Rajasthan Urja Vikas Nigam Ltd & Ors vs Central Electricity Regulatory ... on 11 May, 2026

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 248 OF 2020

Dated: 11th MAY, 2026
Present: Hon`ble Ms. Seema Gupta, Officiating Chairperson
Hon`ble Mr. Virender Bhat, Judicial Member

IN THE MATTER OF:
1. RAJASTHAN URJA VIKAS NIGAM LTD.,
Through its Managing Director
Vidhan Sabha Rd, Janpath,
Jyothi Nagar,Lalkothi,
Jaipur, Rajasthan - 302005

2. AJMER VIDYUT VITRAN NIGAM LTD.,
Through its Managing Director,
Vidyut Bhaan, Makarwali Road,
Panchsheel Nagar,
Ajmer, Rajasthan - 305004.

3. JODHPUR VIDYUT VITRAN NIGAM LTD.,
Through its Managing Director,
Old Jhanwar Rd. Near CBI Officers,
Sector 18E, Chopasni Housing Board,
Jodhpur, Rajasthan - 342008.

4. JAIPUR VIDYUT VITRAN NIGAM LTD.,
Through its Managing Director,
Vidyut Bhawan, Janpath,
Jaipur, Rajasthan, 302005. ... Appellant(s)

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION
Through its Secretary,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi -110001.

2. D MARUTI CLEAN COAL AND POWER LIMITED
   Through its Chairman and Managing Director
   7th Floor, Office Tower,
   Ambiance Mall, HN-8,
   Gurugram, Haryana - 122002.

3. PTC INDIA LIMITED,
   Through its Director Marketing
   2nd Floor, NBCC Tower,
   15 Bhikaji Cama Place,
   New Delhi - 110066.

4. PRAYAS (ENERGY GROUP)
   Through its Secretary,
   Unit II A & B, Devgiri,
   Joshi Railway Museum Lane,
   Kothrud industrial Area, Kothrud
   Pune, Maharastra - 411038.

5. CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.
   Through its Managing Director,
   Vidyut Sewa Bhawan, Dangania,
   Raipur, Chhattisgarh - 492013. .... Respondents

Counsel on record for the Appellant(s)	:	Mr. Anand K. Ganesan Ms. Swapna Seshadri Ms. Ashwin Ramanathan Mr. Damodar Solanki Mr. Utkarsh Singh for App. 1
Counsel on record for the Respondent(s)	:	Mr. Matrugupta Mishra Ms.Shikha Ohri Mr. Samyak Mishra Ms.Pratiksha Chaturvedi Mr. Mohd Aman Sheikh for Res. 2

JUDGEMENT

PER HON'BLE MRS. SEEMA GUPTA, OFFICIATING CHAIRPERSON

1. The present Appeal No. 248 of 2020 has been filed by Rajasthan Urja Vikas Nigam Ltd. (hereinafter referred to as "Appellant") under Section 111 of the Electricity Act, 2003 challenging the order dated 25.09.2019 ("Impugned Order") passed by the Central Electricity Regulatory Commission in Petition No.116/MP/2018 whereby the Central Commission has granted certain compensation to Respondent No 2, the Maruti Clean Coal and Power Limited.

Description of Parties

2. Appellant No. 1 (erstwhile Rajasthan Rajya Vidyut Prasaran Nigam Ltd.) is a company incorporated under the provisions of the Companies Act, 2013 and it represents Appellant Nos. 2 to 4, the distribution licensees in the State of Rajasthan. The Appellants Nos. 2 to 4 had executed a Power Purchase Agreement dated 01.11.2013 with Respondent No.2 for procurement of electricity through PTC.

3. Respondent No. 1 is the Central Electricity Regulatory Commission (hereinafter referred to as "Central Commission/CERC") exercising powers and discharging functions under the provisions of Section 79 of the Electricity Act, 2003.

