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

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

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

 **APPEAL NO. 24/2019**

**Date of Registration : 06.05.2019**

**Date of Hearing : 12.06.2019**

**Date of Order : 18.06.2019**

**Before:**

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

**In the Matter of :**

Auto Impex,

C-226, Phase-VIII,

Focal Point, Ludhiana ...Petitioner

 Versus

Additional Superintending Engineer,

DS Focal Point Division (Special) ,

PSPCL, Ludhiana

 ...Respondent

Present For:

Petitioner : Sh. Sukhminder Singh,

 Petitioner’s Representative (PR).

Respondent : Er.Bharat Bhushan,

 Addl.Superintending Engineer,

 DS Focal Point Division (Special) ,

 PSPCL, Ludhiana

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 08.01.2019 of the Consumer Grievances Redressal Forum, Ludhiana (Forum), Ludhiana, in Case No.CGL-021 of 2018 deciding that :

 “ *The amount of Rs.14,25,625/- charged to the Petitioner vide Respondent’s Memo No.7418 dated 24.08.2018, due to wrong refund of threshold units given as per CC 49/2017, is in order and hence required to be recovered from the Petitioner. However, ToD rebate/surcharge is liable to be given/levied, as applicable from time to time, for the period 09/2017 to 03/2018. The final calculated amount considering these shall be intimated to the Petitioner* *after getting the same pre-audited”.*

2. **Condonation of Delay:**

At the outset, the issue for condonation of delay in filing the Appeal in this Court was taken up. The Petitioner’s Representative (PR) submitted that the present Appeal could not be preferred in this Court within the stipulated period of one month of date of receipt of order of the Forum due to the reason that copy of the decision of the Forum, was sent by the Secretary, CGRF, Ludhiana, vide Memo No. 516-17 dated 09.01.2019 by Registered Post, which was received by the Petitioner on 16.01.2019, but the Petitioner had filed the Appeal on 06.05.2019 due to reason that the Respondent took about three months in issuance of Demand Notice, vide Memo No.3441 dated 02.04.2019 for Rs.12,60,217/-, after receipt of decision of the Forum. The Petitioner remained in the impression that one month period was to be taken from the date of receipt of Demand Notice and accordingly, filed the Appeal on 06.05.2019 after arranging funds required and engaging its representative for filing the Appeal. Petitioner’s Representative prayed that the delay in filing the Appeal in this Court may be condoned in the interest of justice.

The Respondent, in its reply to the Appeal, did not offer any comments on the submissions made by the Petitioner regarding condonation of delay and also did not raise any objection in this regard during the course of hearing.

In this connection, I have gone through Regulation 3.18 (ii) of the PSERC (Forum and Ombudsman) Regulation-2016 which reads as under:

“*No representation to the Ombudsman shall lie unless the representation is made within one month of the date of receipt of order of the Forum.*

 *Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month”.*

 *I observe that though the Petitioner has given reasons for not filing the Appeal within the stipulated period, but the same are not convincing. It ought to have been vigilant and should have taken up the matter with the Respondent immediately on receipt of the decision of the Forum, to ascertain the amount to be deposited for preferring an Appeal in this Court. But the Petitioner did not do so and filed the present Appeal after one month of receipt of Notice dated 02.04.2019 issued by the Respondent. I also observe that non condonation of delay would deprive the Petitioner of the opportunity, required to be afforded, to seek remedy and would also not meet the ends of ultimate justice. With this in view, the delay in filing the Appeal in this Court is condoned and the Petitioner is afforded an opportunity to present the case.*

**3.** **Facts of the Case**:

 The relevant facts of the case are that:

1. The Petitioner was presently having a Large Supply Category

connection with sanctioned load of 314.970 kW and contract demand (CD) of 359.920 kVA.

1. Earlier, the load of the Petitioner’ s connection was 49.970 kW and

contract demand of 50 kVA which was extended to 314.970 kW and 359.920 kVA respectively in the month of November/December, 2016.

