THURSDAY | 22 AUGUST 2024

Case Update

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION HOLDS INCREASE IN CUSTOM DUTY DUE TO EXCLUSION OF SOLAR POWER PROJECTS FROM PIR, 1986 THROUGH NOTIFICATIONS DATED 19.10.2022 AND 01.02.2024 ISSUED BY CENTRAL BOARD OF INDIRECT CUSTOMS AND TAXES AS A “CHANGE IN LAW” EVENT

The Maharashtra Electricity Regulatory Commission (MERC) passed an order on August 20, 2024 in a petition filed by T.P. Saurya Limited (TPSL) whereby MERC has declared Project Imports (Amendment) Regulations, 2022 issued *vide* Notification bearing ref. no. ‘54/2022-Customs’ dated 19.10.2022 and the Project Imports (Amendment) Regulations, 2023 introduced vide Notification bearing ref No. ‘07/2023-*Customs*’ dated 01.02.2023 (**PIR Notifications**) by the Central Board Indirect Taxes and Customs (**CBIC**) and published by the Ministry of Finance, Government of India (**MoF, GoI**), as a “Change in Law” event, under the PPA between TPSL and Maharashtra State Electricity Distribution Company Limited (MSEDCL). SKV Law Offices represented T. P. Saurya Limited (TPSL), a subsidiary of Tata Power.

TPSL had entered into a PPA with MSEDCL on August 3, 2022, for the development of a 300 MW Wind-Solar Hybrid Power Project in Maharashtra. The PPA set the tariff for the project at ₹2.56 per kWh, following a competitive bidding process. However, subsequent notifications issued by the CBIC on October 19, 2022, and February 1, 2023, significantly altered the monetary investment required for the project by introducing amendments due to which Solar Power Projects have been excluded from the purview of PIR, 1986 as a result of which they can no longer avail concessional rates of customs duty. Hence, these amendments have increased the cost of importing essential components such as solar cells and modules.

TPSL argued that these notifications should be classified as "Change in Law" events under the PPA. The notifications imposed a sudden and substantial increase in customs duty—from 5% to 25% on solar cells and from 5% to 40% on solar modules—resulting in a significant financial burden on the project. TPSL claimed that this change directly affected the project costs and, therefore, should entitle them to compensation.

MSEDCL, on the other hand, opposed TPSL’s claim. They argued that the possibility of an increase in customs duty had already been indicated by the Ministry of New and Renewable Energy (MNRE) in a memorandum dated March 9, 2021, well before the bid submission deadline. According to MSEDCL, the entities bidding for Power Generation Plants were advised to take this into consideration while quoting their tariffs. Therefore, MSEDCL contended that TPSL's claim for compensation due to the "Change in Law" was not justified.

After reviewing the arguments from both parties, MERC concluded that the notifications dated October 19, 2022, and February 1, 2023, do qualify as "Change in Law" events under the PPA. MERC noted that these notifications were issued after the last date for bid submission (June 23, 2021), which satisfies the criteria for a "Change in Law" as outlined in the PPA. On the aspect of bidders having been already informed about the increase in custom duty, MERC observed that the March 9, 2021 Notification has no bearing as TPSL always intended to avail Custom Duty concession under Chapter 98.

MERC observed that TPSL had made genuine efforts to secure the necessary recommendatory letter from the Government of Maharashtra, and the pendency of the recommendatory letter was beyond TPSL’s control. The Commission acknowledged that TPSL could not be faulted for this delay and that the subsequent notifications had imposed a significant financial impact on the project. Accordingly, MERC held that TPSL shall be eligible to seek compensation for increased expenses and it shall file separate Petition for the same, post commissioning of the project.

TPSL was represented before the MERC by Mr. Shri Venkatesh, Managing Partner, Mr. Suhael Buttan, Counsel and Mr. Nikunj Bhatnagar, Associate of the SKV Law Offices Team