



CASE STUDIES

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CASE STUDY

Unforeseen Tax Changes and Existing Contracts: A Precedent-Setting Case for the Solar Sector

KARNATAKA ELECTRICITY REGULATORY COMMISSION

PETITION NUMBER: OP Nos. 111, 113 of 2018

NAME OF PARTIES: Adani Green Energy (UP) Limited & Hubli Electricity Supply Company Limited

DATED: 28TH DECEMBER 2023

NATURE OF ORDER: ORDERS ON REMAND

BACKGROUND: Adani Green Energy (UP) Limited (Adani) filed two petitions (**OP No. 111/2018** and **OP No. 113/2018**) against Hubli Electricity Supply Company Limited (HESCOM) seeking reimbursement for additional expenses incurred due to the introduction of Goods and Services Tax (GST) in 2017. These costs impacted both the establishment and ongoing operation and maintenance (O&M) of two solar power projects.

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What was the case about ?

In the Regulatory Commission: Resolving GST Impact on Solar Projects – Adani Green vs. HESCOM

India's burgeoning solar sector was abuzz with activity in 2017. Among the players driving this growth was [Adani Green Energy](#), with two promising [solar power projects underway](#). However, the introduction of the [Goods and Services Tax \(GST\)](#) that same year cast a shadow of uncertainty. The new tax regime meant additional expenses for Adani, raising questions about who would bear this burden – them or the electricity distribution company, [Hubli Electricity Supply Company Limited \(HESCOM\)](#).

The Dispute: Unwilling to shoulder the entire GST impact, Adani filed two petitions (OP No. 111/2018 and OP No. 113/2018) against HESCOM. Their claim was reimbursement for the additional expenses incurred due to GST, both during the project establishment and ongoing operation and maintenance (O&M).

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Arguments

Decoding the Arguments in Adani vs. HESCOM

Adani's Claim:

- **Unforeseen Event:** Adani argued that the implementation of GST in 2017, after the project agreements were signed, constituted an unforeseen event beyond their control. They emphasized that the agreements were based on the pre-GST tax regime, making them financially unprepared for the additional burden.
- **Equity & Fairness:** Adani stressed the principle of equity and fairness, arguing that HESCOM, as the beneficiary of the power generated, should bear the additional cost arising from a change in statutory levies. They maintained that absorbing the entire GST impact would significantly impact project viability and discourage future investments in the solar sector.

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Arguments (Contd.)

Decoding the Arguments in Adani vs. HESCOM

HESCOM'S Counter:

- **Force Majeure Clause:** HESCOM countered by invoking the force majeure clause in the agreements, which typically absolves parties from liabilities arising from unforeseen circumstances beyond their control. They argued that changes in government policies like GST fall under this clause, and hence, they were not liable for the additional cost.
- **Contractual Obligation:** HESCOM emphasized that the agreements clearly defined the price they would pay for the power generated, and any changes in input costs due to external factors like GST were not their responsibility. They argued that accepting Adani's claim would set a dangerous precedent, impacting the financial stability of future power purchase agreements.

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Hon. Commission's Ruling

1. Additional Expenditure:

- Adani is **entitled to reimbursement for additional GST** incurred after the project commissioning dates, previously disallowed.
- Adani must pay court fees based on the newly allowed carrying cost and O&M expenses.

2. Carrying Cost:

- Adani **receives a 10% per annum carrying cost on the additional GST expenditure** from the date of incurring to the date of full payment.
- Adani needs to submit the calculated carrying cost for HESCOM verification.
- HESCOM must pay the carrying cost and other amounts in four equal installments.

3. O&M Expenses:

- Adani **receives reimbursement for the additional GST impact on O&M expenses** from the project's commercial operation date to **March 31, 2023**.
- Adani pays court fees based on the newly allowed O&M expenses.
- HESCOM reimburses additional O&M expenses incurred after April 1, 2023, based on actual bills with supporting documents.

➤ Conditions:

- **All reliefs are subject to the outcome of a pending Supreme Court case (Civil Appeal No. 8880/2022).**
- Both parties must adjust their rights and liabilities accordingly.
- Adani needs to provide an undertaking acknowledging this condition.

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Implications

For Adani:

- **Positive:** Secures partial reimbursement for additional GST costs, carrying cost award, and precedent for future claims.
- **Negative:** Court fees, uncertainty due to pending Supreme Court case, potential adjustments based on the final verdict.

For HESCOM:

- **Positive:** Financial burden of reimbursement, court fees, uncertainty due to pending Supreme Court case.
- **Negative:** Potential reduction in future liabilities if the Supreme Court rules in their favor.

For SOLAR SECTOR:

- **Positive:** Clarification on reimbursement rights for GST changes, precedent for carrying cost recovery.
- **Negative:** Uncertainty due to pending Supreme Court case, potential financial burden on DISCOMs.

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Eninrac's Impact Analysis

This case highlights the complexities arising from changes in tax laws and their impact on existing contracts. While the court order provides some relief for Adani, the final outcome hinges on the Supreme Court's decision. *This case also sets a precedent for carrying cost recovery in similar situations, which could have broader implications for the solar sector.*

Potential Precedent for the Solar Sector:

- **Carrying Cost Recovery:** The court's recognition of Adani's right to carrying cost recovery on additional GST expenses could set a precedent for similar situations in the future. This could provide some financial relief to developers facing unforeseen tax changes.
- **Clarity on Risk Allocation:** The final outcome of this case, particularly the Supreme Court's decision, could provide much-needed clarity on how risks associated with changes in tax laws are allocated between developers and DISCOMs in future contracts. This could improve predictability and encourage investments in the solar sector.
- **Policy Implications:** The case raises broader policy questions about the need for clearer guidelines or regulations addressing the impact of unforeseen tax changes on existing contracts. This could help mitigate future disputes and create a more predictable investment environment.
- **Tariff Hike Pressure:** To recover the additional costs imposed by the KEREC order, DISCOMs might seek tariff hikes. This can be unpopular with consumers and put pressure on regulatory commissions to approve such increases.

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