**COURT OF THE LOK PAL (OMBUDSMAN), ELECTRICITY, PUNJAB,**

 **PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,**

**S.A.S. NAGAR (MOHALI).**

 **APPEAL NO. 16/2019**

**Date of Registration : 18.02.2019**

**Date of Hearing : 09.05.2019**

**Date of Order : 28.05.2019**

**Before:**

 **Er. Virinder Singh, Lok Pal (Ombudsman), Electricity**

**In the Matter of :**

Bansal Infographics (India) Limited,

E-56, Growth Centre,

Mansa Road, Bathinda-151001

 ...Petitioner

 Versus

Senior Executive Engineer,

DS Division,

 PSPCL, Bathinda.

 ...Respondent

**Present For:**

Petitioner : Sh.Vaneet Bansal,

 Petitioner’s Representative (PR).

Respondent : Er.Baljinder Singh

 Assistant Executive Engineer(Commercial) , DS Division,

 PSPCL, Bathinda

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 29.01.2019 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-424 of 2018 deciding that :

*“***a)** *Petitioner be billed on the basis of NRS Tariff applicable to the Petitioner from the date of checking by AEE/Enforcement-II, Bathinda vide ECR No. 40/2125 dated 02.10.2018.*

***(b)*** *Respondent is directed to get the revised A&A Form completed from the Petitioner under the NRS Category”.*

**2**. **Facts of the Case:**

 The relevant facts of the case are that:-

1. The Petitioner was presently having a Medium Supply (MS)

Category connection having sanctioned load of 35.945 kW and contract demand (CD) of 40 kVA for which the Metering was being done by providing Three Phase Four Wire, Whole Current, 10– 60A, Static Energy Meter.

1. Initially, the Petitioner applied for a new connection under Small

Power (SP) Industrial Category with load of 17.930 kW in the year 1999 with ia view to print computer stationery by installing Dot-Matrix Printer. Thereafter, the Petitioner applied for extension in load from 17.930 kW to 35.945 kW on 02.08.2011 alongwith change in category of connection from Small Power (SP) to Medium Supply (MS).

1. The connection was checked by the AEE/Enforcement-II, PSPCL,

Bathinda vide ECR No.40/2125 dated 02.10.2018, and it was reported that :

*" that connection of the Petitioner was checked as Non DLMS meter was installed in the premises. Whole current Meter was installed outside the premises. Pulse of the meter was blinking. Phase 1, 2 were blinking but Phase 3 was stable on display of the meter. In the premises, work of printing press is running that is carried out by taking paper from outside. No manufacturing was being carried out. The Connection of the Petitioner is required to be released under NRS category as per the Schedule of Tariff Clause SV 1.1, but DS office had released the connection under MS category. The account of the Petitioner be overhauled as per PS*PCL instructions."

1. In view of above checking, the account of the Petitioner was

overhauled from 08.12.2011 to 08.09.2018 and an amount of Rs.65,799/- was charged to the Petitioner vide Supplementary Notice, bearing No.4465 dated 22.10.2018, for difference of Tariff between MS and NRS category.

1. Aggrieved with the above Notice, the Petitioner filed a Petition

dated 03.12.2018 in CGRF, Patiala, who, after hearing, passed the order dated 29.01.2019. (Reference Page-2, Para-1).

1. Not satisfied with the decision of the CGRF, the Petitioner preferred

an Appeal in this Court and prayed that relevant Industrial Tariff may be ordered to be made applicable to the Petitioner and it should not to be forced to sign new A&A for billing its consumption under NRS Category. Besides, the Respondent be restrained from compelling the Petitioner to sign new A&A during the pendency of this Appeal.

**3. Submissions made by the Petitioner and the Respondent**:

 Before undertaking analysis of the case, it is necessary to go through written submissions made by the Petitioner and reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner and the Respondent along with material brought on record by both the sides.

