of Andhra Pradesh, incorporated under the Companies Act, 1956, and are vested with the function of distribution of electricity within the State of Andhra Pradesh inter-alia having been granted distribution licence by the Andhra Pradesh Electricity Regulatory Commission (in short "APEREC" or "State Commission") under the Electricity Act, 2003 (in short "Act").

4. The Central Electricity Regulatory Commission, Respondent No. 1 has been established and vested with powers and functions under the Act.

5. The Solar Energy Corporation of India Limited, Respondent No. 2, is a Central Public Sector Undertaking (in short "SECI") under the administrative control of the Ministry of New and Renewable Energy (in short "MNRE") inter-alia



vested with the function of facilitating the implementation of Jawaharlal Nehru National Solar Mission (in short "JNNSM").

6. The Central Commission vide its Order dated 01.04.2014 (read with Order dated 30.12.2015 in Petition No. 298/MP/2015) has accorded trading licence of Category I in the favour of the Respondent No. 2 for trading in electricity as an electricity trader in whole of India in accordance with CERC (Procedure, Terms and Conditions of Trading License and other related matters) Regulations, 2009, subject to the terms and conditions contained in the licence.

7. Respondent No. 3 in the all the captioned Appeals is Solar Power Developer (in short "SPD") and have setup solar power generating plants (in short "SPPs" in the Country.

8. The main contention of the Appellant is that the Central Commission lack jurisdiction to adjudicate the matter as the SPDs as Respondents in the captioned Appeals have set up the SPPs in the State of Andhra Pradesh and also supplying power within the State.

9. The captioned Appeals are identical in nature and therefore Appeal No. 210 of 2019 is taken up as the lead Appeal to resolve the matter.

10. The factual matrix of Appeal No. 210 is noted in brief.

11. The Respondent No. 2, SECI has been appointed as the implementing agency by Government of India for purchase and sale of solar power under the

guidelines of National Solar Mission of Government of India, these guidelines inter-alia envisage providing Viability Gap Funding (in short “VGF”) from the National Clean Energy Fund through Respondent No. 2 to the bidders which are selected through a transparent bidding process to procure solar power.

12. On 02.01.2016, SECI issued Request for Selection (in short “RFS”) document inviting bid for selection of SPDs for the development of cumulative capacity of 500 MW in Ananthapuramu Solar Park being developed by Andhra Pradesh Solar Power Corporation Pvt. Ltd. (in short ‘APSPCL’) in the State of Andhra Pradesh.

13. Pursuant to the RFS document issued by SECI, the Respondent No. 3 submitted its bid and was selected as a successful bidder vide the Letter of Intent dated 16.08.2016 (in short “LOI”) for developing SPP inter-alia generating and sale of power under the JNNSM.

14. Thereafter, SECI and the SPD signed a PPA on 14.10.2016 for supply of 50MW of power for a period of 25 years at a tariff of Rs. 4.43/kWh plus VGF.

15. Separately, SECI and the Appellants agreed to enter into a Power Sale Agreement (in short “PSA”) for the entire capacity of 500 MW capacity from various SPDs required to be procured under the RFS document inter-alia executed PSA on 27.10.2016 for sale and supply of entire capacity of 500 MW at a tariff of Rs. 4.50/kWh including Rs. 0.07/kWh.

16. Subsequently, on 05.12.2016, the Appellants filed a petition before the State Commission for the approval to the PSA executed between the Appellants and the SECI, the same was approved by the State Commission vide its Order dated 25.10.2018.

17. Meanwhile, the Central Government on 12.04.2016 introduced Central Goods and Service Tax Act, 2017 (hereinafter referred to as `GST Act') and vide its notification dated 28.06.2017, the GST Act came into force w.e.f. 01.07.2017 which inter-alia subsumed multiple taxes and duties levied by the Central and the State Government on goods and services.

18. On 22.08.2017, the SPDs filed a Petition i.e. Petition No. 190/MP/2017 before the Central Commission claiming introduction of GST as change in law event in terms of the PPA and seeking payment on account of extra expenditure incurred due to the introduction of GST regime, the Central Commission vide the Impugned Order disposed of the said Petition, being aggrieved the captioned appeals are filed.

19. The Appellants submitted that they are similarly placed as the distribution licensee in Civil Appeal Diary No. 42540/2022 filed before the Supreme Court challenging the judgment dated 15.09.2022 passed by this Tribunal in Appeal No. 256 of 2019 and batch, titled *PARAMPUJYA SOLAR ENERGY PVT. LTD. vs CERC & others (in short "Parampujya judgment")*, further, added that they are also entitled to a restraint on the enforcement of the Impugned Order passed by the Central Commission as the Supreme Court vide an Interim Order, passed in the

said Civil Appeal, stayed the enforcement of such order against the distribution licensees therein.

20. The Appellants, further, argued that this Tribunal has upheld the decision of the Central Commission that: (a) the Central Commission had the jurisdiction to adjudicate the dispute; (b) the imposition of GST is a change in law event as per Article 12 of the PPA; (c) the Appellants are liable to compensate Respondent No. 3 for expenditure incurred towards GST prior to commissioning, however, the Central Commission disallowed the claim for additional expenditure on account of GST after commissioning which was not agreed by this Tribunal.

21. It is important to note here that this Tribunal vide the said common judgment dated 15.09.2022 i.e. Parampujya judgment dismissed the Appeals filed by the distribution licensees on the issue of jurisdiction and allowed the Appeals filed by the generators by the aforesaid judgment, and only, on the issue of compensation post COD, this Tribunal remanded the matter to the Central Commission for computing the consequential impact of GST imposition.

22. It is the submission of the Appellants that the distribution licensees in the aforesaid Tribunal judgment filed the said Appeal questioning the Judgment dated 15.09.2022 before the Supreme Court in relation to the jurisdiction of the Commission and the entitlement of the generators to receive compensation on account of GST being imposed prior to commissioning and after commissioning.

23. The Supreme Court in its order dated 24.03.2023 in *Civil Appeal Diary Nos 42540/2022 and 1867/2023* directed that the Central Commission shall undertake

computation of the additional expenditure incurred by the generators in accordance with the aforesaid Tribunal's judgment, however, the order passed by the Central Commission shall not be enforced till further orders by the Supreme Court, also added that an identical order dated 12.12.2022 has also been passed by the Supreme Court in connected Civil Appeal No. 8880/2022, granting similar protection to another distribution licensee, the said order dated 24.03.2023 is extracted below for reference:

*“3 Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders.”*

24. The Appellants claimed that they are similarly placed as the distribution licensees before the Supreme Court in Civil Appeal Diary No. 42540/2022, therefore, this Tribunal may, in similar terms as the order of the Supreme Court, keep the enforcement of the Impugned Judgment of the Central Commission in abeyance, further, referred this Tribunal's order dated 31.03.2023 in Appeal No. 153 of 2023, whereby, has stayed the enforcement of a similar order passed by the Central Commission on the basis of the orders passed by the Supreme Court in Civil Appeal No. 8880/2022 and connected matters, claiming that this protection has been granted by this Tribunal to parties who are unrelated to the proceedings before the Supreme Court, pending the final adjudication of Appeal.