4. Respondent No. 2- the Maruti Clean Coal and Power Limited, is a company incorporated under the Companies Act, 1956 and is a generating Judgement in Appeal Nos. 248 of 2020 company within the provisions of the Electricity Act, 2003 having established a 300 MW coal-based thermal power project located at Korba, in the State of Chhattisgarh.

5. Respondent No. 3 - PTC India Limited (hereinafter referred to as "PTC") is the Power Trading Corporation, which is an inter-state trading licensee through which Appellant Nos. 2 to 4 are procuring electricity from Respondent No.2's plant in terms of the PPA.

6. Respondent Nos. 4 and 5 are trading licensee and distribution licensee within the State of Chhattisgarh.

Factual matrix of the Case:

7. On 28.05.2012, Appellant No1 issued a Request for Procurement ("RFP"), for long-term power supply to Appellant No 2 to 4, through a tariff- based competitive bidding process with bids due by 18.09.2012. Subsequently, on 01.11.2013, the Appellants finalized back-to-back power purchase agreements with Respondent No.2 through PTC. Few dates relevant for adjudication of the appeal are as listed below:

Cut-off date	11.09.2012
Bid Submission date	18.09.2012
PPA/PSA executed on	01.11.2013
Start of supply of power	30.11.2016 for 45 MW
	01.04.2017 250 MW

8. On 11.04.2018, Respondent No.2 filed a petition bearing Petition No.116/MP/2018 before the Central Commission seeking increase in tariff on Judgement in Appeal Nos. 248 of 2020 account of certain change in law events like Levies on Royalty, Sizing Charges and Surface Transportation charges, Forest Transit Fee, etc. in terms of PPA executed between the parties. There were several other claims made by Respondent No.2.

9. The Central Commission passed the impugned order on 25.09.2019 in the Petition No. 116/MP/2018 and admitted certain claims of the Respondent No2 against the Appellants. Being aggrieved by the impugned order, the Appellants have preferred the present appeal raising following issues:-

I. Increase in coal cost on account of change in law even

(a) Royalty on Coal;

(b) Service Tax on Royalty of Coal;

(c) Increase in Environment Cess and Paryavaran Upkara, and Change in Infrastructure Development Cess/ Vikas Upkar;

(d) Change in Clean Energy Cess/Clean Environment Cess and GST;

(e) Change in Forest Tax;

(f) Change in the components of Central Excise Duty; and

(g) Increase / Change in VAT on account of changes in individual component of such Tax.

II. Increase in cost on account of change in law pertaining to rail transportation of domestic coal supplied by CIL and its subsidiaries -

(a) Levy of Busy Season Charges and Levy of Development Surcharge; and Judgement in Appeal Nos. 248 of 2020

(b) Increase in Service Tax Rate and imposition of Swachh Bharat Cess and Krishi Kalyan Cess.

III. Increase in Rate of Electricity Duty imposed on Auxiliary Consumption.

IV. Increase in Coal Cost due to Reduction in supply of coal by Coal India Limited and its subsidiaries.

V. Increase in Consent Fee
VI. Introduction of Evacuation Facility Charges

VII. Additional cost towards Fly Ash Transportation VIII. Additional capital expenditure on account of amendment in Environment Norms IX. Carrying Cost ANALYSIS AND DISCUSSION

10. At the outset, it is submitted on behalf of the Appellants that save and except the "Change in Forest Tax", all other change in law events, arising out of the present appeal, addressed and settled by various decisions of this Tribunal and the Supreme Court, and accordingly are not pressed by the Appellants. In view thereof, arguments are confined to the sole surviving issue of "Change in Forest Tax". We have heard the Appellants and Respondents and elaborate submissions were put forth by Mr Anand K. Ganeshan, the learned counsel for the Appellants and Mr Matragupta Mishra, the learned counsel for the Respondent No 2, on the said issue.