1. **Submissions of the Petitioner**:

 The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner was presently having a Medium Supply (MS) Category connection having sanctioned load of 35.945 kW and contract demand (CD) of 40 kVA for which the Metering was being done by providing Three Phase Four Wire, whole Current, 10– 60A, Static Energy Meter.
2. Assistant Engineer, DS Sub Division, Commercial-I, Bathinda issued Memo no.4465 dated 22.10.2018 to deposit Rs.65,799/- on account of difference of Tariff of MS and NRS Category which was not based on facts.
3. The Petitioner had set a Unit with a view to manufacture Computer Stationery i.e Dot Matrix Printer (DMP) for which, electricity connection was got released from the Respondent in the year 1999 under Small Power (SP) Industrial Category. As the requirements of the manufacturing process increased, the load was augmented in the year 2011 and as such, the load of 35.94kW was got sanctioned and released in 2012 under Medium Supply (MS) Category, which included 80% as motive load.
4. The connection was checked by the Enforcement in the absence of the Petitioner’s representative on 2nd October, 2018 which was national holiday and no activity of manufacturing took place on that day in the Company. However, some employees residing in the quarters allotted were sitting outside the gate of the Petitioner’s Company. The Enforcement Staff did not have any access to the premises of the Factory which was closed due to holiday, as such, could not physically verify the machines and motors installed inside the Factory. They just enquired from the labourers sitting outside about the activities going on in the Factory. The report of the Enforcement staff was based on assumptions and not on actual facts.
5. The operative part of the Checking Report stated that only Printing Process was being done in the premises of the Petitioner’s Unit and no manufacturing was done, so, NRS Tariff was applicable to the Petitioner’s connection. It was very well clear from the nomenclature of Schedule of Tariff itself i.e. Non Residential Supply, Clause SV 1.1 that NRS Tariff was not applicable to the supply given to the premises of the Petitioner. A perusal of the Clause SV 1.1 revealed that in Guest Houses, Restaurants etc., load for lights, fans, appliances like Lamps, Lamping Sets, Air- Conditioning Units/Plaints, Lifts, Welding Sets, Small Lathes, Electric Drills, Battery charges, Embroidery Machines, printing Press, Ice Candy Machines, Dry Cleaning Machines, Power process, Small Motors etc. were covered under NRS Tariff category and NRS was applied only if any commercial activity was carried out in residential areas and not in Industrial Focal Points.
6. It was obvious that Printing Press installed in the Commercial premises such as Guest Houses or Restaurants, large Hotels, Cinemas Houses etc. were covered under NRS schedule of Tariff and the Printing Machines installed in any Industrial Unit which conducted manufacturing activities other than printing also could not be covered under NRS Tariff.
7. It was established that proper manufacturing process was being done in the Petitioner’s Unit which had been approved by the Government for the purpose of manufacturing of Computer Stationery. The Petitioner had installed Industry in Industrial Growth Centre (IGC) which was approved Focal Point by the Government of Punjab for running Factory, then it was not understood as to how NRS Schedule of Tariff could be imposed on the Factory’s motive load.
8. The Petitioner submitted its reply to the Memo No.4465 dated 22.10.2018 (issued by the Respondent) intimating the facts including the applicability of SV 1.1 that when there was 2 or 3 days weekly off days for industries, then the supply of power to the Petitioner’s premises/Unit could not be put under NRS Schedule of Tariff under the garb of checking dated 02.10.2018 which was itself arbitrary, illegal and against facts. It was worth mentioning here that large number of printing process and computer paper Units were being run in industrial parts/Focal Points under industrial Schedule of Tariff i.e SP/MS/LS.
9. The checking report dated 02.10.2018 and also the application of NRS Tariff to the premises of the Petitioner was illegal, arbitrary and not based on facts, therefore, the demand of Rs.65,799/- raised by the Respondent was liable to be set-aside.
10. The account of the Petitioner was overhauled from 12/2011 to 08/2018 and accordingly, supplementary notice was issued to the Petitioner by charging an amount of Rs.65,799/- vide Memo No.4465 dated 22.10.2018 by charging difference of Tariff between MS category and NRS category to the Petitioner.
11. Aggrieved with the notice, issued vide Memo No.4465 dated 22.10.2018, the Petitioner filed a Petition in the Forum, who, after hearing, passed the order dated 29.01.2019.
12. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed that the decision of the Forum was illegal and arbitrary as they could not force/coerce the Petitioner to submit revised Application &Agreement (A&A) under NRS category as the Petitioner had already agreed to give supply of power to the Petitioner under Small Power (SP)/ Medium Supply (MS) Industrial Category Tariff. Had the Respondent asserted that NRS tariff was applicable to the Petitioner, they would not have opted for installation/started the Business of Manufacturing of Computer Paper/printing as the same was not viable /economic with NRS category Tariff.
13. It was worth mentioning here that checking dated 02.10.2018 by AEE, Enforcement-II, PSPCL, Bathinda stated that there was no manufacturing being done in the premises of the Petitioner, which very well proved that manufacturing was not being done. The Forum had observed that the Petitioner was a Manufacturing Unit and Manufacturing Process/Printing was being done in the said premises of the Petitioner. If so, then SV 1.1 Tariff could not be made applicable to the Petitioner. The Schedule of Tariff under SV 1.1 was specifically applicable to NRS categories which were commercial Establishment and where some Electrical Appliances were installed for the purpose other than Lighting, Fans etc. were covered under NRS category Tariff.
14. Moreover, the Commercial Establishments were doing commercial business and some Electrical Appliances installed by them i.e. Small Lathe, Welding Set etc. to assist their business as additional accessories, were part of their commercial activities/business, whereas the Petitioner had intended to obtain power connection for doing manufacturing of Computer Paper/Printing which was not a commercial unit and in the case of the Petitioner’s manufacturing unit, the sole objective of the Petitioner for obtaining power load was for manufacturing process with regard to printing of Computer Stationery which included Rapid 45000 (40 feet long) which manufacture, print the Computer stationery, Paper Slitter, Carbon insertion unit, Plate making Machine, therefore SV 1.1 was not applicable to the consumption of the manufacturing unit of the Petitioner.
15. Keeping in view the submissions made, the Appeal as prayed for