1. While implementing instructions contained in Commercial Circular

(CC) No.49/2017 dated 10.11.2017, the Respondent gave the rebate for the threshold limit to the Petitioner in the bills for the months of 09/2017 to 03/2018 as per following details:

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Month | Aug-17 | Sept-17 | Oct-17 | Nov-17 | Dec-17 | Jan-18 | Feb-18 | Mar-18 | Total |
| RebateIn Rs. | 54846 | 144548 | 191036 | 272632 | 254224 | 103251 | 105496 | 82124 | 1208157 |

1. The above rebate was given in the bills by SAP Billing System

without considering the change in load/CD of the Petitioner from 49.970 kW/50 kVA to 314.970 kVA/359.920 kVA and change of category from MS to LS Category of the connection.

1. The Centralized Billing Centre (CBC) revised the calculation of

the rebate , admissible under CC No.49/2017, considering the change in load/CD on 30.12.2016 and issued Revised Billing Statement (RBS) No.126/2018 dated 09.08.2018, as per which, a sum of Rs.14,25,625/- was charged on account of excess refund given in bills along with ED/Infrastructure Development Fund.

1. On the basis of the said RBS, the Respondent issued the Notice,

bearing Memo No.7418 dated 24.08.2018, to the Petitioner to deposit the above amount.

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

dated 09.11.2018 in the CGRF, Ludhiana, who, after hearing, passed the order dated 08.01.2019. ( Page-2, Para-1).

1. Not satisfied with the decision of the Forum, the Petitioner

preferred an Appeal in this Court and prayed toset aside the demand of interest/surcharge of Rs.5,12,794/- and order the revision of disputed amount of Rs.14,25,625/- in the interest of natural justice and fairness.

**4**. **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 originally having an electricity connection with

sanction load of 49.970 kW and CD of 50 kVA. Subsequently, it got the load extended to 314.970 kW and contract demand (CD) to 359.920 kVA in the month of December 2016.

1. The Assistant Executive Engineer/Commercial, Focal Point

Division, PSPCL, Ludhiana issued Notice, vide Memo No.7418 dated 24.08.2018, to deposit an amount of Rs.14,25,625/- mentioning that the amount had been charged due to wrong refund given to the consumer in view of Circular No.49/2017. The amount with regard to period 04/2017 to 03/2018 was charged to the Petitioner as pointed out by the Addl.S.E. Centralized Billing Centre vide RBS No.126/2018 dated 09.08.2018 without providing month wise details of the billing required to be done as per applicable tariff and less bill (if any) as per each energy bill.

1. As per the said RBS, the total kVAh consumption, as measured from

01.04.2017 to 31.03.2018, was multiplied by Rs.7.13and ED/IDF @ 18% had been added on the amount so worked out. However, the difference of amount, as charged to the Petitioner was very much on the higher side, keeping in view instructions regarding applicable tariff, issued by the PSPCL from time to time.

1. Aggrieved with the bill so raised, the Petitioner approached the

Forum, who did not grant any relief to the Petitioner relating to the disputed amount of Rs.14,25,625/-. Accordingly, the present Appeal was preferred .

1. Chief Engineer/Commercial, PSPCL, vide CC No.49/2017

dated 10.11.2017, issued instructions for reduced energy charges @ Rs.4.23 as applicable to LS consumers ( who consumed power above the threshold limit) for the FY 2017-18. The criteria for reduced energy charges was the consumption in excess of the maximum consumption recorded during the FY 2015-16 and 2016-17 as per Para no.6.1.3 of the Tariff Order for FY 2017-18.

1. Thereafter, vide CC No.12/2018 dated 23.02.2018, it was

prescribed that the rate of tariff for the industry would be Rs. 5 per kVAh as variable cost effective from 01.01.2018. In this Circular (12/2018), it was also mentioned that State Govt. should bear 50% of financial implication of the increased tariff retrospectively i.e. from 01.10.2018.