SUBMISSIONS URGED ON BEHALF OF APPELLANTS

11. It is submitted that the Central Commission, in the Impugned Order, has proceeded on the erroneous premise that as on the cut-off date i.e., Judgement in Appeal Nos. 248 of 2020 11.09.2012, no Forest Tax was in existence, and has recorded that Forest Tax was levied at the rate of Rs. 7/ton on coal mined and transported from SECL mines only with effect from 01.11.2012, and subsequently revised to Rs. 15/ ton pursuant to Notification dated 30.06.2015 with effect from 01.07.2015; on this basis, the Central Commission has concluded that the levy of Forest Tax came into force after the cut-off date and held that the Respondent Generator is entitled to change in law compensation @ Rs. 15/ton.

12. It is submitted that, admittedly, as per the Notification dated 14.06.2002 issued by the Forest Department, Government of Chhattisgarh, a transit fee of Rs. 7/ton was already levied for transportation of coal in forest areas, and therefore, as on the cut-off date, the said levy was in existence; consequently, the Generator would, at best, be entitled only to the incremental increase in forest tax from Rs. 7/ton to Rs. 15/ton. This position also stands reinforced by the approach adopted by the Central Commission in its Order dated 19.12.2017 in Petition No. 101/MP/2017, arising out of a bidding process with an identical cut-off date and similar change in law events, wherein it was held that the generator therein was entitled only to the increase in forest tax to the extent of Rs. 8/ton.

13. In fact, the Respondent Generator has not contested the applicability of forest tax at the rate of Rs. 7/ton in terms of Notification dated 14.06.2002, and its sole contention is that such levy, though in existence, was not being uniformly implemented and was enforced only pursuant to SECL's letter dated 09.11.2012 directing compulsory implementation with effect from 01.11.2012; however, the said contention is wholly misconceived. Firstly, there is no basis to contend that the Notification dated 14.06.2002 was not being implemented before 01.11.2012. Further, the SECL letter merely constitutes an Judgement in Appeal Nos. 248 of 2020 administrative direction for the implementation of an already existing law, and such an internal communication issued to its officers cannot, in itself, be regarded as a "Change in Law" within the meaning of Article 10.1.1 of the PPA. Learned counsel further submits that in terms of the bid documents, generators are required to take into account all taxes and duties prevailing as on the date of bid submission.

SUBMISSIONS URGED ON BEHALF OF RESPONDENT NO.2

14. It is submitted that Appellant's reliance upon Chhattisgarh State Notification No. F 7-61/V.S./2001 dated 14.06.2002 ("2002 Notification"), contending that the said Notification predates the cut-off date of 11.09.2012, is liable to be rejected as an afterthought. The 2002 Notification was never pleaded in the Appeal and has been sought to be introduced for the first time during the course of final arguments held on 16.02.2026, and was thereafter placed on record belatedly on 27.02.2026. The Appellants cannot be permitted to improve their case at the stage of final hearing by relying upon a document which was never pleaded. It is a settled position in law that parties are bound by their pleadings, and no case can be made out beyond the same to the prejudice of the opposite party.

15. Without prejudice to the foregoing, even on merits, the objection raised by the Appellants is wholly misconceived. The contemporaneous record unequivocally establishes that the impugned levy, though referable to the earlier forest tax/van kar framework, was rendered compulsorily operative only subsequent to the cut-off date. In particular, the Office of the Forest Conservator, Bilaspur Circle, Chhattisgarh, vide communication dated 31.10.2012, expressly stipulated that the arrangements for issuance of license Judgement in Appeal Nos. 248 of 2020 fee for transit passes/minerals from forest land "shall be effected from 01st November, 2012" on a mandatory basis, with necessary directions to be issued to all coal exploration fields under South Eastern Coalfields Limited (SECL). Accordingly, the levy variously described in the record as forest tax/forest cess and operationally recovered through the transit pass/license fee mechanism--became mandatory and practically enforceable only with effect from 01.11.2012. This is also consistent with Circular No. 3541/2531/2010/10-2 dated 06.10.2012 and the subsequent implementation on and from 01.11.2012 Thereafter, SECL, vide Notification No. SECL/BSP/S&M/1788 dated 12.10.2015, revised the forest tax/levy (operationally recovered through the transit pass/license fee mechanism) from Rs. 7 per tonne to Rs. 15 per tonne with effect from 01.07.2015. Significantly, the Appellants do not dispute the said subsequent revision as constituting a Change in Law event, and their challenge is confined solely to the initial levy of Rs. 7 per tonne burden.