25. In the light of above, the Appellants prayed for similar protection as has been granted by this Hon'ble Tribunal to parties in Appeal No. 153 of 2023, the said order is reproduced as under:

*“Dated: 31.03.2023*

*In the matter of:*

*Jaipur Vidyut Vitran Nigam Limited & Ors. .... Appellant(s)*

*Versus*

*Azure Solar Private Limited & Ors. .... Respondent(s)*

**ORDER**

*Mr. Anand K. Ganesan, learned Counsel for the Appellant, would draw our attention to the order of the Supreme Court in Civil Appeal No. 8880 of 2022 dated 12.12.2022 by which the Supreme Court, while declining to interfere with the orders of this Tribunal remanding the matter to the CERC, however, directed that the final order of the CERC shall not be enforced, pending further orders. Mr. Vishal Binod, learned Counsel for the first Respondent, however contends, not without justification, that unlike in the earlier case, where the matter was remanded by this Tribunal to the CERC, in the present case, the order under appeal is an order passed after the matter was remanded to the Commission and, consequently, the question of it being remanded again would not arise. We find considerable force in the submissions of the learned Counsel for the first Respondent. Let the appeal be included in the List of Finals after pleadings are complete. The order under appeal shall, however, not be enforced till the order of the Supreme Court is varied or the Civil Appeal is finally disposed of by the Supreme Court. It is made clear that*

*only enforcement of the order of the Commission has been stayed, and the order of stay shall not be construed as disabling the parties from taking further steps pursuant to the said order, except for its enforcement.”*

26. However, we decline to accept the contentions of the Appellants, as the aforesaid order was passed against the remand proceedings taken by CERC and disposed of by the order impugned therein, however, in the instant batch the matter has been placed before this Tribunal against the original order passed by the CERC.

27. The Appellants also countered the submissions of SECI that order of the Supreme Court applies only in relation to claims of generators after commercial operation date, they argued that such a contention is misconceived and is not borne out on a plain reading of the order of the Supreme Court, the Supreme Court in categorical terms has restrained enforcement of any order passed by the Central Commission on remand pursuant to this Tribunal Judgment dated 15.09.2022, added that the scope of the remand directs the Central Commission to determine compensation from the date of the enforcement of GST laws to a period after commercial operation date of the projects, therefore, the remand concerns claims that arise before and after commercial operation date.

28. We decline to accept the contention of the Appellants as the remand by this Tribunal is with respect to post COD only, as CERC in the impugned order has allowed the change in law prior to COD which has been upheld by this Tribunal.

29. The Appellants further argued that the Impugned Order is passed without jurisdiction since: (a) Article 12.3.1 of the PSAs vests the State Commission with exclusive jurisdiction to adjudicate disputes that may have an impact on tariff; (b) this case is only of intra-state supply of electricity and (c) the Impugned Judgment re-writes the PSAs executed by the Appellants, the Appellants are only party to the PSAs that they executed with SECI, the terms of the PSAs exclusively govern the rights and obligations of the Appellants and Article 12.3.1 of the PSAs vests exclusive jurisdiction with the State Commission involving any determination that may result in a change of the tariff, compensation in respect of GST as a change in law event shall result in a change in the tariff thus has to be decided by the State Commission, further, pleaded that this Tribunal did not have the occasion to consider such a contractual stipulation in the judgment dated 15.09.2022, the Article 12.3.1 is quoted as under:

"12.3 Dispute Resolution

12.3.1 Dispute Resolution by the Appropriate Commission

i) Where any dispute (i) arises from a claim made by any party for any change in or determination of the tariff or any matter related to tariff or claims made by any party which partly or wholly relate to any change in the tariff or (ii) relates to any matter, shall be referred to the APERC. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act 2003 as amended from time to time."



30. The Appellant also placed reliance on the judgment dated 23.02.2011 in Pune Power Development v. Karnataka Electricity Regulatory Commission wherein this Tribunal has held that the location of the trading licensee and the grant of trading licence by the Commission will not oust the jurisdiction of the State Commission, also submitted that this decision of the Tribunal was not considered while rendering the judgment dated 15.09.2022, therefore, in view of the binding contractual stipulation under Article 12.3.1 of the PSAs, the State Commission has the exclusive jurisdiction to determine any additional tariff, or compensation to be paid by the Appellants to SECI even on account of introduction of GST as a change in law event.

31. The Appellant, referring to the letter dated 11.09.2018 written by Andhra Pradesh Power Coordination Committee (in short "APPCC") requesting SECI to allow the sale of 150 MW capacity of power generated from 400 MW solar park outside the State of Andhra Pradesh, submitted that the SECI in response vide letter dated 13.09.2018 stated that the tender was issued based on the commitment that the entire generation capacity is procured within the State of Andhra Pradesh and SECI has cited this as the basis for the execution of the PSAs, therefore, from the very beginning, it was agreed that the entire power supply shall be made to the Appellants, however, such a condition was not there before this Tribunal while passing the judgment dated 15.09.022 i.e. where SECI itself has asserted that inter-state supply is not possible, the relevant extract of the said letter is quoted as under:

*"In this context it is pertinent to mention that CERC regulations does not indicate/restrict to 90% of internal generation and 10% to be sold*

*to outside state. In addition to that MNRE notified guideline for 2000 MW on 04/08/2015 states that:*

*Hence, sale of power outside the state is not mandatory and can be utilized intrastate (copy of guideline attached). It is only procedure of application that APSPCL has filed to PGCIL on 29.01.2015, envisaging 10% to be sold outside state.*

*As per the signed agreement with APDISCOMs, it is clearly mentioned for off take of 500 MW or the capacity as per the LOI issued by SECI, in this case it is 400 MW.*

*In view of above, 150 MW solar power generated from 400 MW solar park setup at Galiveedu Mandal, Kadapa district @ 4.50 per unit to outside the AP state or other states is not possible.*

*Hence, I request that the APPC may be given suitable directions to procure the entire 400 MW of solar power generated at solar park setup at Galiveedu Mandal, Kadapa district @ 4.50 per unit and process the invoices and release the payment as per their Due date in order to avoid Late payment surcharge @ 1.25% per month as per Article 6.3.3 of the PSA without waiting for APERC directions.”*

32. The Appellants relying upon the judgment titled *Energy Watchdog v. Central Electricity Regulatory Commission* wherein the Supreme Court defined 'composite scheme' with reference to the Tariff Policy dated 06.06.2006, the Appellants

argued that the 'composite scheme' refers actual sale of electricity to the extent at least of 10% outside the state where the generation takes place, as there cannot be any supply outside of the State in this case and therefore this cannot be construed to be a composite scheme.

33. It is the argument of the Appellant that in accordance with the aforementioned letter issued by SECI, the entire capacity procured in compliance of provisions of the PSA has to be supplied and consumed within the State of Andhra Pradesh and no electricity is been sold outside the State of Andhra Pradesh, since, both the generation and supply of electricity takes place within the State of Andhra Pradesh, therefore, considering the provisions contained under section 79 of the Act, the Central Commission holds no jurisdiction to adjudicate any intra-state dispute and the jurisdiction to adjudicate such dispute lies with the State Commission i.e. APERC, further contended that the Central Commission without any jurisdiction and without considering the terms of the PSA, vide the Impugned Order dated 09.10.2018 allowed the SPDs to claim GST charges as change in law event and further directed the Appellants to pay such GST charges on back to back basis.

34. Further added that this Tribunal in Parampujya judgment noticed a stipulation similar to Article 6.5.5 of the PSAs, recording Respondent No. 2's right to make sales to third parties as the basis of holding it to be a composite scheme, Article 6.5.8 of the PSAs, however, makes it clear that power cannot be supplied to third parties, if there is no default in payment by the Appellants, the relevant clause of the PSAs are reproduced below:

*"6.5 Third Party Sales by SECI*

*6.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of any of the following event(s), SECI shall be entitled to regulate power supply of the Buying Utility:*

- (i) Default in making the payment by the 15th day after the Due Date;*
- (ii) Non-recoument of Letter of Credit by the 15th day after its operation*
- (iii) Non availability of LC for operation and for its required value by the 15th day after the Due Date*

*6.5.2*

*6.5.3*

*6.5.4*

*6.5.5 SECI shall have the right to divert the Solar Power or part thereof and sell it to any third party namely:*

- (i) Any consumer, subject to applicable law;*
- (ii) Any licensee under the Act;*

*SECI shall request the concerned SLDC.RLDC to divert such power to third party as it may consider appropriate.*

*6.5.6.*

*6.5.7*

*6.5.8 Sales to any third party shall cease and regular supply of electricity to the APDISCOMs shall commence and be restored within thirty (30) days from the date of clearing all outstanding dues payable to SECI for the Solar Power under this Agreement...."*

35. Also added that the stipulation under Article 6.5.8 of the PSAs, has not been pointed out nor has it been considered in the Parampujya Judgment thus clearly militates against the conclusion that PSAs envisioned a composite scheme, there is no entitlement for Respondent No.2 to divert power outside of the State unless there is a default by the Appellants, accordingly, the jurisdiction of the Commission under Section 79(1)(b) of the Act is inapplicable in this case.

