

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 13/SM/2017

Coram:

Shri A.K. Singhal, Member

Shri A.S.Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 14th March, 2018

In the matter of

Abolition of Clean Energy Cess and Introduction of Goods and Services Tax
Compensation Cess

And

In the matter of

The Commission on its own motion

Vs

1) GMR-Kamalanga Energy Limited
New Shakti Bhawan, Building No. 302- New Uddan Bawan
Opposite Terminal- 3 Indira Gandhi International Airport
New Delhi- 110037

2) Adani Power Limited
“Adani House”II
Near Mithakhali Six Roads, Navarangpura
Ahmedabad-380009

3) EMCO Energy Limited/GMR Warora Energy Limited
701/704, 71h Floor, Naman Centre, A-Wing
SKC (Sandra Kurla Complex)
Sandra, Mumbai 400051

4) Sasan Power Limited
Reliance Power Limited
3rd Floor, Reliance Energy Centre
Santa Cruz East, Mumbai

5) M.B.Power (Madhya Pradesh) Limited
239, Okhla Industrial Estate, Phase-III
New Delhi-110020

6) Coastal Gujarat Power Limited



34, Sant Tuka Ram Road
Carnac Bunder, Mumbai-400 021

7) Dakshin Haryana Bijli Vitran Nigam Ltd
Vidyut Nagar, Hissar (Haryana)

8) Uttar Haryana Bijli Vitran Nigam Ltd
Vidyut Sadan, Plot No C/16,
Sector 6, Panchkula (Haryana)

9) Haryana Power Generation Corporation Ltd
Urja Bhawan, Sector 6, Panchkula (Haryana)

10) PTC India Ltd
2nd Floor, NBCC Tower, 15, Bhikaji Cama Place,
New Delhi

11) Bihar State Power (Holding) Company Ltd
Vidyut Bhawan, Bailey Road, Patna - 800001

12) Bihar State Power Generation Company Ltd
Vidyut Bhawan, Bailey Road, Patna - 800001

13) South Bihar Power Distribution Company Ltd
Vidyut Bhawan, Bailey Road, Patna - 800001

14) North Bihar Power Distribution Company Ltd
Vidyut Bhawan, Bailey Road, Patna - 800001

15) MP Power Management Company Limited
Shakti Bhawan, Jabalpur-482008
Madhya Pradesh

16) Paschimanchal Vidyut Vitran Nigam Limited
Victoria Park, Meerut-250001
Uttar Pradesh

17) Purvanchal Vidyut Vitran Nigam Limited
Hydel Colony, Bhikaripur Post-DLW,
Varanasi-221004
Uttar Pradesh

18) Madhyanchal Vidyut Vitran Nigam Limited
4A-Gokhale Marg, Lucknow-226001
Uttar Pradesh

19) Dakshinanchal Vidyut Vitran Nigam Limited
220 kV Vidyut Sub- Station
Mathura Agra By-pass Road
Sikandara, Agra-282007 (Uttar Pradesh)

20) Ajmer Vidyut Vitran Nigam Limited



Hathi Bhata, City Power House
Ajmer-305001, (Rajasthan)

21) Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan, Jaipur-302005
Rajasthan

22) Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area
Jodhpur-342003, (Rajasthan)

23) Tata Power Delhi Distribution Limited
Grid Sub- Station Building, Hudson Lines,
Kingsway Camp, New Delhi-110009

24) BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place
New Delhi-110019

25) BSES Yamuna Power Limited
Shakti Kiran Building, Karkardooma
Delhi-110096

26) Punjab State Power Corporation Limited
The Mall, Patiala-147001
Punjab

27) Maharashtra State Electricity Distribution Company Limited
Fifth Floor, Prakashgad, Plot No. G-9,
Anant Kanekar Marg, Sandra (East),
Mumbai- 400 051

28) Electricity Department,
Vidhyut Bhavan, Opp. Secretariat,
Dadra and Nagar Haveli,
Silvassa, 396230