be allowed in the interest of justice.

1. **Submissions of the Respondent:**

 The Respondent, in its defence, submitted the following for consideration of this Court**:**

1. The Petitioner was having an electric connection, bearing Account no. 3002963229, under Medium Supply (MS) category, with sanctioned load of 35.954 KW and contract demand of 40 kVA.
2. The connection of the Petitioner was checked by the AEE/Enforcement-II, Bathinda vide ECR no. 40/2125 dated 02.10.2018. During the said checking, it was observed that the connection was being used for printing purposes by using outsourced paper. There was no manufacturing in the premises. According to Clause SV 1.1 of Schedule of Tariff for Non-Residential Supply (NRS), consumption was to be charged with NRS Category Tariff, but it was being charged at MS Industrial Category Tariff. Accordingly, the account of the Petitioner was overhauled by applying NRS Category Tariff from 12/2011 to 08/2018 and charging it with a sum of Rs. 65,799/- vide Notice, bearing No. 4465 dated 22.10.2018.
3. Aggrieved with the notice, the Petitioner filed a Petition in the Forum, who, after hearing, decided that the Petitioner be billed on the basis of NRS tariff applicable to the Petitioner’s connection from the date of checking by AEE, Enforcement II, PSPCL, Bathinda. Bessides, Respondent was directed to get the revised A&A submitted from the Petitioner under NRS category.
4. Memo No. 4465 dated 22.10.2018 was issued by the AEE/

Commercial-1, Bathinda to the Petitioner on the basis of checking vide ECR No. 40/2125 dated 02-10-2018, clearly mentioning that the connection was being used for printing purposes by using outsourced paper and there was no manufacturing activity in the premises. According to Clause SV 1.1 of Schedule of Tariff for Non-Residential Supply (NRS**),** the Petitioner was to be charged with NRS Rate, but it was being charged at MS Industrial Category rates, accordingly, the account of the Petitioner was overhauled as per rule.