36. Further submitted that the declaration claimed by Respondent No. 3 is with reference to the PPA signed between the Respondent No. 3 and Respondent No. 2, however, the Appellants are not a party to the PPA, further, the Respondent No. 3 has not made any claim under the provisions of the PSA where Appellants are the party, thus, the Central Commission has erred in finding the Appellants liable, against the relief claimed by Respondent No. 3, therefore, the PPA and PSA are distinct contracts wherein the Appellants are not a party to the PPA and Respondent No. 3 is not a party to the PSA, as such, there is no contractual liability of the Appellants against any claim made by Respondent No.3, even to the fact that these PPA and PPA were envisioned as back-to-back agreements in terms of the Guidelines for the Jawaharlal Nehru Solar Mission, it is the Appellants argument that once the parties have signed the detailed agreements, being the PSA and the PPA then the terms contained in the PSAs alone bind the Appellants.

37. The Appellants also pleaded that they received supply of electricity under the PSA through Respondent No. 2 and the bills are accordingly raised by the Respondent No. 2 in accordance with Article 6 of the PSA, further, payment security is furnished by the Appellants to Respondent No. 2, there is no bilateral

transaction between the Appellants and Respondent No. 3, added that none of these contractual terms have been considered in the Parampujya Judgment.

38. The Appellant also contended that the Government of India vide its Notification No. 12/2017- CT (R), Sl. No. 25, exempted the service by way of transmission or distribution of electricity by an electricity transmission or distribution utility from payment of any tax under the GST regime, since, supply of electricity is exempted from payment of any tax under the GST regime, therefore, considering the provisions of the PSA, the introduction of GST cannot be considered as change in law event under the PSA and the Appellants in compliance of terms of the PSA are under no obligation to pay/compensate such GST charges.

39. It is important to first consider the reliance placed by the Appellants on the judgment dated 23.02.2011 in Appeal No. 200 of 2009 titled *Pune Power Development v. Karnataka Electricity Regulatory Commission*, this decision was rendered prior to the decision dated 11.04.2017 of the Supreme Court in *Energy Watchdog Case (2017) 14 SCC 80* wherein the scope of composite scheme was defined, further, the prior concept on composite scheme got diluted and the scope of Composite Scheme was enlarged as per the decision of the Supreme Court in the Energy Watchdog Case to include any scheme involving generation and sale of electricity to more than one state, as such, the reliance placed by AP Discoms on judgment dated 23.02.2011 of this Tribunal has no application in the present case, also, the Central Commission in the impugned order has considered the above decisions of this Tribunal and has rightly concluded that the said decision is not applicable to the facts of the present matter as the PPAs and PSAs are

entered into in pursuance of the JNNSM Guidelines which envisages composite scheme.

40. The relevant extract of the aforesaid Impugned Order of CERC is quoted as under:

*"303. From the above it is observed that if under a scheme there is generation or sale of electricity in more than one State then the same is covered under the expression of the "Composite Scheme" and is consequently under the jurisdiction of the Central Commission. In the instant Petitions Phase-II, Batch-III: State Special Viability Gap Funding (VGF) in JNNSM Scheme envisages that the power from the projects developed under the scheme shall be supplied to more than one State and hence is covered as composite scheme. Whereas Phase-II Batch-II State Specific Bundling in JNNSM Scheme envisage that NVVN will bundle the Solar Power with un-allocated Thermal Power from Coal based stations of NTPC on 2:1 basis (2 MW of Solar with 1 MW of Thermal) and finally provisions of "Scheme for development of Solar Parks and Ultra Mega Solar Power Projects" clearly stipulates that in case the state was not willing to buy at least 50% of the power generated in the solar park, then CTU was entrusted with the responsibility of setting up 400 KV or bigger sub-station for connectivity with the CTU. Thus, it is the clear case of composite schemes and the judgments relied upon by the Respondents viz. Appeal No. 200 of 2009 between M/s PUNE Power Development Private Limited (Inter-State Trading Licensee) and Karnataka*

*DISCOMs and Appeal No. 31 of 2012 between PTC India Limited and Gujarat Urfa Vikas Limited are not applicable in the instant Petitions. The Commission is of the view that it has the jurisdiction to adjudicate in the matter. It is pertinent to mention here that the view taken in the instant Petitions is consistent with the view taken in the Order of Welspun Energy Private Limited vs. Solar Energy Corporation of India (Petition No. 95/MP/2017).*

*306. From the above the Commission is of the view that since the schemes are covered as Composite Schemes therefore the Commission is the deciding authority in respect of "Change in Law", in terms of the Hon'ble Supreme Court's judgment (Energy Watchdog Vs. CERC & Ors.) cited in the foregoing para.*

*349. Therefore, the Commission directs that the Petitioners have to exhibit clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services backed by auditor certificate. The certification should include `Certified that all the norms as per `GST Laws' have been complied with by the Petitioner and the claim of the amount being made by the Petitioner are correct as per the effective taxes in pre and post `GST regime". The Petitioners should then make available to the Respondents, the relevant documents along with the auditor certification who may reconcile the claim and then pay the amount so claimed to the SPD w.e.f 01.07.2017 qua EPC cost on the basis of the auditor's certificate as per the methodology discussed in para no. 338*



& 348 above. Further, as Government of India has appointed 'Nodal agencies' under JNNSM scheme to act as an intermediary to facilitate the purchase and sale of electricity from solar power developer to DISCOMS. Accordingly, the amount determined as payable above by Petitioners shall on 'back to back' basis be paid by DISCOMS to intermediary nodal agency under the respective 'Power Sale Agreements'.

375. To sum up the:

**a. Issue No. 1:** The Commission has jurisdiction to adjudicate in the matter.

**b. Issue No. 2:** The enactment of 'GST laws' is covered as 'Change in Law' under Article 12 of the PPA.

**c. Issue No. 3 & 4:** 'GST Laws' are applicable on all cases except in case of the generating company where the 'actual date of Commissioning' is prior to 01.07.2017. As regards its claim (subject to threshold limit in case of Petition No. 33/MP/2018) during construction period, the Petitioners have to exhibit clear and one to one correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services backed by auditor certificate. In respect of PV Modules post enactment of 'GST Laws' 5% will be applicable on intra state procurement as well as import by EPC or SPV. The amount as determined by Petitioners shall be on 'back to back' basis to be paid by DISCOMS to Petitioners under the respective 'Power Sales Agreements'. The claim of the Petitioners on account of additional tax burden on 'O&M' expenses (if any), is not maintainable."

41. We find no infirmity in the findings of the Central Commission, thus decline to accept the submission of the Appellants *inter-alia* reliance on the aforesaid judgments.