16. The question which arises for consideration, therefore, is whether the mere existence of the 2002 Notification, in its textual form, is sufficient to defeat the claim of Change in Law. It is submitted that Article 10.1.1 of the PPA, which defines "Change in Law" is not concerned with a dormant notification merely existing on the statute book; rather, it contemplates a law which has come into force, is made applicable, and results in additional expenditure to the Seller. The provision expressly confines the ambit of "Change in Law" to an event "resulting in any additional recurring or non-recurring expenditure. In the absence of actual imposition and recovery of the levy, there can be no expenditure, no impact on tariff, and consequently, no Change in Law event. A harmonious and purposive construction of the clause further fortifies this position. Point 1 makes a clear distinction between "enactment" and "coming into effect"; Point 2 contemplates a change in the "interpretation or application"

> Judgement in Appeal Nos. 248 of 2020 of law; and Point 4 specifically refers to a tax being "made applicable." These expressions have been consciously employed and must be accorded their distinct and independent meaning. Any interpretation that

> treats mere promulgation or textual existence of a notification as sufficient would render the phrases "coming into effect," "application," and "made applicable" otiose. The clause, when read in its entirety, is thus concerned with the operative effect and actual enforcement of a law, and not with a mere unimplemented or inchoate declaration.

17. Learned counsel asserted that Article 10.1.1 is, in any event, sufficiently wide to encompass the present event, whether construed as a tax being made applicable, a law coming into effect, or an additional burden arising through the permit/transit pass regime. Prior to 01.11.2012, there was no actual recovery and, consequently, no occasion for the answering respondent to factor such burden into its bid. This aspect assumes particular significance from the standpoint of bid-factorability, as a bidder can only account for a levy that is real, operative, and actually recovered as on the cut-off date, and cannot reasonably be expected to anticipate a dormant levy which, though traceable to an earlier notification, was operationalized only subsequently through the transit pass/license fee mechanism. The Impugned Order has correctly appreciated this position and, accordingly, warrants no interference.

18. It is further submitted that the Supreme Court has repeatedly held that Change in Law relief is restitutionary in nature and is intended to restore the affected party to the same economic position as if the Change in Law had not occurred, thereby implying that any compensatory adjustment must be linked to the point at which the Change in Law becomes effective and results in actual cost impact upon the Seller. In this regard, reliance placed by the learned Judgement in Appeal Nos. 248 of 2020 counsel upon "Energy Watchdog v. CERC, (2017) 14 SCC 80; Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power Ltd., (2019) 5 SCC 325; Jaipur Vidyut Vitran Nigam Ltd. v. Adani Power Rajasthan Ltd., (2020) 4 SCC 650; and Jaipur Vidyut Vitran Nigam Ltd. v. MB Power (Madhya Pradesh) Ltd., (2024) 8 SCC 513". The said principle has further been reiterated by this Tribunal in its Judgment dated 15.09.2022 passed in Appeal No. 427 of 2019 & batch.

In view of above submissions, the Appellants' limited challenge is liable to be rejected.