1. As per Clause SV 1.1 of Schedule of Tariff Non-Residential Supply (NRS) *Supply to non-residential premises such as business houses, cinemas, clubs, offices, hotels/motels, marriage palaces, departmental stores, shops, guest houses, restaurants for lights, fans, appliances like pumping set & air conditioning units/plants, lifts, welding sets, small lathes, electric drills, heaters, battery chargers, embroidery machines, printing presses, ice candy machines, dry cleaning machines, power presses, small motors etc.* It was clear that the connection was to be billed under NRS tariff. It was nowhere mentioned in the Tariff Order that if the connection of the **Printing Press** was running in IGC or Industrial Area, then it could be billed under Industrial tariff.
2. The application of NRS tariff was correct, legal and as per

 instructions of the PSPCL.

1. In view of the submissions made, the Appeal may be dismissed.

**4.** **Analysis:**

The issues requiring adjudication are the legitimacy of the :

1. Billing of the Petitioner’s connection based on difference of Tariff between MS Industrial Category and NRS Category Tariff from the date of checking i.e. 02.10.2018 by the AEE, Enforcement, PSPCL, Bathinda.
2. Issuance of directions for submission of revised Application and Agreement mentioning NRS Category ( instead of MS Category) for the Petitioner’s Unit.

*The issues emerged in the case are deliberated and analysed as under:-*

 **Issue No.(i)**

**a.** In the present case, the Petitioner applied initially for a new

connection. under Small Power (SP) Industrial Category with load of 17.930 kW in the year 1999 with a view to print computer stationery by installing DOT MATRIX Printer. Thereafter, the Petitioner applied for extension in load from 17.930 kW to 35.945 kW on 02.08.2011 alongwith change in category of connection from Small Power (SP) to Medium Supply (MS). The connection of the Petitioner was checked on 02.10.2018 by the AEE, Enforcement-II, PSPCL, Bathinda who reported that work of printing was going on in the premises by taking paper from outside and no manufacturing activity was carried out. The AEE, Enforcement-II, Bathinda observed that the connection of the Petitioner was required to be released under NRS Category (instead of under MS Category already released by the DS Office) considering the provisions of Clause SV 1.1 of the Schedule of Tariff. The Checking Officer also issued directions to overhaul the account of the Petitioner as per instructions of the PSPCL.

 Petitioner’s Representative (PR) submitted that the operative part of the Checking Report stated that only Printing Process was being done in the Petitioner’s Unit and no manufacturing was done, so, NRS, Tariff was applicable to the Petitioner’s connection. It was very well clear from the nomenclature of Schedule of Tariff itself i.e. Non Residential Supply, Clause SV 1.1 that NRS Tariff was not applicable to the supply given to the premises of the Petitioner. **A perusal of the Clause SV 1.1 of Schedule of Tariff revealed that in Guest Houses, Restaurants etc., load for lights, fans, appliances like Lamps, Lamping Sets, Air- Conditioning Units/Plaints, Lifts, Welding Sets Small Lathes, Electric Drills Battery charges, Embroidery Machines, printing Press, Ice Candy Machines, Dry Cleaning Machines, Power process, Small Motors etc. were covered under NRS Tariff category** and NRS tariff was applied only if any commercial activity was carried out in residential areas and not in Industrial Focal Points. It was obvious that Printing Press installed in the Commercial premises such as Guest Houses or Restaurants, large Hotels, Cinemas Houses etc. were covered under NRS Schedule of Tariff and the Printing Machines installed in any Industrial Unit which conducted manufacturing activities other than printing also could not be covered under NRS Tariff. It was established that proper manufacturing process was being done in the Petitioner’s Unit which had been approved by the Government for the purpose of manufacturing of Computer Stationery. The Petitioner had set up its Unit in Industrial Growth Centre which was approved Focal Point by the Government of Punjab for running Factory, then it was not understood as to how NRS Schedule of Tariff could be imposed on the Factory’s motive load. The Petitioner submitted its reply to the Memo No.4465 dated 22.10.2018 (issued by the Respondent) intimating the facts including the applicability of SV 1.1 that when there was 2 or 3 days weekly off days for industries, then the supply of power to the Petitioner’s premises/Unit could not be put under NRS Schedule of Tariff under the garb of checking dated 02.10.2018 which was itself arbitrary, illegal and against facts. It was worth mentioning here that large number of printing process and computer paper Units were being run in industrial parts/Focal Points under industrial Schedule of Tariff i.e SP/MS/LS.