42. On the contrary, the Respondent No. 2, SECI submitted that the Appellants in the captioned Appeals have assailed the findings of the Central Commission on (a) the jurisdiction of the Central Commission, (b) the structure of PPA, PSA and obligations of the parties on back-to-back basis, and (c) change in law impact qua GST Law till SCOD only and therefore, the Appellants have not assailed the change in law impact beyond SCOD i.e. not for the delay on the part of SPD in commissioning beyond SCOD, further, argued that the SPDs in Appeal No. 256 of 2019 & batch (Parampujya judgment) have not challenged the aspects of allowance of change in law claim upto the actual COD which were in favour of SPDs, additionally, this Tribunal has allowed Change in law claim for the post COD period also i.e. Operational and maintenance expenses ('O&M expenses') and carrying cost which were rejected by the Central Commission, however, the issue of jurisdiction was raised by the Chhattisgarh distribution licensee (similar to one raised in the present Appeal) in one of the appeals being appeal no. 35 of 2022 filed by the Chhattisgarh distribution licensee, which *inter-alia* was decided by this Tribunal as part of the batch, holding that the jurisdiction lies with the Central Commission, the relevant extract of the order dated 15.09.2022 is as under:-

“

**CONCLUSION**

**108. For the foregoing reasons, Appeal no. 35 of 2022 (Chhattisgarh State Power Distribution Company Ltd. v. Central**

***Electricity Regulatory Commission & Ors.) must fail. It is accordingly dismissed.***

*109. The other captioned appeals – Appeal no. 256 of 2019 (Parampujya Solar Energy Pvt. Ltd & Anr. v. CERC & Ors.), Appeal no. 299 of 2019 (Parampujya Solar Energy Pvt. Ltd. v. CERC & Ors.), Appeal no. 427 of 2019 (Mahoba Solar (UP) Private Limited v. CERC & Ors.), Appeal no. 23 of 2022 (Prayatna Developers Pvt. Ltd. v. CERC & Ors.) Appeal no. 131 of 2022 (Wardha Solar (Maharashtra) Private Ltd. & Anr. v. CERC & Ors.) and Appeal no. 275 of 2022 (Parampujya Solar Energy Pvt. Ltd. & Anr. v. CERC & Ors.) - deserve to be allowed. We order accordingly directing the Central Electricity Regulatory Commission to take up the claim cases of the Solar Power Project Developers herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post Commercial Operation Date of the projects in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.”*

43. Further, submitted that in Civil Appeal No. 8880 of 2022 filed by Telangana distribution licensees before the Supreme Court and in Civil Appeal No.505-510 of 2023, the distribution licensees and SECI have challenged the above two

findings i.e. a) the issue of jurisdiction and b) change in law claim for the post COD period i.e. Operational and maintenance expenses ('O&M expenses') and carrying cost, while adjudicating the said Appeals, the Supreme Court vide interim orders dated 12.12.2022 and 23.01.2023 directed the Central Commission to comply with the Parampujya judgment, however, stayed the enforceability of only Para 109 of the Parampujya judgment till further directions, the relevant extract of the order dated 12.12.2022 in Civil Appeal No.8880 of 2022 filed by Telangana Discoms is quoted as under:

*“2. Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders.”*

44. Similar orders were passed in Civil Appeal No.505-510 of 2023 on 23.01.2023 and in batch of similar matters including Diary No. 42540 of 2022 on 24.03.2023.

45. It was also pleaded by the SECI that vide the Parampujya judgment, this Tribunal dealing with the same guidelines dated 04.08.2015 (as in the present case) for the Batch-III of Phase II of JNNSM, has settled the issue of jurisdiction as raised by the Chattisgarh Distribution Company, further, vide orders dated 12.12.2022 and 23.01.2023, the Supreme Court stayed the enforceability of the Central Commission's order to be passed in pursuance of this Tribunal's Parampujya judgment inter-alia with regard to the issues in Para 109 only and not

with the issue of jurisdiction which is decided in Para 108 of the Parampujya judgment, therefore, the stay granted by the Supreme Court, does not deprive the Central Commission of its jurisdiction to have passed the order impugned in the Parampujya judgment or for that matter in the present Appeal, in fact the Supreme Court, has directed the Central Commission to comply with the directions of this Tribunal given in para 109 of the Parampujya judgment, except that the same will not be given effect to pending the decision of the Supreme Court, thus has not decided on the issue of jurisdiction by issuing directions to CERC.

46. It is thus clear that while staying the directions issued in paragraph 109 of the Parampujya judgment, the Supreme Court decided not to interfere in the matter of jurisdiction at the interim stage by directing the Central Commission to comply with the directions issued in paragraph 109 of the impugned order dated 15.09.2022 of this Tribunal, however, staying the final order to be passed by the CERC with respect to only the directions issued under paragraph 109 of the Parampujya judgment till further orders.

47. The SECI argued that the stay on enforceability granted by the Supreme Court has no application to the issues challenged by the Appellants in the present Appeal i.e. (a) the jurisdiction of the Central Commission, (b) the structure of PPA, PSA and obligations of the parties on back-to-back basis, and (c) change in law impact qua GST Law till SCOD only, added that there is no stay on the issue of jurisdiction as held in Parampujya judgment by this Tribunal which is at Para 108 of the Parampujya judgment, therefore, the Appellants herein cannot claim *pari materia* consideration for grant of any stay of the enforceability of the Central

Commission order on the aspects challenged by the Appellants in the captioned Appeals.

48. It was further submitted that the SPDs filed Petition No.190/MP/2017 before the Central Commission seeking change in law relief on account of the promulgation of GST Laws wherein SECI, the Appellants herein were also impleaded as a Respondents, the Central Commission passed the Impugned Order deciding the said Petition and other connected Petitions.

49. We are inclined to agree to the aforesaid submission of the SECI as the issue before the Supreme Court which was stayed is not under consideration in the present batch of Appeals.

50. Further, on 08.06.2020, SECI filed Petition No.536/MP/2020 before the Central Commission for clarification and approval of the uniform annuity methodology for making payments in respect GST and/or Safeguard Duty compensation, the Appellants and SPDs herein as well as the Renewable Power Developers and Distribution Companies in other Petitions filed for claiming impact of GST and Safeguard Duty as Change in Law were parties in the proceedings of Petition No.536/MP/2020, the Central Commission vide order dated 20.08.2021, disposed of the said Petition No.536/MP/2020, inter-alia, holding as under, which has not been challenged by the Appellants herein:

*“67. We observe that in the Petitions filed by the SPDs where claims under Change in Law were adjudicated, the Commission has directed SPDs to make available to SECI/ Discoms all relevant documents*

exhibiting clear and one to one correlation between the projects and the supply of goods or services, duly supported by the relevant invoices and Auditor's Certificate. **SECI/ Discoms were further directed to reconcile the claims for Change in Law on receipt of the relevant documents and pay the amount so claimed to SPDs.**

It was also held that SECI is liable to pay to SPDs which is not conditional upon the payment to be made by the Discoms to SECI. **However, SECI is eligible to claim the same from the Discoms on 'back to back' basis.** The claim was directed to be paid within sixty days of the date of respective orders or from the date of submission of claims by SPDs whichever was later failing which it will attract late payment surcharge as provided under PPAs/PSAs. Alternatively, SPDs and the SECI/ Discoms may mutually agree to a mechanism for the payment of such compensation on annuity basis spread over the period not exceeding the duration of the PPAs as a percentage of the tariff agreed in the PPAs

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105. The summary of our findings are as follows:

Issue No. 1:

- The discount rate of annuity payments shall be **10.41%** towards the expenditure incurred by SPDs on account of Change in Law (GST Laws or Safeguard Duty, as the case may be).
- The **liability of SECI/Discoms** for 'Monthly Annuity Payments' starts from 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims

*by the Respondent (SPDs), whichever is later. In case of delay in the Monthly Annuity Payment beyond the 60th (sixtieth) day from the date of orders in respective petitions or from the date of submission of claims by the Respondent (SPDs), whichever is later, late payment surcharge for the delayed period corresponding to each such delayed Monthly Annuity Payment(s) shall be payable as per **respective PPAs/PSAs**.*

- *The “Tenure of Annuity Payments” shall be for 13 years.*

.....

*Issue No. 3:*

- *Cut-off date for GST Claims: The invoices related to supply of the goods can be raised only up to COD for all the equipment as per the rated project capacity that has been installed and through which energy has flown into the grid. in case of supply of services related to goods procured up to COD, the invoices are to be raised within 30 days of supply of such services, which cannot be later than 30 day of COD.*

51. In compliance to the above order, as submitted by SECI, it has duly evaluated and reconciled GST claims of the SPDs in terms of the above and made payments regularly on annuity basis to the SPDs in respect of amount determined as impact of GST in terms of the Impugned Order and order dated 20.08.2021 passed by Central Commission in Petition No.536/MP/2020, however, the distribution licensees of the State of Andhra Pradesh have delayed substantially in making the said payments despite multiple reminders sent by SECI, it is only, from 18.03.2023 they have started making payments to SECI, thus the aforesaid



order of the CERC has attained finality, till its set-aside or modified by a superior court.