1. The energy bills from 01.04.2017 to 05.08.2017 were issued by

applying energy charges + fixed charges varying from Rs.5.96 to Rs.6.67 per kVAh. Thereafter, from 05.08.2017 to 31.3.2018, the energy bills had been issued by applying energy charges+ fixed charges varying from Rs.5.20 to Rs.6.58 per kVAh. But, in the bills issued for the consumption recorded from 05.08.2017 to 31.03.2018, rebate under the Head/Item ‘ HT Rebate/Punjab Govt. Subsidy’ had been given. After considering the rebate, the effective rate per kVAh of energy charges + fixed charges, varied from Rs.4.48 to Rs.5.50 per kVAh. Thus, the energy bills during FY 2017-18 were not issued by applying reduced energy charges @ Rs.4.23 (CC No.49/2017). Therefore, the amount of Rs.14,25,625/- due to wrong refund ( as per calculation made in the RBS) was definitely on the higher side.

1. In order to verify the less billing/wrong refund, complete and month-

wise details of energy bills were required to be issued in view of provisions of CC No.12/2018 and other circulars, without rebate/reduced energy charges as admissible to eligible consumers and month wise difference in billing from 04/2017 to 03/2018, so that the amount of month wise wrong refund/less billing could be ascertained. A request in this regard was made to the Respondent, but the requisite details had not been provided till date.

1. Infrastructure Development Fund/ ED had been charged on the

actual amount of energy charges (without considering rebate/ subsidy) every month as per bills, even then an amount of Rs. 2,17,468/- was charged again on the wrong refund of Rs.12,08,157/- and chargeable amount was worked out as Rs.14,25,625/- (Rs.12,08,157+ Rs.2,17,468/-) .

1. When the said mistake was pointed out by the Petitioner,

Addl.S.E./CBC, PSPCL, Ludhiana modified the amount of wrong refund already given as Rs.12,08,157/- instead of Rs.14,25,625/, but added an amount of Rs.76,338/- as ED/IDF/MC tax charges for billing cycle from 12/2017 to 03/2018 and amount of net adjustment had been worked out as Rs(-) 1,41,130/- (Rs.2,17,468-Rs.76,338). The Forum did not mention any reason for not considering the revised calculation of CBC and upheld the charged amount of Rs.14,25,625/- .

1. The Petitioner was not given admissible ToD rebate in the energy

bills issued from 09/2017 to 03/2018. On pointing out mistake by the Petitioner, the Addl.S.E/CBC worked out the amount of admissible ToD rebate as Rs.4,26,390/- for the billing cycle 09/2017 to 03/2018 and prepared RBS dated 17.12.2018. However, AEE/Commercial, Focal Point Division (Special), PSPCL, while implementing the decision of the Forum, as intimated to the Petitioner vide Notice, bearing Memo No.3441 dated 02.04.2019 reduced the amount of ToD rebate as Rs.3,93,077/- instead of Rs.4,26,390/- without giving any reasons.

1. The AEE/Commercial, vide notice bearing Memo No.3441

dated 02.04.2019, asked the Petitioner to deposit balance amount of Rs.12,60,217/- including surcharge/interest of Rs.5,12,794/-. It was not understood as to how and under which rule/regulation, huge amount of Rs.5,12,794/- was charged as surcharge/interest. Even, the Forum did not give any direction in its decision for charging any interest from the Petitioner on disputed amount of Rs.14,25,625/- and did not discuss the important pleadings of the Petitioner and upheld the amount of Rs.14,25,625/- charged by the Respondent. But surprisingly, the Forum observed that as ToD rebate/surcharge was given/levied in the bills which causes different per unit rate in the bills of the Petitioner. The Forum could not consider that difference in rate was pointed out in energy charges + fixed charges i.e. without considering ToD rebate/surcharge and thus, failed to observe it properly.

1. Regulations 2.41 and 2.47 of CCHP approved by the Hon’ble

PSERC, provided that the decisions of the Forum would be recorded duly supported by reasons and every order made by the Forum should be a speaking order.

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

by setting aside the demand of interest/surcharge of Rs.5,12,794/- and passing orders for the revision of disputed amount of Rs.14,25,625/- in the interest of natural justice and fairness.