29) Gujarat Urja Vikas Nigam Ltd.,
Sardar Patel Vidyut Bhavan, Race Course
Vadodara-390007, (Gujarat)

30) Haryana Power Purchase Centre
Room No.239, Shakti Bhawan, Sector- 6
Panchkula-134109, (Haryana)

31) Uttarakhand Power Corporation Limited
Urja Bhawan, Kanwali Road Dehradun-248001 (Uttarakhand)

32) D. B. Power Ltd.,
3 rd Floor, Naman Corporate Link,



Parties present:

Shri Alok Shankar, Advocate, GKEL & GWEL
Ms. Nayantara Pandey, Advocate, GKEL & GWEL
Shri Vishrov Mukherjee, Advocate, Sasan Power Ltd.
Ms. Ranjitha Ramachandran, Advocate, GUVNL & Haryana Discoms
Ms. Poorva Saigal, Advocate, GUVNL & Haryana Discoms
Shri Hemant Singh, Advocate, BALCO & ACB
Shri Matrugupta Mishra, Advocate, BALCO & ACB
Shri Raunak Jain, Advocate, TPDDL
Shri Vishvendra Tomar, Advocate, TPDDL
Ms. Swapna Sheshadri, Advocate, PSPCL
Ms. Rhea Luthra, Advocate, PSPCL
Ms. Parichita Chowdhary, Advocate, PSPCL
Shri Sanjay Kumar, Advocate, PTC India
Shri Ashish Anand Bernad, Advocate, PTC India
Shri Paramhans, Advocate, PTC India
Shri Deepak Khurana, Advocate, DB Power
Shri Bijay Mohanty, CGPL
Shri Jignesh Langalia, APL
Shri Abhay Kumar, Tata Power
Shri Girish, GMR
Shri G. M. Gupta, GMR

ORDER

In terms of Section 79 of the Electricity Act, 2003 (“hereinafter referred to as the 2003 Act”), this Commission has been regulating the tariff of generating companies which are owned or controlled by the Central Government and those which have a composite scheme for generation and supply of electricity in more than one State. Regulation of tariff is being carried out in two ways, namely, determination of tariff under Section 62(1)(a) and adoption of tariff under Section 63 of the 2003 Act. The Hon’ble Supreme Court in its judgement dated 11.4.2017 in Appeal Nos. 5399-5400 (Energy Watchdog Vs Central Electricity Regulatory Commission & others) and related appeals has held that “.....the general regulatory



power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating tariff”.

2. In exercise of the power vested under Section 63 of the 2003 Act, Central Government has notified the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” vide notification dated 19.1.2005 which has been amended from time to time (hereinafter referred to as the Guidelines). In terms of the said Guidelines, the Distribution Companies have procured power from the generating companies and the tariff for such procurement of power is determined in accordance with the PPAs between the concerned generating station and distribution licensees. Inter alia, the PPAs provide for grant of relief in the form of adjustment of tariff either to the generating companies or to the distribution licensees on account of Change in Law. In terms of the PPAs, the Commission is required to determine the impact of various events of Change in Law on tariff and grant appropriate relief. Further, in terms of Section 79(1)(f) of the 2003 Act, Para 5.17 of the Guidelines and relevant provisions of the PPAs, this Commission has the power to adjudicate any dispute involving the generating companies in matters connected with clauses 79(1)(a) to 79(1)(d) of the Act.

3. This Commission in exercise of its power under Section 79(1)(f) of the 2003 Act read with Para 5.17 of the Guidelines and the relevant provisions of the PPAs has allowed/disallowed various expenditures claimed under Change in Law events from time to time in the matter involving generating companies and distribution licensees which have been arrayed as respondents in this petition.