52. Apart from the above, SECI also supported its contentions on the issue of jurisdiction by stating that in the facts and circumstances of the present case, the jurisdiction is of the Central Commission under Section 79(1)(b) of the Electricity Act 2003 as also decided in Parampujya judgment as the present case is identical to Parampujya judgment in respect of following:

- a) the JNNSM Guidelines notified by Government of India envisage SECI selling not less than 90% of the power in the State where the Solar Project is established and the balance 10% of the power outside the State, inter-alia as under:

*“1.6 Phase-II, Batch-III: State Specific VGF Scheme*

.....

***These guidelines shall form the basis for selection of Grid Connected Solar PV projects under this scheme. Out of total capacity of 2000 MW, a capacity of 250 MW will be earmarked for bidding with Domestic Content Requirement (DCR).***

***MNRE shall specify the total State-wise Capacity of the projects (both “open Category” and “DCR Category”) based on commitments from the State for off take of not less than 90% of the capacity to be invited by SECI before issue of Request of Selection (RfS). SECI shall tie up for the remaining capacity with the other Buying Entities for which the Host State shall facilitate inter-State transfer of power.***

b) The JNNSM Guidelines envisages the sale of power in more than one state at any time with the mandate to host state to provide facilities for inter-state transfer.

c) The scheme under the JNNSM Guidelines is in the nature of Composite Scheme within the scope of Section 79 (1) (b) of the Electricity Act 2003 as interpreted and decided by the Supreme Court in Energy Watchdog case –v- Central Electricity Regulatory Commission & Ors.(2017) 14 SCC 80 (**Paras 24, 26**).

d) The Supreme Court in the Energy Watchdog Case (Supra) has emphasised the importance on the expression '**scheme**' which is whether the entire scheme envisages generation and sale of electricity in more than one state and not that at every given point of time, there has to be an actual sale in more than one state. Once there is a scheme of any kind in terms of the decision of the Hon'ble Supreme Court in Energy Watchdog case, it would be a Composite Scheme and would be covered under section 79(1)(b) of the Electricity Act 2003.

e) The PPAs and PSAs entered into in the present case also envisage sale of electricity to outside the state of Andhra Pradesh.

i. Article 6.5 of the PSA provides that in the event of default on part of AP Discoms, SECI is entitled to divert the solar power or part thereof and sell it to any third party including a licensee under the Electricity Act, 2003 anywhere in India;

ii. SECI is also entitled to divert power when there is excess generation beyond the quantum of power as specified in Article 6.8.3 of the PSA as per Article 6.8.4 of the PSA read with Article and 4.4.2 of the PPAs.

53. It is the argument of the SECI that the jurisdiction of an authority rests on certain principles and cannot shift from one authority to other constantly, such a situation may create irregularities which are beyond any control, also submitted that in such a situation where during the pendency of the proceedings if a third party sale is effected, the jurisdiction will shift, or if a third party sale is withdrawn, again the jurisdiction will shift, certainly is not the spirit of the Act, accordingly, the basic governing documents namely the Guidelines issued by the Central Government under section 63 of the Act envisage the sale of electricity under a composite scheme in more than one state, the role of SECI as the nodal agency to promote renewable sources of power on Pan India basis and the provisions in the PPAs and PSAs entered into enabling sale of power to third parties in certain eventualities which could from time to time be outside the State of Andhra Pradesh also, the arrangement falls within the scope of Section 79(1)(b) of the Act and therefore the jurisdiction is of the Central Commission.

54. The SECI pleaded that the PPA and PSA have been entered into on a back to back basis, therefore, the jurisdiction in regard to the PSA has to be seen in conformity with the jurisdiction that exists in regard to the PPA, reliance placed by the Appellants on APPCC letter dated 11.09.2018 and SECI letter dated 13.09.2018 is misplaced as the jurisdiction of the Central Commission is by virtue of the provisions in the JNNSM Guidelines and the provisions in the PPA and PSA

dealing with the sale of power outside the state where the generating station is situated, which are the governing documents as far as the scheme is concerned, any development post bidding cannot be considered as the conditions stipulated as part of the bidding in case of any deviation therein, it is only because AP Discoms sought to reduce the quantum of power under the PSA committed for purchase and requested SECI to sell outside such power, which SECI rejected on grounds of there being no possibility at the relevant time does not alter the above provisions in the JNNSM Guidelines, the PPA and the PSA, the jurisdiction is to be decided based on the relevant provisions and not with reference to any steps taken in the implementation of the PPA or the PSA.

55. It is also the argument of the SECI that in terms of the PPA and PSA, SECI is acting as an intermediary nodal agency as appointed by the Central Government through trading licence granted to it and thus facilitating purchase and resale of electricity in its capacity as a nodal agency, certainly, SECI is not acting as a merchant trader or otherwise independently purchasing the electricity from the SPD having the option to sell electricity to any person/utility at such time and on such terms and conditions as SECI can decide from time to time, therefore the obligations of SECI to the SPD are on a back to back basis to the obligations to be performed and to be discharged by the concerned Buying Entities/ Distribution Companies namely AP Discoms.

56. Further, added that this Tribunal in the Parampujya judgment has also held in para 38-46,100,101 that the PPAs between SECI and Project Developers and the PSAs between SECI and the buying utilities are on back to back basis, the relevant extract reads as under:-

*“100..... In this context, we would only recall the view already taken by us in earlier part of this judgment on the objection to the jurisdiction exercised by the Central Commission. The PPA and PSA, executed on back to-back basis, are intertwined, and have to be read together. The liability of SECI has to ultimately reach the door of the ultimate beneficiary i.e. Chhattisgarh Discom.”*

57. The SECI strongly contested the argument of the Appellants stating that the above aspect dealt and decided in the Parampujya judgment has not been stayed by the Supreme Court in its decisions dated 12.12.2022, 23.01.2023 and 24.03.2023 passed in Civil Appeal No. 8880 of 2022; Civil Appeal No.505-510 of 2023 and Diary No. 42540 of 2022 and batch.

58. In support, the SECI referred the provisions under the JNNSM Guidelines in relation to the back to back arrangement as under:

***“3.2. Mechanism of Operation of the VGF Scheme***

.....

*f) SECI will purchase the Solar Power generated from the selected Solar PV Plants at the pre-determined tariff and sell the power to willing State Utilities under 25 years Power Sale Agreements (PSA) at the applicable tariff determined after including a Trading Margin of Rs.0.07 per kWh.”*

.....

***“3.10 Power Purchase Agreement***

*3.10.1 A copy of Standard Power Purchase Agreement to be executed between SECI and the Project Developer shall be provided by SECI along with Invitation for Submission of response to RfS. Within one month of the date of issue of Letter of Intent (LoI), the Power Purchase Agreement (PPA) between SECI and the Project Developer for Purchase of Power from the project will be executed. The PPA shall be for a period of 25 years from the date of CoD.*

.....

*3.10.3 SECI will execute a Power Sale Agreement (PSA) with the State Utilities/DISCOMs/Bulk Consumers of the buying States for sale of power to them valid for 25 years. Further, State Utilities/DISCOMs will have to maintain LC and Escrow Arrangement as may be defined in the PSA.”*

59. The provisions of the PPA dated 14.10.2016 executed between SECI and the SPD and PSA dated 27.10.2016 in regard to the ‘back to back’ nature of the two agreements, which has been reiterated by the Central Commission in Para 349 of the Impugned order, clearly recognizing that the provisions and contractual terms of the PPA and PSA are back to back, the relevant provisions of the PPA and PSA are quoted as under:

**Power Purchase Agreement (PPA)**

“

a) Recitals-

A. *SECI has been designated by the Government of India as the nodal agency for implementation of MNRE scheme for developing grid connected solar power capacity including Phase-II, Batch-III of the Jawaharlal Nehru National Solar Mission (JNNSM) of Government of India (GoI) through VGF mode.*

.....

