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

 **ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 18/2020**

**Date of Registration : 09.03.2020**

**Date of Hearing : 17.06.2020**

**Date of Order : 19.06.2020**

**Before:**

**Er. Gurinder Jit Singh,**

 **Lokpal (Ombudsman), Electricity, Punjab**.

**In the Matter of :**

Jasmel Singh,

Sehyog Enterprises,

M.S. Nagar, Opposite Power Grid,

Near Central Jail, Tajpur Road,

Ludhiana.

**Contract Account Number: 3002810240**

 ...Appellant

 versus

Senior Executive Engineer,

DS Focal Point Division (Special),

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Appellant : Sh. Sukhminder Singh

 Appellant’s Representative (AR).

Respondent : Er. Rajinder Singh

 Senior Executive Engineer,

 DS Focal Point Division (Special),

 PSPCL, Ludhiana.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 25.02.2020 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL- 013 of 2020, deciding that:

 *“The threshold units rebate of* ₹ *1,76,707/- for the year 2017-18 be given to the petitioner after pre-audit.”*

**2*.* Registration of the Appeal**

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 09.03.2020 i.e. within one month of receipt of order dated 25.02.2020 of the Forum. Since the present dispute related to Threshold Units Rebate, the requisite 40% of the disputed amount was not required to be deposited by the Appellant. Accordingly, the Appeal was registered in this Court on 09.03.2020 and a copy of the same was forwarded to the Respondent for sending written reply/parawise comments with a copy forwarded to the office of the CGRF, Ludhiana under intimation to the Appellant vide Memo No. 241-243/OEP/A-18/2020 dated 09.03.2020.

**3.** **Proceedings**

With a view to adjudicate the present dispute, a hearing in this case was fixed for 17.06.2020 at 01.00 PM and intimation to this effect was sent to the Appellant and Respondent vide Memo No. 416-417/OEP/A-18/2020 dated 09.06.2020. The said hearing was attended by both the sides and copies of proceedings were sent to them vide Memo No. 462-63/OEP/A-18/2020 dated 18.06.2020.

**4.** **Submissions made by the Appellant and the Respondent**:

With a view to adjudicate the dispute, it is necessary to go through written submissions made in the Appeal by the Appellant and reply of the Respondent as well as oral submissions made by their respective representatives along with material brought on record by both the sides.

1. **Submissions of the Appellant**
2. **Submissions made in the Appeal**

The Appellant made the following submissions in the Appeal, received on 09.03.2020, for consideration of this Court:

1. The Appellant was presently having Large Supply (LS)

category connection with present sanctioned load as 1000 kW and CD as 1000 kVA .

1. The office of the Chief Engineer/Commercial issued

instructions, vide CC No. 31/2016 dated 05.08.2016, in compliance of Tariff Order dated 27.07.2016 for FY-2016-17 (approved by Hon’ble PSERC) for Base Tariff Rate for incremental consumption above threshold limit for LS category consumers, as under:

The commission approves base Tariff rate of ₹ 4.99/- per kVAh for LS Industrial Category Consumers who consume power above Threshold limit as per ‘para a’ above. All other surcharge and rebates as approved by the commission and Government levies as notified by State Government shall be charged extra.

b) The criterion for allowing rate of ₹ 4.99/- per kVAh shall

 be as under:

 It shall be allowed for any consumption during the

financial year exceeding the consumption worked out on the following methodology:-

The maximum annual consumption in any of the last two financial years shall be taken as threshold. In case period is less than two financial years i.e. if connection has been released after 31.03.2014, tariff @ ₹ 4.99 per kVAh shall not be permissible. Further, in case, there is reduction or extension in load/demand, threshold limit shall be worked out on prorate basis.

The billing at the reduced rate shall be done once the

consumer crosses the target consumption as worked out under step (i).