4. The Parliament has enacted the following Acts in order to introduce a unified indirect tax structure in the form of Goods and Services Tax (GST) which has replaced various Central and State level taxes:

- (a) Central Goods and Services Tax, Act, 2017
- (b) Integrated Goods and Services Tax Act, 2017
- (c) Union Territories Goods and Services Act, 2017
- (d) Goods and Services Tax (Compensation to States) Act, 2017

The respective State Legislatures have enacted the States Goods and Services Act, 2017.

5. These Acts have come into effect from 1st July 2017. Therefore, the taxes and duties which were admissible under Change in Law provisions of the PPAs have been replaced by either Central GST or State GST. In addition, certain existing taxes have been abolished and certain new taxes have been introduced.

6. In terms of the above Acts, the following taxes have been merged either in Central GST or State GST:

(A) Central GST

- (a) Central Excise Duty
- (b) Additional Duties of Customs (commonly known as CVD)
- (c) Special Additional Duty of Customs (SAD)
- (d) Service Tax
- (e) Central Surcharges and Cesses so far as they relate to supply of goods and services

(B) State GST

- (a) State VAT
- (b) Central Sales Tax



(c) State Surcharges and Cesses so far as they relate to supply of goods and services.

7. Certain taxes have been abolished through the Taxation Laws Amendment Act, 2017. The taxes which are relevant for the electricity sector are enumerated below:

- (a) Cess on coal introduced in terms of the Coal Mines (Conservation and Development) Act, 1974.
- (b) Education Cess on Excisable Goods introduced through the Finance (2) Act, 2004.
- (c) Secondary and Higher Education Cess on Excisable Goods introduced through the Finance Act, 2007.
- (d) Clean Energy Cess introduced through the Finance Act, 2010.
- (e) Swachh Bharat Cess introduced through the Finance Act, 2015.
- (f) Infrastructure Cess and Krishi Kalyan Cess introduced through the Finance Act, 2016.

8. The Goods and Services (Compensation to States) Act, 2017 (hereinafter referred to as the Compensation Act) provides for the mechanism for compensation to States for loss of their revenues. Section 8 of the Compensation Act provides for levying of cess on supplies of certain goods for the purpose of the said Act. Section 8 of the Compensation Act is extracted as under:

“8. (1) There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in Section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in Section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council:

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under Section 10 of the Central Goods and Services Tax Act.

(2) The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify:



Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under Section 15 of the Central Goods and Services Tax Act for all intra-State and inter-State supplies of goods or services or both:

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.”

As per Schedule (2) to the said Act, the compensation cess has been levied on the following in so far as the generation and supply of electricity is concerned:

S. No.	Description of supply of goods and services	Tariff item, heading, sub-heading, chapter, or supply of goods or services, as the case may be	The maximum rate at which goods and services tax compensation cess may be collected
(1)	(2)	(3)	(4)
3.	Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite, whether or not agglomerated, excluding jet, peat (including peat litter), whether or not agglomerated	2701, 2702 or 2703	Four hundred rupees per tonne

9. As per the Taxation Laws Amendment Act, 2017, Clean Energy Cess which stood at Rs. 400 per tonne has been abolished with effect from 1.7.2017. In accordance with the Goods and Services Tax (Compensation to States) Act, 2017, GST Compensation Cess @ Rs.400 per metric tonne on coal and lignite has been introduced to be leviable from 1.7.2017. Both these Acts are in the nature of Change in Law as per the provisions of the PPAs, since they have been enacted and brought into force after the cut-off dates in respect of the PPAs where the Commission has determined the impact of Change in Law and these Acts have resulted in the change in the cost of or revenue from the business of selling electricity by the concerned generating companies to the Procurer States.



10. In the above background, this *suo moto* Petition has been initiated by the Commission for settlement of the dues arising out of the aforementioned change in law. Accordingly, the Petition was heard on 14.9.2017 and the Commission directed both, the generating companies and the distribution companies to file their written submissions with regard to the settlement of dues between these parties, on account of introduction of GST with effect from 1.7.2017 limited to the change in law components claimed in their various Petitions and allowed by the Commission in its orders.