CONSIDERATION AND OUR VIEW

19. The CERC in the impugned Order has concluded that as on the cut-off date i.e., 11.09.2012 there was no forest tax. The CERC held that as per the letter dated 06.10.2012 issued by the Forest Department, Government of Chattisgarh, Forest Tax was levied at the rate of Rs. 7/MT with effect from 01.11.2012 under Chattisgarh Transit (Forest Produce) Rules, 2001. Further, the Forest Department, Government of Chattisgarh vide its notification dated 30.06.2015, revised the Forest Tax from Rs. 7/MT to Rs. 15/MT with effect from 01.07.2015. in view thereof, the Central Commission has held that there was no Forest Tax as on the cut-off date and hence, the Respondent is entitled to recover such levy and subsequent increase in the forest tax relying on this tribunal's judgment in "Adani Power Limited v. RERC & Ors. dated 14.08.2018 in Appeal No 119 of 2016 and batch. Relevant portion of said judgment is extracted as under:

> "xxii. It is observed that the claim of APRL for the said fee at the rate of Rs. 7/ton has been levied based on Chhattisgarh Government, Forest Department letter dated 6.10.2012, under Judgement in Appeal Nos. 248 of 2020 Chhattisgarh Transit (Forest Produce Rule) 2001 on coal mined and transported from SECL mines located in Forest area with effect from 1.11.2012. There was no such fee applicable as on cut-off date of the bid deadline. Accordingly, APRL could not have envisaged for factoring it in its bid. The levy of Forest Tax/Fee cannot be considered as a part of pricing mechanism for coal and hence it cannot form part of CERC Escalation Rates for coal. Accordingly, there has been increase in expenses related to coal due to such levy and the same falls under the category of first bullet of Article 10.1.1of the PPA read with the definitions of the 'Law' and 'Indian Government Instrumentality' under the PPA. This is also in line with the judgement of this Tribunal in Appeal No. 288 of 2013 as discussed above. Accordingly, the State Commission has not justified in rejecting the benefit claims of the APRL/Appellant."

20. We note from the Appellant's pleading, that Appellants have contested the allowance of change in law - Forest Tax mainly on the issue that levy of such amount is in the nature of fee for use of forest land for transportation and is not in the nature of tax as claimed by Respondent No 2, and therefore does not become eligible for change in law in terms of Article 10.1 of PPA as well as the claim of Respondent No 2 on the basis of circulars dated 06.10.2012 and 31.10.2012 is barred by limitation; both of these contentions have been given up on behalf of the Appellants during the hearing of the Appeal before this tribunal.

21. As per the Appellant's submission before this tribunal, the 2002 Notification No. 7-61/V.S./2001 dated 14.06.2002 issued by the Government of Chattisgarh under Chattisgarh Transit (Forest Produce) Rules, 2001 Judgement in Appeal Nos. 248 of 2020 prescribed the forest transit fee at Rs.7 per tonne and the same is pre-dated the cut-off date i.e., 11.09.2012. Therefore, the levy was a known, pre-existing legal obligation as on cut-off date and that the Generator was expected to factor into its bid. Hence, the Generator is only eligible for increase in the forest tax from Rs. 7/ton to Rs. 15/ton.

22. Per contra, it has been contended on behalf of Respondent No 2 that though the "2002 Notification" was in existence but was not being implemented and it was only vide circular dated 25.10.2012, the "2002 Notification" was made mandatorily applicable with effect from 01.11.2012, which is post cut off date, therefore Responsible No 2 is eligible for Change in law compensation on Forest tax of Rs 15/Ton as accorded vide Impugned Order. Respondent No 2, has also objected to the reliance placed by Appellants on 2002 Notification and belated submission of the said order before this Tribunal as it was never pleaded in the Appeal.

23. It is a fundamental and time-honoured principle of adjudication that parties are bound by their pleadings. Courts and tribunals do not permit litigants to travel beyond their pleadings to the detriment of the other side. It is well established principal that a case must be decided on the basis of the pleadings and generally no additional evidence to be looked into upon a plea which was never put in an issue.