1. **Submissions of the Respondent**:

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

1. The connection of the Petitioner was presently running under LS

category with sanctioned load/CD of 314.970 kW/359.920 kVA.

1. As per CC No. 49/2017, within two part tariff structure from FY

2017- 18 to FY 2019-20, issued on 23.10.2017, the LS category consumers, who consumed Power above the threshold limit i.e. for the consumption in excess of the maximum consumption recorded during the FY 2015-16 and FY 2016-17 would be billed @ Rs. 4.23 per kVAh.

1. In continuation of the Single Part Tariff for the period from

01.04.2017 to 31.12.2017, the reduced energy charges under Single Part Tariff shall be Rs.4.99 per kVAH. However, reduced energy charges under Two Part Tariff structure remained Rs. 4.23 per kVAh for the period from 01.01.2018 to 31.03.2018. However, in case, the period was less than two financial years i.e if the connection had been released after 31.03.2015, the reduced energy charges would not be permissible.

1. The Petitioner was given wrong rebate, as per CC No,. 49/2017, in

the bills for the months of September, 2017 to March, 2018.

1. The Petitioner extended its load from 50 kVA to 359.920 kVA on

30.12.2016 and change of category from MS to LS. The above rebate was given in the bills by SAP billing System without considering the change in the load/CD of the consumer. Subsequently, the account of the consumer was overhauled by the CBC as per Commercial Circular (CC) No. 49/2017 considering the change in the load/CD of the consumer and issued RBS no. 126/2018 dated 09.08.2018 where in Rs. 14,25,625/- were charged on account of excess refund given in the bills alongwith ED/IDF.

(vi) The Petitioner was issued Notice, vide Memo No. 7418 dated 24.08.2018, to deposit the above charged amount of Rs. 14,25,625/-The Petitioner, instead of depositing the said amount, filed a Petition before the Forum, who, after hearing, decided the same in favour of the Respondent holding that the amount charged was in order and hence required to be recovered from the Petitioner. The Forum also decided that ToD rebate/surcharge was liable to be given/levied for the period from 09/2017 to 03/2018 as applicable from time to time.

1. Accordingly, the Respondent issued Notice, vide Memo No. 3441

dated 02.04.2019, asking the Petitioner to deposit the amount of Rs. 12,60,217/- after deducting the amount of ToD and charging interest/surcharge as under:\_

1. Charged amount Rs. 14,25,625/-

2. Amount deposited vide BA 16 Rs. 2,85,125/-

 No.154/50324 dated 05.10.2018.

3. Balance amount Rs. 11,40,500/-

4. ToD refund Rs.3,93,077/-

5. Interest/Surcharge Rs. 5,12,794/-

6. Net recoverable amount Rs. 12,60,217/-

(viii) In view of the submissions made above, the Appeal may be

dismissed.

**5. Analysis:**

The issue requiring adjudication is the legitimacy of recovery of the rebate given for energy consumption in excess of the threshold limit for the FY 2017-18 as per Commercial Circular (CC) No.49/2017 and levy of interest and surcharge thereon on the Petitioner, as per applicable regulations.

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

1. In the present dispute, the Petitioner was initially having a Medium

Supply Category Connection with sanctioned load of 49.970 kW and contract demand (CD) of 50 kVA. The Petitioner got extended its sanctioned load to 314.970 kW and 359.920 kVA in December 2016 with conversion of category from MS to LS. Subsequently, PSPCL, allowed the rebate of threshold limit vide Commercial Circular No.49/2017 dated 10.11.2017, which reads as under:

“*Hon’ble PSERC in Tariff Order for MYT control period from FY 2017-18 to FY 2019-20 issued on 23.10.2017 against Petition No.90 of 2016 has decided that within Two Part Tariff structure, in order to further encourage the industry for productive use of surplus power, reduced energy charges for FY 2017-18 @ Rs.4.45kWh for small Power and Rs.4.23 per kVAh for large Supply/Medium Supply consumers, for all categories of ‘Industrial Consumers’ shall be applicable, who consume power above the threshold limit i.e. for the consumption in excess of the maximum consumption recorded during the FY 2015-16 and FY 2016-17 as per Para no.6.1.3 of Tariff Order for FY 2017-18. Consequent to the continuation of single Part Tariff for the period from 01.04.2017 to 31.12.2017, the reduced energy charges under Single Part Tariff shall be Rs.4.99 per kVAh for Large Supply/Medium Supply and Rs.5.25 per kWh for Small Power Industrial Consumers, other items and conditions remaining same as contained in Para 6.1 of Tariff Order dated 23.10.2017. However, reduced energy charges under Two Part Tariff Structure shall remain i.e. Rs.4.23 per kVAh for large Supply/Medium supply and @ Rs. 4.45 per kWh for Small Power industrial Consumers for the period from 01.01.2018 to 31.03.2018.*

 *However, in case, the period is less than two financial years i.e. if the connection has been released after 31.03.2015, the reduced energy charges shall not be permissible.*

*All other terms and conditions, including determining of threshold limit, shall remain same as approved in the Tariff Order for FY 2016-2017 (CC No.31/2016) read with order of the Commission dated 18.10.2016 in Petition No.64 of 2016. However, decision pending in Appeal No.06/2017 filed by PSPCL before APTEL, New Delhi, against PSERC order dated 18.10.2016 in Petition No.64 of 2016, shall be applicable”.*

 I find that due to extension in load, the threshold limit for FY 2016-17 comes to be 1,81,0276 kVAh units, which was more than the consumption of FY 2017-18 which was 1,69,5031kVAh units. Therefore, the rebate was wrongly given to the Petitioner from 09/2017 to 03/2018 and was rightly charged to the Petitioner by the Respondent vide Notice dated 24.08.2018. This was also clear from perusal of Commercial Circular No.36/2016 dated 03.08.2016, issued with the approval of Hon’ble PSERC.

 I also find that the Respondent, in its reply and also during hearing, admitted that the rebate was wrongly allowed by the SAP billing System without taking into account the fact of extension in load and change in category of connection from MS to LS by the Petitioner in 12/2016.

1. As per material on record, the Centralized Billing Cell (CBC)

prepared and sent RBS No.126/2018 dated 09.08.2018, the Respondent issued the Notice, bearing Memo No.7418 dated 24.08.2018, to the Petitioner to deposit a sum of Rs.14,25,625/- on account of wrong refund given in the bills alongwith ED/IDF.

1. The Petitioner neither claim the ToD rebate nor it mentioned this in

the Petition filed by it before CGRF. At the same time, it did not notice the benefit accruing to it due to wrong refund on account of threshold limit given by the Respondent which it never crossed. This proves that the Petitioner was innocent and had no inention to avail any undue benefit from the Respondent. However, during the proceedings in CGRF, the Petitioner raised the issue of rebate on account of ToD.

In view of the above, the Forum allowed the ToD rebate for the period from 09/2017 to 03/2018 for which the Petitioner has not claimed interest. However, the Respondent levied interest on wrong refund given on account of threshold limit, but it has not allowed the interest on ToD rebate. Basically, the Respondent defaulted in allowing the refund on account of threshold limit and also not allowing the ToD rebate. The intention of the Petitioner does not appear to take advantage of this default of the Respondent. In view of this, the interest on the amount of wrong refund given by the Respondent on account of threshold limit raised by the Respondent, is not just and fair.

**6. Conclusion**:

From the above analysis, it is concluded that no interest/surcharge is required to be charged on the amount levied due to wrong rebate given for threshold limit. Besides, no interest is to be given on ToD rebate allowed to the Petitioner at later stage. However, if the Petitioner had paid the monthly current bills after due date, then, the surcharge/interest be charged as per applicable regulations on this unpaid current billed amount.

**7. Decision:**

As a sequel of above discussions, the order dated 08.01.2019 of the CGRF, Ludhiana in Case No. CGL- 021 of 2018 is modified in terms of conclusion arrived at in Para-6 above. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short after adjustment, if any.

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

**9**. 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)

June 18, 2019 Lok Pal (Ombudsman)

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