11. During the hearing of the petition on 21.12.2017, the learned counsels appearing for the generators namely GKEL (Respondent No. 1), SPL (Respondent No. 4) and CGPL (Respondent No. 6) submitted that there has been increase in the cost / expenditure incurred by the generators due to payment of GST Compensation Cess @ Rs 400 /MT on coal and lignite under the GST Compensation Act with effect from 1.7.2017 and accordingly prayed that the Commission may consider the grant of relief on this count, pending final disposal of the matter. The Commission after hearing the parties, vide Record of Proceedings (ROP) directed the generating companies and the distribution companies to file information as under:

“3.The Commission observed that in order to examine the claims made by the parties and to take a holistic view in the matter, all relevant data/information is required in a composite manner. Accordingly, the Commission directed that the generating companies, whose claims under change in law had already been allowed and /or pending for consideration, shall file their claims, on affidavit, as per the enclosed format, on or before 2.1.2018, with advance copy to the respondent discoms. The respondent discoms may file their responses by 9.1.2018. The generating companies are also directed to confirm that apart from the taxes claimed under change in law, there is no other implication of the levy of Goods and Services Tax i.e. no other taxes have been abolished or reduced or subsumed.

12. During the hearing of Petition on 16.1.2018, the learned counsels appearing for the discoms namely, GUVNL (Respondent No. 29) and Haryana (Respondents No. 7,



8, 9 and 30)) submitted that only few generating companies have filed the information as sought for by the Commission. The generating companies also prayed for interim direction to allow the GST Compensation Cess @ Rs 400 / MT on coal and lignite, subject to the final determination of the claims by the parties. The Commission however directed as under:

“6. The Commission after hearing the parties directed the generating companies who had filed petition for relief under Change in law due to imposition of taxes under GST and generating companies who are in process of filing petitions under Change in law are required to submit the details in tabular form as per directions contained in ROP of the hearing dated 21.12.2017. The said information/ details shall be filed by the generating companies on or before 5.2.2018 with copy to the respondent distribution companies procuring powers and the distribution companies shall file their responses with advance copy to the generating companies on or before 20.2.2018.

7. The Commission also directed the procuring distribution companies to submit their calculation with regard to the GST Compensation Cess which shall be payable after offsetting the receivable on account of subsuming of the various taxes in GST which were earlier allowed under Change in Law.”

13. As regards the prayer of the generating companies for an interim direction, the Commission observed that the same would be considered after submission of the information by the parties in terms of the above directions of the Commission.

14. TPDDL (Respondent No. 23) vide affidavit dated 16.10.2017 submitted as under:

The generators except SPL have not issued any change in law notice until after the order dated 21.08.2017 passed by the Central Commission. Generators have not furnished any document or supporting evidence for computation of impact of change in law. Therefore, no compensation can be granted at this stage and the delay in computation is on account of the Generators.

15. GUVNL submitted that APL (Respondent No. 2) has not made any submission with regard to GST and CGPL has not provided any document or supporting evidence



for calculating impact of change in Law. Therefore, no compensation can be granted at this stage and the delay in computation is on account of the Generators.

16. TPDDL, GUVNL and Haryana vide affidavit dated 15.12.2017, 16.12.2017 and 15.12.2017 respectively submitted as under:

(a) Goods and Services Tax:

The Generators have not provided clear computation of impact of GST. The figures submitted by the Generators are without explanation and cannot be accepted. The Generators are required to identify all taxes which are subsumed in GST or abolished or reduced.

(b) GST on Coal:

With the introduction of GST on domestic coal to the extent of 5 per cent, there is overall reduction in tax liability. The pre-existing taxes and duties on coal have been abolished or subsumed.