24. In the present case, the 2002 Notification No. 7-61/V.S./2001 dated 14.06.2002 issued by the Government of Chattisgarh under Chattisgarh Transit (Forest Produce) Rules, 2001 was never pleaded in the Appeal nor it was placed before the CERC. It was first pleaded during the final arguments before this Tribunal and placed on record belatedly on 27.02.2026. The attempt to Judgement in Appeal Nos. 248 of 2020 introduce a new factual foundation at such a belated stage- is impermissible. Accordingly, in general Appellants should not be permitted to rely upon 2002 Notification as an independent ground of challenge. However, since the document was placed on record by the Appellants and parties have addressed it on merits, the tribunal proceeds to examine the merits as well, without prejudice to this preliminary finding.

25. The term "Law", which has been defined in the PPAs, reads as under:

> "Law" shall mean in relation to this Agreement, all laws including Electricity laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of Appropriate Commission."

26. Perusal of the definition of the term "Law" itself would clearly show that the term "Law" would mean all laws including Electricity laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian governmental instrumentality and having force of law. It is apposite to reproduce the Change in Law Clause in PPA between PTC and Appellant 2-4, which are applicable for Respondent No 2 as they have back to back agreement with PTC.

> "10.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the Seller or any income to the Seller:
>
> Judgement in Appeal Nos. 248 of 2020 • the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law...;
>
> • a change in the interpretation or application of any Law by any Indian Governmental Instrumentality...; • ...
>
> • any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement."

27. This tribunal in Adani Power (supra) judgement dated 14.08.2018 has already held that levy of such forest tax shall be eligible under change in law and has been applied by the Central Commission in the Impugned Order. The referred judgement of this Tribunal dated 14.08.2018 was

assailed before the Supreme Court in civil Appeal no 12055-56 of 2018 and Batch, in which supreme court vide its order dated 20.04.2023 ("GMR Warora Energy Limited vs CERC"; (2023) 10 SCC 401) has affirmed the said judgement and held as under:

> "100. As discussed hereinabove, the term "Law" would also include all applicable rules, regulations, orders, notifications issued by an Indian governmental instrumentality.
>
> 101. It would thus be clear that all such additional charges which are payable on account of orders, directions, notifications, regulations, etc. issued by the instrumentalities of the State, after the cut-off date, will have to be considered to be "change in law" events. The generators would be entitled to compensation on the restitutionary principle on such changes occurring after the cut-off date."

28. Therefore, as far as the issue concerning whether such levy of forest tax be eligible under change in law, as contended by the Appellants in the Appeal, stand decided in favour of Respondent No 2, in terms of the above cited judicial pronouncement.

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29. The remaining issue is whether the 2002 Notification was actually operational and applicable to the Respondent No 2 as on the cut-off date, and whether it was therefore a burden that a prudent bidder presumed to have been factored into its bid.

30. The Supreme Court in Energy Watchdog v. CERC, (2017) 14 SCC 80, Jaipur Vidyut Vitaran Nigam Ltd. v. Adani Power Rajasthan Ltd., (2021)18 SCC 478 while interpreting Change in Law clause in the context of PPAs for supply of electricity, held that the Change in Law provisions are restitutionary in nature and aim to restore the affected party to the economic position it occupied as if the Change in Law had not occurred. Crucially, the Court held that a bidder can only factor in those levies which are real and operative at the time of bidding.

31. The text of Clause 10.1.1 itself fortifies this interpretation. The clause separately uses the expressions "enactment" and "coming into effect", thereby expressly distinguishing between the legislative promulgation of a provision and its actual operational effectiveness. It refers to a "change in interpretation or application", and a tax being "made applicable." If the mere existence of a notification in the statute book were sufficient, the separate references to "coming into effect", "application", and "made applicable" would be rendered entirely otiose. The clause, read harmoniously, is unambiguously concerned with operational effect and actual financial impact.

32. Reading all the documents and PPA provides Application and Principles for computing impact of change of law, the parties shall have due regard to the principle that the purpose of compensating party affected by any change in law, is to restore through monthly Tariff Payments, the affected party to the same economic condition as if such change has not occurred.