 Petitioner’s Representative (PR) added that it was worth mentioning that checking dated 02.10.2018 by AEE, Enforcement-II, PSPCL, Bathinda stated that there was no manufacturing being done in the premises of the Petitioner, which very well proved that manufacturing was not being done. The Forum had observed that the Petitioner’s was a Manufacturing Unit and Manufacturing Process/Printing was being done in the said premises of the Petitioner. If so, then SV 1.1 Tariff could not be made applicable to the Petitioner. The Petitioner had intended to obtain power connection for doing manufacturing of Computer Paper/Printing which was not a commercial unit and in the case of the Petitioner’s manufacturing unit, the sole objective of the Petitioner for obtaining power load was for manufacturing process with regard to printing of Computer Stationery, therefore, SV 1.1 (NRS tariff) was not applicable to the Petitioner’s unit.

 The Respondent, in its defence, stated that as per Clause SV 1.1 of Schedule of Tariff, Non-Residential Supply (NRS) units *such as business houses, cinemas, clubs, offices, hotels/motels, marriage palaces, departmental stores, shops, guest houses, restaurants* for *lights, fans, appliances like pumping set & air conditioning units/plants, lifts, welding sets, small lathes, electric drills, heaters, battery chargers, embroidery machines,* ***printing presses****, ice candy machines, dry cleaning machines, power presses, small motors etc.* It was clear that the connection was to be billed under NRS tariff. It was nowhere mentioned in the Tariff Order that if the connection at the **Printing Press** was running in IGC or Industrial Area, then, it could be billed under MS Industrial tariff. Accordingly, the application of NRS tariff was correct, legal and as per instructions of the PSPCL.

1. During the Course of hearing on 09.05.2019, the Petitioner’s

Representative (PR) brought on record of this Court a Certificate of Eligibility for the grant of Industrial Incentive for Sales Tax Exemption/Deferment issued by the Government of Punjab. Petitioner’s Representative (PR) added that the Petitioner was also getting subsidy from the Government which was being credited to its Bank. Accordingly, Petitioner’s Representative (PR) was, then, asked to send documentary evidence to this Court by 20.05.2019. In response, the Petitioner, vide letter dated 13.05.2019, sent, by post as well as by e-mail dated 13.05.2019, a copy of Memo No. Ind/Sub/BHT/B-219/10705C dated 02.08.2000 from Director of Industries & Commerce, Punjab, Chandigarh sanctioning an amount of Rs.14,22,000/- as an Investment Incentive subject to the condition *that the disbursement will be made on the availability of funds strictly as per seniority ( Except units set up at Goindwal Sahib Industrial Complex, by NRIs, Rural Focal Points, EOU’s and SC’s) provided that unit found in working condition*/ in *operation at the time of disbursement.*

The Petitioner also sent a copy of Account Ledger Enquiry/Statement of Sales Tax subsidy of Rs.1,17,40,291/- for exemption from payment of Sales Tax and passed by Director of Industries, as an evidence in support of availing benefit. The Petitioner stated that its Bank Statement showed Rs.14,22,000/- transferred in the Account in the name of Bansal Infographics (I) Ltd.