(c) GST on domestic goods other than coal:

With regard to the procurement of goods other than coal, there is overall reduction in the tax liability. SPL has claimed that majority of the goods being supplied are under 28 per cent GST while CGPL has claimed the same under 18 per cent GST. The applicable GST may be considered at 18 per cent. GKEL has not referred impact of GST on goods other than Coal. The Generator has not considered input Tax Credit available under Section 16 of the CGST Act. CGPL has considered applicability of taxes based on procurement from manufacturers and traders and considered the base value as Rs.100 in both cases, which is incorrect. CGPL has also not considered Input Tax Credit. Total tax on purchase from manufacturer has reduced and hence cost to the trader would also come down, all things remaining the same after GST. In such circumstances, the price from trader would also be reduced.



(d) GST on Domestic Services:

GKEL has claimed the service tax only on transportation of coal through rail. Both CGPL and SPL do not use rail services for transportation of coal. The generating stations have already been commissioned and CGPL and SPL are operating the power stations. They have not specified services on which tax would be applicable.

(e) GST on import of services- Transportation of coal:

This is related to CGPL only. Computation is necessary on normative coal requirement for generation of electricity or quantity of coal actually used whichever is lower.

(f) GST on import of coal:

The generation of power by CGPL and APL is based on imported coal primarily from Indonesia. The Custom duty as on cut-off date was applicable at 5 per cent with Education Cess of 2 per cent. The said custom duty was reduced to nil for import of coal from ASEAN countries including Indonesia. The same is change in Law resulting in reduction in costs. Similarly, if the generator concerned has the opportunity to import coal from ASEAN countries, including Indonesia at lower costs as compared to import of coal from other countries, the generator should be treated to have not resorted to mitigation of cost. The extra cost on account of payment of taxes and levies on importation of coal from such other countries as compared to import of coal from ASEAN countries should not be allowed as a pass through in the tariff on account of change in law.

17. In compliance of the directions of the Commission, some of the generators namely, CGPL, GKEL, GWEL (Respondent No. 3) and APL have filed the information. DB Power (Respondent No. 32), PTC Ltd (Respondent No. 10) and SPL have filed



their comments in the matter. The discoms GUVNL and HPPC have filed their written submissions in the matter.

18. GKEL has submitted vide affidavit dated 03.01.2018 the information of impact of GST in the prescribed format in respect of Haryana and Bihar PPAs. The impact of GST on the coal and transportation of coal on cut off date is reduction in cost by Rs.95 per tonne from 1.7.2017 and a further reduction by Rs.23 per tonne thereafter. These were revised on 05.02.2018 to Rs.102.84 per tonne and Rs.19.68 per tonne respectively.

19. GWEL has submitted vide affidavit dated 03.01.2018 that impact of GST on cut-off date is reduction in taxes and duties by Rs.47 per tonne and subsequent reduction of Rs.2 per tonne thereafter. On 05.02.2018, GWEL also revised the impact to reduction of taxes and duties by Rs.47.28 per tonne on 01.07.2017 and reduction in duties and taxes by Rs.143.72 per tonne subsequently.

20. APL has submitted the details which indicate increase in CVD on imported coal from 2 per cent to 5 per cent, increase in service tax on ocean freight/railway freight from 4.5 per cent to five percent. Excise duty on domestic coal has been reduced from 6 per cent to 5 per cent. Clean Energy Cess has been abolished and GST compensation Cess has been introduced.

21. CGPL has submitted vide affidavit dated 05.01.2018 that Central Excise duty, CVD, Service Tax, Special Additional duty of Customs and other Central Surcharges and Cesses have been merged in Central GST. State VAT, Central Sales Tax and State Surcharges and Cesses have been merged in State GST. Cess on coal, Education Cess on Excisable Goods, Secondary and Higher Education Cess on Excisable Goods, Clean Energy Cess, Swachh Bharat Cess, Infrastructure Cess and Krishi Kalyan Cess have been abolished through the Taxation Laws Amendment Act, 2017. GST Compensation Cess has been introduced.



22. APL has submitted vide affidavit dated 03.01.2018 that NCLT, Ahemdabad vide order dated 3.11.2017 sanctioned the arrangement of approved scheme between Adani Power Limited and Adani Power (Mundra) Limited whereby the 4620 MW Mundra Project will now vest with Adani Power (Mundra) Limited.