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33. Admittedly, the Notification dated 14.06.2002 (2002 Notification) was issued which prescribed the fee for issuing transport permits for forest produce in which Rs 7/ Ton fee was made applicable on "Limestone, Dolomite, Fireclay, Manganese, Copper, Rock-Phosphate, Pyrophyllite, Diaspore, Ochre, Bauxite, Calcite, Coal, Quartz, Silica Sand, Slate, Soap Stone, Iron Ore, Gold, Corundum and Tin Ore".

34. The Office of the Forest Conservator Bilaspur Circle Chhattisgarh, vide its letter dated 31.10.2012, addressed to the Chairman SECL, referring to the 2002 Notification, expressly directed that the arrangements for issuance of license fee for transit passes for minerals from forest land "shall be effected from 01 November, 2012" mandatorily. Relevant extract from the said letter is reproduced hereunder: -

> "In concern to the subjected exploration of forest for the continuation of the transport license and the assessment of the fee the letter vide No. F-7-61/FOREST CONSERVATOR/2001 Dated 14.06.2002 is issued. (Notification is enclosed in the Appendix-1). As per the above notification the transpiration charges @7/- per manganese, tonne is assessed for limestone, dolomite, fireclay, copper, rock-phosphate, pyriphylite, diaspore, oaker, bauxite, caselite, coal, claret, silica sand slate, soap stone, iron ore, gold, corundum and tin ore; amount of '4/- per tone is fixed for transportation before the issuing of licence for flag stone, granite, marble, soil, stone, sand, and murum. The above noted fee shall be charged to continue the transit pass. and the Under the S.E.C.L. such mines which are having lands sanctioned under the forest land, there the transit pass is necessary for the coal exploration. For this the following arrangements shall be as follows:
>
> i)The transit of the minerals explored from the forest land shall be as per the Chhatisgarh Forest Policy 2001 (forest produce). Under this act the mineral explored from the forest, the transit pass shall be issued for the transit of those minerals.

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ii) The decided license fee shall be charged from the decided transport concerned to the issuance of the license from the person or organization.

iii) The officer of the organization getting the lease can be authorized by the concerned Forest Divisional Officer as per section 4(b) of Chhatisgarh Transit (forest produce) Act 2001.

iv) The compliance shall be made of the Chhatisgarh Transit (forest produce) Act 2001 to issue the transit pass for the forest produce and the passes shall be issued as per the format 'a' in the section 6 of the above act.

v) The Divisional Forest Officer shall review the issued transit passes to the authorized organization and the books concerned to the transit passes shall be issued as per the requirement by the office of the Forest Divisional level. But it shall be ensured by the Forest Divisional officer that the transit fee against the used tranait passes is being deposited regularly alongwith its counterfoils.

vi) The arrangements to issue license fee for the issuance of transit passes for the explored minerals from the forest land shall be effected from 01 November, 2012 in all the areas mandatorily.

Kindly issue the necessary orders & directions by your level to the incharge of all the coal exploration fields under the S.E.C.L. In this concern the necessary directions has been issued by this office to the Divisional Forest officers for coordination. The arrangement to issue the transit passes shall be applicable from 01.11.2012 in the mines with the S.E.C.L. Kindly do the same ensure".

35. From the above communication issued by the office of the Conservator of Forests, it stands established beyond cavil that the levy in question acquired the character of a compulsory and enforceable impost only with effect from 01.11.2011. The attempt of the Appellant to diminish the probative worth of the said communication by characterizing it as a mere internal directive cannot be sustained. The tenor and substance of the communication do not advert to any alleged non-compliance by SECL in respect of recovery of licence fee; rather, it unequivocally affirms that, in relation to mines under Judgement in Appeal Nos. 248 of 2020 SECL situated on forest land, the issuance of transit passes was indispensable and that the fee stipulated under Notification dated 14.06.2002 to be mandatorily applicable from 01.11.2011. The submission of the Respondents that prior to 01.11.2011 there was no mandatory recovery of the levy, therefore, merits acceptance.