F. **SECI has agreed to purchase such Solar Power from SPD as an intermediary Seller and sell it to Buying Utilities back to back basis as per the provisions of the JNNSM.**

G. *SECI has agreed to sign a Power Sale Agreement with the Buying Utilities to sell such power as per the provisions of the JNNSM.*

b) Article 1.1- Definitions and Interpretation

i. Discom

*“Discoms”:* Shall means the distribution utility or the distribution utilities who have signed the PSA (s) with SECI for purchase of Power;

ii. Power Sale Agreement

*“Power Sale Agreement” or “PSA”:* shall mean the Power Sale Agreement entered between the Buying Utilities and SECI (SECI- Buying Utilities PSA) for selling the power as

*per the provisions of Guidelines for Phase-II Batch-III of JNNSM.*

c) **2.2 Term of Agreement**

*2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid from a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period at least one hundred eighty (180) days prior to the Expiry Date on agreed terms and conditions between the Solar Power Developer (SPD), SECI and the Buying Utilities.*

d) **ARTICLE 4: CONSTRUCTION & DEVELOPMENT**

.....

**4.4 Right to Contracted Capacity & Energy**

*4.4.1 SECI at any time during a Contract Year shall not be obliged to purchase any additional energy from the SPD beyond **116.596 Million kWh (MU)**. If for any Contract Year it is found that the SPD has not been able to generated minimum energy of **90.097 Million kWh (MU)** till the end of 10 years from the COD and **84.797 Million kWh (MU)** for the rest of the term of the Agreement on account of reasons solely attributable to the SPD, the non-compliance by SPD shall make SPD liable to pay the compensation provided in the PSA as payable to Buying Utilities and shall duly pay such compensation to SECI to enable SECI to remit the amount to Buying Utilities. This will, however be relaxable by*



*SECI to the extent of grid non-availability for evacuation, which is beyond the control of the developer. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of compensation shall be equal to the compensation payable (including RECs) by the Buying Utilities towards non-meeting of RPOs, if such compensation is ordered by the State Commission. However, this compensation shall not be applicable in events of Force Majeure identified under PPA with SECI affecting supply of solar power by SPD.*

e) 10.3.3 Late Payment Surcharge

*In the event of delay in payment of a Monthly Bill by SECI beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the SPD at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis subject to such late payment is duly received by SECI under the PSA from its Buying Utilities. The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill.*

f) Article 10.7.2- Payment of Supplementary Bills

*10.7.2SECI shall remit all amounts due under a Supplementary Bill raised by the SPD to the SPD's Designated Account by the Due Date. If any claim is being raised by the Buying Utilities pursuant to the Article 4.4.1,*

*SECI shall make adjustment in the payment made to the SPD.”*

**Power Sale Agreement (PSA)**

“

a) Recitals-

- A. *SECI has been identified by the Government of India as the implementing agency for purchase and sale of grid connected Solar PV power at 33 kV or above under Phase-II, Batch-III of the Jawaharlal Nehru National Solar Mission of Government of India (GoI).*
- B. *SECI will sign Power Purchase Agreement (PPAs) and VGF Securitization Agreements (VGFSAs) with the selected solar power developers (hereinafter referred to as “SPDs”) for procurement of 500 MW Solar Power or the total capacity of projects selected under the provisions of RfS (SECI/JNNSM/P-2/B-3/AP/122015 dated 02.01.2016), if it is less than 500 MW, on a long term basis, as indicated at Schedule-1 and Schedule-2 respectively.*
- C. *SECI has agreed to sell Solar Power to the APDISCOMs and the APDISCOMs have agreed to purchase such Solar Power from SECI as per the terms and conditions of this Agreement.*

D. *SECI has agreed to sell power to the Buying Utilities at the tariff determined from the reverse auction process mentioned in the RfS plus trading margin of Rs. 0.07/kWh i.e. Rs. 4.5/Kwh fixed for entire term of this Agreement.*

b) Article 1.1- Definitions and Interpretation

- *“SECI-SPD PPA”- shall mean the Power Purchase Agreement signed between SECI and SPD for procurement of Solar Power by SECI from SPD and annexed hereto as Schedule 1 of this Agreement;*
- *“SECI-SPD VGFSA”- shall mean the VGF Securitization Agreement signed between SECI and SPD annexed hereto as Schedule 2 of this Agreement;*

c) **2.3 Early Termination**

*2.3.1 This Agreement shall terminate before the Expiry Date:*

- i) if either SECI or APDISCOMS terminates this Agreement, pursuant to Article 9 of this Agreement; or*
- ii) If any SECI-SPD PPA gets terminated, the capacity under this agreement shall automatically be reduced but only to the extent of that particular SECI-SPD PPA capacity.*

d) Article 5- Applicable Tariff

**ARTICLE 5: APPLICABLE TARIFF**

5.1. *The Tariff for Solar Power of individual projects shall be the tariff determined from the reverse auction process mentioned in the RfS plus trading margin of Rs. 0.07/kWh i.e, 4.50/kWh fixed for entire term of this Agreement at delivery point.*

5.1.2 *The applicable tariff shall be the weighted average tariff of all the commissioned project capacity as per Article-14.1, till the end of the term of the Agreement. The APDISCOMs shall make the Tariff Payments to SECI as per the provisions of this Agreement.*

e) Article 6.5.6- Third Party Sale by SECI

.....

6.5.6 *Provided that such sale of power to third party shall not absolve the APDISCOMs from its obligation to pay in full to SECI for solar as per SECI-SPD PPA and any other outstanding payment liability of the APDISCOMs as per this Agreement.*

.....

6.5.9 *Further, the liability of the APDISCOMs to make the Tariff Payments to SECI as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available by SPD for usage by the Buying Utility*

f) Article 6.8.1, 6.8.4- Renewable Purchase Obligation

*6.8.1 The APDISCOMs may identify the energy procured from the SPD delivery point to meet its renewable purchase obligations (as mandated by the Appropriate Commission). Provided that the renewable purchase obligation of the APDISCOMs shall be considered to be met by the APDISCOMs only if there is no payment default for such energy procured by the Buying Utility. A certificate to such effect shall be provided by SECI to the Buying Utility*

*6.8.4 Notwithstanding Article 6.8.3, any power which is in excess of the quantum of power agreed to be supplied under this Agreement shall be offered to the APDISCOMs and in case the APDISCOMs does not accept the same, SECI shall take appropriate action as per the PPA.*

g) 9.4 Termination of back-to-back agreements

*In case of termination of SECI-any SPD PPA, this Agreement shall automatically be of reduced capacity but only to the extent of that particular SECI-SPD PPA capacity. Provided that in case of such reduction, any pending monetary liabilities of either Party shall survive the reduced capacity of this Agreement.*

60. This Tribunal in the Parampujya judgment has noted that the back to back arrangement of the purchase of solar power from the Solar Power Developers and resale of the solar power to the Buying Utilities/Distribution Companies in the context of similar PPA and PSA involving SECI as an intermediary trader has been considered by this Tribunal in the judgment dated 27.02.2020 passed in Appeal Nos. 368 of 2019 & batch in the matter *Ayana Ananthapuramu Solar Private Limited v. Andhra Pradesh Electricity Regulatory Commission & Ors.*, the relevant extract of the judgment dated 27.02.2020 is quoted as under:

*“57. Admittedly, the solar power developers have entered into PPAs with Intermediary procurer i.e., NTPC/SECI as the case may be, and PSAs between the intermediary procurer and end procurer i.e., NTPC/SECI with AP Discoms. These PSAs and PPAs between the parties are back-to-back agreements. Therefore, they are not separate transactions; they are part and parcel of one single transaction even in accordance with the provisions of PPAs.”*

61. Additionally, submitted that the role of an Intermediary Trader vis-à-vis a Merchant Trader and back to back arrangement has been considered by this Tribunal in its Judgment dated 04.11.2011 in Appeal No. 15 of 2011 in the case of *Lanco Power Limited v Haryana Electricity Regulatory Commission and Ors*, the relevant part is extracted below:

*“21. So, the combined reading of the above provisions brings out the scheme of the Act. A trader is treated as an intermediary. When the trader deals with the distribution company for re-sale of electricity, he*

*is doing so as a conduit between generating company and distribution licensee. When the trader is not functioning as merchant trader, i.e. without taking upon itself the financial and commercial risks but passing on the all the risks to the Purchaser under re-sale, there is clearly a link between the ultimate distribution company and the generator with trader acting as only an intermediary linking company*

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*38. In this context, it would be proper to refer to the relevant clauses of the recitals of the PPA dated 19.10.2005 which go to show that that PPA is linked to the PSA. Those clauses are reproduced herein:*

.....