23. GUVNL and Haryana Utilities have submitted on 10.01.2018 that generators have not given the complete information. CGPL has not referred to all taxes which would have been applicable pre-GST such as entry tax, terminal tax, Octroi. Thus, impact of GST would be higher than claimed by CGPL. GKEL has submitted the increase in assessable value of coal and freight, which has already been rejected by the Central Commission. GKEL has not considered Central Sales tax and Entry Tax, other taxes which may be applicable. APL has not mentioned Entry Tax, VAT, Stowing Excise Duty and other taxes on domestic procurement. GKEL and APL have not given categorical statements that there is no other implication of GST i.e. No other taxes have been abolished or reduced or subsumed.

24. GKEL has further submitted the impact of change in Law as Rs.50.85 per tonne as on 09.01.2018 in respect of Haryana PPA and Rs.11.34 per tonne in respect of Bihar PPA. GWEL submitted the impact of change in law as increase in taxes and duties on 9.1.2018 by Rs.96.42 per tonne, Rs.41.53 per tonne and Rs.7.92 per tonne in respect of PPA with MSEDCL, DNH and TANGEDCO, respectively.

25. DB Power Ltd has submitted working sheet of impact of GST in respect of TANGEDCO but did not indicate implications. PTC India Limited submitted that entire transactions undertaken by them are on back to back basis and on pass-through basis. HPPCL (Respondents no. 7, 8, 9 and 30) further stated on 06.03.2018 that their computation of impact of changes in law results in savings to the generators of Rs.110/- per MT with CST and Rs.156/- per MT with VAT based on assumed coal cost of Rs.1000 per MT.



Analysis and Decision

26. The above *suo moto* petition was initiated to assess the impact of Abolition of Clean Energy Cess, introduction of goods & services tax in place of host of indirect taxes and Introduction of Goods and Services Tax Compensation Cess effective from 01.07.2017. These events are change in law events as already noted above. The Commission had directed the parties to make submissions by 20.02.2018 in this regard. The submissions made regarding implication of GST on items other than fuel have not been considered in the instant petition.

27. The Commission in the past, prior to introduction of GST, in cases covered under section 63 and having composite scheme has allowed/disallowed impact of various events of change in law on tariff. These were decided in terms of provisions of PPA and keeping the cut-off date of each individual case/petition in sight. There are certain events of change in laws which are still under consideration of the Commission.

28. Abolition of Clean energy cess and introduction of Goods and Services Tax Compensation Cess have become effective from 01.07.2017. Irrespective of the Original cut-off date, as applicable to individual Generator/ Distribution Company PPA, this event is applicable on all PPAs covered under section 63 and having composite scheme, except in case of generating company having captive coal mine such as Sasan Power Ltd. and NLC, therefore, in all those cases where the cutoff date as per the respective PPA is 30.06.2017 or earlier, the generator shall be entitled to GST compensation cess @ Rs 400/ MT where intra-State or inter-State movement of coal is involved.



29. Keeping in view the above point and earlier decisions of this Commission allowing/disallowing as change in law, the submissions made by Generator/s and Distribution Company/ies have been analyzed. From the analysis done on the submissions, the Commission finds that apart from the GST compensation cess, following taxes, duties, cess etc. are change in law events as a result of enactment of various legislations as indicated in paragraph 4, 7 and 8 of this order. The list is not exhaustive and is only indicative.

i. Taxes, duties and cess levied (wherever applicable):

- a. IGST at the rate of 5 per cent,
- b. GST of 5 per cent on transportation of coal by rail,
- c. GST compensation Cess of Rs.400 per tonne.

ii. Taxes and duties subsumed:

- a. Central Excise duty,
- b. Central Sales Tax,
- c. VAT,
- d. Stowing Excise duty,
- e. Additional duty of custom - Countervailing Duty (CVD)
- f. Special Additional duty of Customs and other Central Surcharges and Cesses,
- g. Service tax ,
- h. Krishi Kalayan Cess,
- i. Swacch Bharat Cess,
- j. Education Cess and Secondary and Higher education cess,
- k. Entry Tax and Octroi



(As regards Octroi, it is based on the submissions by some of the respondents while most of the generators are silent on the aspect of Octroi getting subsumed),

iii. Taxes, duties and Cess abolished;

a. Clean Energy Cess.

iv. Other taxes, duties and Cess as stated to be subsumed in GST as submitted by the discoms/beneficiaries States:

a. Purchase tax,

b. Additional duty on excise,

c. Environmental and Infrastructure Cess,

d. Work contract Tax, Forest Tax,

e. Niryat Kar, and

f. Coal terminal surcharge on loading and unloading of coal for transportation by train from 10.7.2017.

30. From the foregoing, we are of the view that the Clean energy cess was applicable @ 400/MT as on 30.06.2017 and was earlier allowed by this Commission as a pass through cost as consequence of change in law, on case to case basis. But this was abolished from 01.07.2017 and this event of abolition is hereby allowed as a change in law event. Hence, the procurer shall not be liable to pay the Clean energy cess from 01.07.2017.

31. The GST Compensation cess was introduced from 01.07.2017 @ 400/MT. This was claimed by most of the generators as change in law event. This matter was under consideration of this Commission under the instant *suo moto* Petition. The Commission hereby allow this event of introduction of GST Compensation cess, as a Change in law event in all cases of Intra-State supplies or Inter-State supplies of coal. Hence, GST compensation cess is not allowed in case of generating stations



having captive mines such as Sasan Power Limited and NLC as no intra-state or Inter-state supplies are involved.

32. At the same time GST and IGST were also introduced from 01.07.2017 and some of the taxes, duties and levies were abolished or subsumed therein. The Commission through the instant petition tried to ascertain the impact of the same on the generators and discoms/beneficiary States by seeking detailed submissions from all concerned.

33. It has been observed that some of the generators and discoms have submitted the calculations of impact of change in law. These calculations show varying impact of such changes on different generators and discoms on various dates. The impact worked out by the discoms was different from that submitted by the generators. Further, the generators have also not submitted a clear declaration as called for that there are no other taxes, duties, cess etc., which have been reduced or abolished or subsumed. From the forgoing, the Commission feels that due to varied nature of such taxes, duties and cess etc. that have been subsumed/ reduced, it is not possible to quantify in a generic manner, the impact of change in law for all the generators.

34. Hence, we are of the opinion that introduction of GST and subsuming/ abolition of such taxes, duties and levies has resulted in some savings for the generators having generation based on domestic coal and the same needs to be passed to the discoms/ beneficiary States. Since, these are change in law events beneficial to the procurers, the same needs to be passed on to the procurers by the generators.

35. Accordingly, we direct the beneficiaries/ procurers to pay the GST compensation cess @ Rs 400/ MT to the generating companies w.e.f 01.07.2017 on the basis of the auditors certificate regarding the actual coal consumed for supply of



power to the beneficiaries on basis of Para 28 and 31. In order to balance the interests of the generators as well as discoms/beneficiary States, the introduction of GST and subsuming/abolition of specific taxes, duties, cess etc. in the GST is in the nature of change in law events. We direct that the details thereof should be worked out between generators and discoms/beneficiary States. The generators should furnish the requisite details backed by auditor certificate and relevant documents to the discoms/ beneficiary States in this regard and refund the amount which is payable to the Discoms/ Beneficiaries as a result of subsuming of various indirect taxes in the Central and State GST. In case of any dispute on any of the taxes, duties and cess, the respondents have liberty to approach this Commission.

Sd/-
(Dr. M.K.Iyer)
Member

Sd/-
(A. S. Bakshi)
Member

Sd/-
(A. K. Singhal)
Member