( c) A perusal of the material available on record reveals that the

Petitioner has contested the decision of the Forum mainly on the plea that provisions of SV 1.1 of Schedule of Tariff referred to in the Tariff Order FY 2018-19 approved/notified by the Hon’ble PSERC were misinterpreted by the Forum as was evidenced from their bare perusal which read as under:

*“****SV 1.1*** *This tariff shall apply to* ***non-residential premises*** *such as business houses, cinemas, clubs, offices, hotels / motels, marriage palaces, departmental stores, shops, guest houses, restaurants* **for** *lights, fans, appliances like pumping sets & air conditioning units/ plants, lifts, welding sets, small lathes, electric drills, heaters, EV Charging Stations, battery chargers, embroidery machines, printing presses, ice candy machines, dry cleaning machines, power presses, small motors etc., Private hospitals (other than charitable), Private unaided educational institutions i.e. schools, colleges and universities, hostels and residential quarters attached thereto where such institutions / installations are not covered under Schedule DS / BS, Telecommunication /Cellular Mobile Phone Towers and all private sports institutions/facilities including gymnasiums.*

 I find that the Forum erred in arriving at proper conclusion about the applicability of Tariff (NRS) to the Petitioner’s Unit as per Tariff Order for FY 2018-19, Schedule of Tariff-Availability despite the fact that the Petitioner had taken MS Industrial Category Connection solely for the purpose of Printing Computer Stationery and that the Petitioner had not undertaken printing work in any other Commercial Establishment/Unit dealing with other activities . If the provision ibid is carefully gone through, it would be seen that the very purpose of use of electricity for undertaking business activity by the Petitioner is not covered under Non Residential Supply Category.

 I also find that Ministry of Micro, Small & Medium Enterprises (MSME) has also issued Udyog Aadhaar, bearing No. 238946273931 (being issued to Industries), to the Petitioner’s Firm whose major activity was manufacturing. Besides,, Punjab Small Industries and Export Corporation Limited (PSIEC), vide letter No. PSIEC/ Estate/ EO-1/424 dated 06.04.1999, allotted an Industrial Plot No.E-56 to the Petitioner in Industrial Growth Centre (IGC), Bathinda for manufacture of **Computer Stationery** thereby categorising the Petitioner as an Industry**.** At the same time, the Petitioner was issued No Objection Certificate, vide No.2122 dated 22.06.1999, by the Punjab Pollution Control Board (PPCB) to establish the Industrial Plant under Section 25/26 of Water (Prevention and Control of Pollution) Act, 1974 and/ or under Section 21 of Air (Prevention and Control of Pollution) Act, 1981 being an Industry. Summarising that the Petitioner falls in the category of Industry for all intents and purposes.

 In view of the above, I am of the view that it is not fair and appropriate to treat the Petitioner’s Unit under NRS Category and charge the Petitioner, for the difference of Tariff between NRS and MS Category from the date of checking its connection i.e. 02.10.2018, thus, order dated 29.01.2019 of the Forum needs to be set aside.

 **Issue No.(ii)**

As per the foregoing discussion on Issue No.(i), the decision dated 29.01.2019 of the Forum relating to issuance of directions to the Petitioner to submit a revised Application and Agreement for its connection under NRS category is also without merit**,** hence, not sustainable.

**5. Conclusion**:

From the above analysis, it is concluded that :

1. The Petitioner is not liable to be charged the Tariff applicable to NRS Category connection and is required to pay Tariff applicable to MS Category connection as discussed in para 4 { Issue No(i)} above.
2. Revised Application and Agreement under NRS Category is not required to be submitted by the Petitioner whose Unit is not covered under NRS Category Tariff in terms of provisions of SV 1.1 of the Tariff Order FY 2018-19, Schedule of Tariff – availability{ Issue No.(ii)} .

**6.** **Decision:**

**As a sequel of above discussions, the order dated 29.01.2019 of the CGRF, Patiala in Case No. CG- 424 of 2018 is set-aside. It is held that the Petitioner being essentially an Industry, MS Category Industrial Tariff, instead of NRS Category Tariff, shall be applied to the Petitioner’s Unit and its A&A form for MS Category need not be got revised as concluded in Para-5 above. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment, without interest.**

**7.** The Appeal is disposed of accordingly.

**8.** In case, the Petitioner or the Respondent is not satisfied with the above decision, it is at liberty to seek appropriate remedy against this order from the appropriate Bodies in accordance with Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016.

 (VIRINDER SINGH)

May 28, 2019 Lok Pal (Ombudsman)

S.A.S. Nagar (Mohali) Electricity, Punjab.