*42. Thus, it is clear that the PPA and PSA are interconnected and inextricably linked to each other and as such there is privity between the Appellant which is the power generator and the Haryana Power (R-2) which is a deemed licensee who is the ultimate beneficiary of the PPA as well as the party to the PSA.*

*50. As per the terms of the PPA entered into between the Lanco Power, the Appellant and PTC (R-3), the PTC was required to enter into power sale agreement with the purchaser for onward sale of power from the Appellant's project. Thus the requirement to execute the PSA was an intrinsic and material provision of the PPA since the performance of the PPA was completely dependent upon the execution of the PSA. Thus, the PPA and PSA are the two documents which are heavily inter-dependent on one another for their*

*sustenance. In order to refer to this aspect, it would be proper to quote the relevant provisions of the PPA.”*

62. In view of the above provisions of the bidding documents, PPA, PSA and the decisions of this Tribunal, it is a clear that there is a back to back arrangement in the PPA and the PSA under the JNNSM scheme in the present matter also.

63. The SECI, further, countered the argument of the Appellants regarding imposition of GST and submitted that the other aspects raised by AP discoms in the grounds of Appeal related to implication of Article 13.10 of the PSA, Article 5 of the PSA, Notification No. 12/2017- Central Tax (Rate) issued by the Government of India on 28.06.2017, and reliance on certain decisions of the Courts to content that AP Discoms are not liable to pay to SECI for the change in law claims, it is their argument that the said Notification is an exemption notification for intra state supply of services as provided in various items listed therein, Entry 25 of the said Notification deals with transmission or distribution of electricity by an electricity transmission or distribution utility, it does not cover the GST payable by the generator i.e. the SPD on the equipment procured for undertaking generation of electricity, as such GST which is a levy on the generator is to be allowed as an impact of Change in Law under the contractual provisions in the PPA and the PSA further, it is not levied on either on SECI or AP Discoms but on the generator i.e. SPD.

64. The Respondent No. 3 i.e. the Solar Power Developer in these batch of appeals have adopted the submissions made by the SECI.



65. We are satisfied that the contention of the Appellant regarding the applicability of the Government notification is erroneous and therefore, reject the same.

66. Therefore, the issues to be settled are whether the Impugned Order passed by the Central Commission suffers from inherent lack of jurisdiction and if not, whether the Central Commission could have allowed any relief under the PSA while determining the dispute between the developer and SECI.

67. This Tribunal vide its judgment dated 15.09.2022 in Appeal No. 256 of 2019 (titled *PARAMPUJYA SOLAR ENERGY PVT. LTD. vs CERC and others*) and batch has already settled the issue of jurisdiction in an identical case where the scheme provided for composite sale of power, however, while signing of the PSA, the sale within the State of generation of solar power was made to 100%, the relevant extract of the judgment is quoted as under:

“ *JURISDICTIONAL ISSUE*

*34. As noted earlier, the Chhattisgarh Discom, by its Appeal no. 35 of 2022, it being cross appeal in relation to Appeal no. 299 of 2019 of SPPDs, directed against the Order dated 18.04.2019 on Petition no. 165/MP/2018 has also raised the issue of jurisdiction. This needs to be considered first.*

*35. The regulatory mechanism provided by the Electricity Act, 2003 comprises primarily the Electricity Regulatory Commissions both at*

*State and at Central level, the former including a Joint Commission for more than one State. The State Commissions are constituted under Section 82 while the Central Commission is established under Section 76, their functions having been specified in Section 86 and Section 79 of Electricity Act, 2003 respectively. The relevant parts of Sections 79 and 86 may be quoted thus:*

*“Section 79. (Functions of Central Commission): --- (1)  
The Central Commission shall discharge the following functions,*

*(a) to regulate the tariff of generating companies owned or controlled by the Central Government;*

*(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*

*...*

*Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -*

*(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category*

*of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;*

*(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

*... ”*

*36. From the above, it is clear that the matters of the tariff of generating companies owned or controlled by the Central Government is under the regulatory regime of the Central Commission. Further, the tariff of companies other than those owned or controlled by the Central Government is also regulated by the Central Government if such generating companies have entered into or otherwise have a composite scheme for generation and sale of electricity “in more than one State”. In contrast, the matters relating to tariff for generation, supply, transmission, wheeling, purchases or procurement “within the State” falls to the jurisdiction of the corresponding State Commission under Section 86 of Electricity Act, 2003. To put it simply, matters pertaining to inter-state transactions of such nature pertain to the jurisdiction of the Central Commission.*

37. Chhattisgarh Discom contends that the Central Commission has wrongly assumed jurisdiction in the matter because it did not have a composite scheme, the SPPs being located in the State of Chhattisgarh, the power thereby generated being supplied within the same State, to Chhattisgarh Discom only. **Reliance is placed on observations of Hon'ble Supreme Court in the case of Energy Watchdog v. CERC & Ors (2017) 14 SCC 80 to the following effect:**

*“26. Another important facet of dealing with this argument is that the tariff policy dated 6th June, 2006 is the statutory policy which is enunciated under Section 3 of the Electricity Act. The amendment of 28th January, 2016 throws considerable light on the expression “composite scheme”, which has been defined for the first time as follows:*

*“5.11 (j) Composite Scheme: Sub-section (b) of Section 79(1) of the Act provides that Central Commission shall regulate the tariff of generating company, if such generating company enters into or otherwise have a composite scheme for generation and sale of electricity in more than one State.*

*Explanation: The composite scheme as specified under section 79(1) of the Act shall mean a scheme by a generating company for generation and sale of electricity in more than one State, having signed*

*longterm or medium-term PPA prior to the date of commercial operation of the project (the COD of the last unit of the project will be deemed to be the date of commercial operation of the project) for sale of at least 10% of the capacity of the project to a distribution licensee outside the State in which such project is located.”*

*27. That this definition is an important aid to the construction of Section 79(1)(b) cannot be doubted and, according to us, correctly brings out the meaning of this expression as meaning nothing more than a scheme by a generating company for generation and sale of electricity in more than one State...”*

*38. The learned counsel for SECI, however, pointed out that being the nodal agency under the Jawaharlal Nehru National Solar Mission (JNNSM) it acts as an intermediary trading agency in purchase of power under the PPAs from the SPPDs and resells it to the distribution licensees under Power Sale Agreements (PSAs) on back-to-back basis. It refers to JNNSM guidelines notified by the Government of India, particularly the following para thereof:*

*“1.6 Phase-II, Batch-III: State Specific VGF Scheme*

*These guidelines shall form the basis for selection of Grid Connected Solar PV projects under this scheme. Out of total capacity of 2000 MW, a capacity of 250 MW will be*

*earmarked for bidding with Domestic Content Requirement (DCR).*

*MNRE shall specify the total State-wise Capacity of the projects (both “open Category” and “DCR Category”) based on commitments from the State for off take of not less than 90% of the capacity to be invited by SECI before issue of Request of Selection (RfS). SECI shall tie up for the remaining capacity with the other Buying Entities for which the Host State shall facilitate inter-State transfer of power.*