36. Significantly, the Appellants have failed to place any cogent material on record to demonstrate that the forest transit levy at the rate of Rs. 7 per tonne was, in fact, being recovered at the field level either from Respondent No. 2 or from any other generator prior to 01.11.2011. In the absence of such evidence, the plea that the levy constituted a pre-existing operative burden factored into the bid process is devoid of substance. The contention must, therefore, fail, as it is contrary to the contemporaneous record and unsupported by proof of actual recovery.

37. Supreme Court in its GMR Warora Judgement (Supra) dated 20.04.2023 has also acknowledged that as on cut off date there was no forest tax applicable; in which case the cut off date considered was 30.07.2009 as referred in this Tribunal Judgement dated 14.08.2018 in Adani Power (Supra). Relevant paragraph of supreme court judgement is reproduced below:

> "Forest tax
>
> 109. Insofar as forest tax is concerned, perusal of the material placed on record would reveal that, as on the cut-off date, there was no forest tax applicable on coal mined and transported from South Eastern Coalfields Ltd. ("SECL" for short) mines located in forest area. For the first time, vide Notification of the Chhattisgarh State Government, Department of Forest, under the provisions of the Chhattisgarh Transit (Forest Produce) Rules, 2001, a fee @ Rs 7 per ton was levied. Undisputedly, the said

> Notification is issued by the Forest Department of the Government of Chhattisgarh, which is an instrumentality of the Judgement in Appeal Nos. 248 of 2020 State. As such, no error can be found with the finding of the learned APTEL in that regard."

38. There is no dispute that the Forest Department, Government of Chattisgarh vide its notification dated 30.06.2015 further revised the said Forest Tax from Rs. 7/MT to Rs. 15/MT with effect from 01.07.2015, applicable for the Respondent No 2 and Appellants have conceded to the d applicability of same under change in law claim.

39. As regards the reliance placed by the Appellants on the Order dated 19.12.2017 passed by the Central Commission in Petition No. 101/MP/2017, wherein only Rs. 8 per tonne was allowed, this Tribunal is constrained to observe that such reliance is misplaced. The jurisprudential position is well-settled that each matter must be adjudicated on the strength of its own facts, pleadings, and documentary record. Orders of Regulatory Commissions, though persuasive in nature, do not bind this Tribunal, which exercises appellate jurisdiction under the statute. The adjudicatory authority of this Tribunal is not circumscribed by determinations rendered by Commissions in other proceedings.

40. In the present case, the issue under consideration turns upon the enforceability of the levy pursuant to the Notification dated 14.06.2002 and the subsequent communication of the Conservator of Forests, which clarified that the levy became mandatorily operative only from 01.11.2011. As already observed in previous paragraph, the Appellant has not adduced any evidence to establish recovery of the levy prior thereto from other generators. Consequently, the reliance on the Central Commission's Order of 19.12.2017 cannot advance the Appellants' case. This Tribunal, therefore, finds no merit in the Appellants submission that the said Order should govern the present adjudication.

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41. Having held that the levy at Rs. 7 per tonne was operationally recovered only from 01.11.2012, i.e., after the cut-off date of 11.09.2012, this Tribunal finds that the amount of Rs. 7 per tonne levy constitutes a Change in Law event. MCCPL is accordingly entitled to Change in Law compensation at Rs. 7 per tonne with effect from 01.11.2012 to 30.06.2015, and at Rs. 15 per tonne with effect from 01.07.2015 (following the revision by SECL vide Notification No. SECL/BSP/S&M/1788 dated 12.10.2015). The Appellants' contention that only the incremental Rs. 8 per tonne is compensable is hereby rejected.

CONCLUSION In view of above deliberations, we do not find any error in the Impugned Order passed by CERC, necessitating our interference and accordingly Impugned Order dated 25.09.2019 is upheld.

The Captioned Appeals and pending IAs, if any, are dismissed.

PRONOUNCED IN THE OPEN COURT ON THIS 11TH DAY OF MAY, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

REPORTABLE / NON-REPORTABLE

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