*39. It is submitted that there is no mandate of absolute nature that there must necessarily be sale of 10% of installed capacity of the power project to State other than the State where 90% is being sold. It points out that the subject was covered by Article 4.2.2 of the PPAs as under:*

*“ARTICLE 4.4.2 OF PPAs*

*4.4.2 Notwithstanding Article 4.4.1, any excess generation over and above 10% of declared annual CUF will be purchased by SECI at a tariff as per Article 9.4, provided SECI is able to get any buyer for sale of such excess generation. While the SPD would be free to install DC solar field as per its design of required output, including its requirement of auxiliary consumption and to reconfigure and repower the Project from time to time during the term*

*of the PPA, it will not be allowed to sell any excess power to any other entity other than SECI (unless refused by SECI). .....Any energy produced and flowing into the grid before CoD shall not be at the cost of SECI under this scheme and the SPD will be free to make short-term sale to any organisation or individual. SECI may agree to buy this power as a trader if they find it viable outside this scheme.”*

40. *It also relies on the following clauses of PSAs executed on back-to- back basis:*

*“6.5. Third Party Sales by SECI:*

*6.5.5. SECI shall have the right to divert the solar power or part thereof and sell it to any third party namely:*

*Any consumer, subject to applicable Law; or*

*Any licensee under the Act;*

*SECI shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.”*

*...*

*6.8 Renewable purchase obligation:*

*6.8.3 The Buying Utility, at any time during a Contract Year, shall not be obliged to purchase any additional energy from SECI beyond 263.063 Million kWh (MU) as per PPAs signed with SECI for solar PV Projects.....*

*6.8.4 Notwithstanding Article 6.8.3, any power which is in excess of the quantum of power agreed to be supplied under this agreement shall be offered to the Buying Utility and in case the Buying Utility does not accept the same, SECI shall take appropriate action as per PPA.”*

*41. The back-to-back arrangement of the purchase of solar power from the Solar Power Developers and resale thereof to the Buying Utilities/Distribution Companies in the context of similar PPAs and PSAs involving SECI as an intermediary trader had come up before this tribunal in the decision dated 27.02.2020 passed in Appeal Nos. 368, 369, 370, 371, 372 & 373 of 2019 in the matter of Ayana Ananthapuramu Solar Private Limited v. Andhra Pradesh Electricity Regulatory Commission & Ors. Batch which, inter alia, reads as under:*

*“57. Admittedly, the solar power developers have entered into PPAs with Intermediary procurer i.e., NTPC/SECI as the case may be, and PSAs between the intermediary procurer and end procurer i.e., NTPC/SECI with AP Discoms. These PSAs and PPAs between the parties are back-to-back agreements. Therefore, they are not separate transactions; they are part and parcel of one single transaction even in accordance with the provisions of PPAs.”*



42. Having heard the learned counsel on all sides, we are not impressed with the objections raised. The SPPDs were set up by Parampujya through the TBCB process conducted by SECI under the State Specific Bundling Scheme in terms of MNRE Guidelines notified on 04.08.2015, the scheme requiring a commitment from the State for offtake of not less than 90% of power, it being obliged to facilitate inter-state transfer of the remainder 10% by sale to other entities. Clause 1.6 of MNRE Guidelines may be quoted in this context:

*“1.6 Phase-II, Batch-III: State Special Viability Gap Funding (VGF) in the Scheme:*

*Projects of 2000 MW Capacity under the State Specific VGF Scheme will be set up in the Solar Parks of various States, to be developed through coordinated efforts of Central and State Agencies. As implementation of solar parks have begun recently, it could be possible that Solar Parks in some of the States do not become available soon. For such States, Solar Projects would be allowed to be located outside solar parks with land being provided either by the State Government, or arranged by the Solar Power Developers (SPDs).*

*These Guidelines shall form the basis for selection of Grid Connected Solar PV projects under this scheme. Out of total capacity of 2000 MW, a capacity of 250 MW will be earmarked for bidding with Domestic Content Requirement (DCR).*

*MNRE shall specify the total State-wise Capacity of the Projects (both “Open Category” and “DCR Category”) based on commitments from the State for off take of not less than 90% of the Capacity to be invited by SECI before issue of Request for Selection (RfS). SECI shall tie up for the remaining capacity with the other Buying Entities for which the Host State shall facilitate Inter-State transfer of power.”*

*43. From the above, it does emerge that the SECI has been entitled to divert power when there is excess generation beyond the quantum of power specified in the PSA read with PPAs. Thus, we accept the submission on its behalf that the basic governing documents viz. the Guidelines issued by the Central Government under section 63 of the Electricity Act 2003 envisage the sale of electricity under a composite scheme in more than one State, the role of SECI as the nodal agency being to promote renewable sources of power on pan-India basis, and the provisions in the PPAs and PSAs entered into enabling sale of power to third parties in certain eventualities which could from time to time be outside the State of Chhattisgarh also, the arrangement falls within the scope of Section 79(1)(b) of the Electricity Act and, therefore, the jurisdiction lies with the Central Commission.*

*44. The submission of Chhattisgarh Discom that the assumption of jurisdiction by the Central Commission amounts to divesting the State Commission is based on the following observation of this tribunal in*

*Order dated 23.09.2015 in appeal nos. 57 and 58 of 2015 (Chhattisgarh State Power Distribution Company Limited v. Chhattisgarh State Electricity Regulatory Commission & ors.):*

*“18. ... The submission of the Appellant is that MNRE guidelines divested the State Commission of the said jurisdiction. We have already noted that MNRE guidelines are not made under the Electricity Act. They cannot divest the State Commission of the inherent jurisdiction vested in it in law. In any case, no guidelines can travel beyond the statute.”*

*45. We do not find any substance in the argument, since there is no usurpation of jurisdiction by the Central Commission or divesting of the jurisdiction of the State Commission in as much as the PPAs have arisen out of composite scheme, an aspect we may elaborate further.*

*46. It is not in dispute that SECI has been granted inter-state trading license by CERC, it having been designated by MNRE as the Nodal Agency for implementation of MNRE Schemes. Thus, SECI has agreed to purchase such power from the SPDs. Parampujya has an intermediary in the form of SECI to sell it further to buying utilities on back-to-back basis. In Energy Watchdog (supra), **the Hon’ble Supreme Court had also held thus:***

*“22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply*

*of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub-clause (c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to*

*absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.”*

*[Emphasis supplied)*

47. *It is also pertinent to note here that Article 12.2.1 on the subject of relief for Change in Law expressly conferred the jurisdiction on the Central Commission:*

*“12.2.1 The aggrieved Party shall be required to approach the Central Commission for seeking approval for seeking approval of Change in Law”*

48. *Since the project in question was set up under a composite scheme envisaging supply of electricity thereby generated to more than one State, the objection to the jurisdiction exercised by the Central Commission is not correct, it being inconsequential that the State of Chhattisgarh had eventually arranged to procure the entire generation capacity.”*

68. From the above it is clear that in case a project is setup under a composite scheme envisaging supply of electricity generated to more than one State, the jurisdiction for dispute resolution shall fall within the domain of Central Commission

irrespective of whether the entire capacity is ultimately procured by one procurer within the State.

69. Therefore, the issue of jurisdiction is settled accordingly and the contentions of the Appellants on the issue of jurisdiction are rejected.

70. Accordingly, the issues of a) jurisdiction, b) application of the two contractual agreements i.e. PPA and PSA in the instant case and c) claim of GST on account of change in law are settled in above terms as concluded in the preceding paragraphs.

### **ORDER**

In the light of above, the batch of appeals being Appeal No. 210 of 2019, Appeal No. 211 of 2019, Appeal No. 212 of 2019 & Appeal No. 213 of 2019 are dismissed as devoid of merits.

The pending IAs, if any, are also disposed of accordingly.

**PRONOUNCED IN THE OPEN COURT ON THIS 09<sup>th</sup> DAY OF FEBRUARY, 2024.**

**(Sandesh Kumar Sharma)  
Technical Member**

**(Justice Ramesh Ranganathan)  
Chairperson**

*pr/mkj*