1. Similarly, the office of the Chief Engineer/Commercial, PSPCL

issued instructions, vide CC No. 49/2017 dated 10.11.2017, in compliance of Tariff Order for MYT control period FY- 2017-18 to FY-2019-20 on 23.10.2017 (approved by Hon’ble PSERC), reduced energy charges for 2017-18 @ ₹ 4.45 per kWh for Small Power and ₹ 4.23 per kVAh for Large Supply/Medium Supply Consumers, for all categories of Industrial Consumers shall be applicable, who consume power above threshold limit for Base Tariff rate for incremental consumption above threshold limit i.e. for the consumption in excess of maximum consumption recorded during FY 2015-16 and FY 2016-17 as per Para No. 6.1.3 of Tariff Order for FY 2017-18.

The reduced energy charges of Single Part Tariff (or the period from 01.04.2017 to 31.12.2017) shall be ₹ 4.99 per kVAh for Large Supply/Medium Supply Consumers and ₹ 5.25 per kWh for Small Power industrial consumers. However, reduced energy charges under Two Part Tariff Structure shall remain the same i.e. ₹ 4.23 for Large Supply/Medium Supply Consumers for the period 01.01.2018 to 31.03.2018.

It was also mentioned in CC No. 49/2017 that “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 shall not be permissible.” Similar remarks had been given in CC No. 31/2016.

1. In the case of the Appellant, the industrial connection was very

old. However, extension in load to make total load as 449.610 kW and CD as 499.500 kVA was given in 5/2015. Similarly, the load CD was got extended as 1000 kW /1000 kVA on 31.10.2017. As such, the Appellant qualified for getting rebate under CC No. 31/2016 and CC No. 49/2017.

1. The following clarification had been issued vide CC No.

14/2018 dated 19.03.2018 on the basis of clarification given by the Hon’ble PSERC vide Memo No. 2388 dated 07.03.2018:

 “The provision of adjustment of consumption on pro-rata basis has been made only in case of reduction/extension in load/demand taking place in any of the last two financial years to work out the threshold consumption for that financial year i.e. in case of reduction/extension in load/demand during any of the two previous financial years, the consumption of the relevant year shall be reduced/enhanced on pro-rata basis, as the case may be, for the purpose of working out threshold consumption of that year.”

1. In view of instruction issued vide CC No. 31/2016, 49/2017 and

clarification issued vide CC No. 14/2018 dated 19.03.2018, the amount of rebate admissible to the Appellant was as under:

**Rebate for FY-2016-17:**

The total consumption recorded for the year 2016-17 was 2271306 kVAh. The maximum adjusted consumption as recorded in the previous two financial years is for FY 2015-16 and it was 1690155 units. The excess units which qualified for rebate (as per CC No. 31/2016) i.e. 2271306 units-1690155 units = 581151 units. The amount of rebate worked out to be ₹ 604397/- (581151 units x ₹ 1.04).

**Rebate for FY-2017-18**:

The total consumption recorded for the year 2017-18 was 2487360 kVAh units. The maximum consumption as recorded in the previous two financial years was for FY 2016-17 and it was 2271306 kVAh. The excess units which qualified for rebate (as per CC No. 31/2016) 2487360 kVAh-2271306 kVAh -216054 kVAh. The amount of rebate (after adjustment of ToD units/rebate) worked out to be ₹ 1,76,707/-.

1. A case was filed in the office of the CGRF, Ludhiana and

registered as CGL-013/2020. The proceedings in the case were conducted on 27.01.2020, 03.02.2020 and finally on 10.02.2020. During proceedings, the Forum directed the Respondent to submit reply to the Petition alongwith calculation sheet/Revised Billing Statement (RBS) of refundable amount. The Respondent submitted the reply alongwith RBS revised from Sr. Xen/CBC, Ludhiana on 10.02.2020. The Respondent confirmed the refundable amount as ₹ 7,81,104/- i.e. ₹ 6,04,397/- for FY 2016-17 and ₹ 1,76,707/- for FY 2017-18 without any objection/reservation. During oral discussion in the proceedings, there was no talk about non- admissibility of rebate either by the Respondent or by the Forum. However, the Appellant was surprised to note that the Forum had disallowed the rebate of ₹ 6,04,397/- for the FY 2016-17 and had decided to allow threshold consumption rebate of ₹ 1,76,707/- only for the FY 2017-18 vide its Order dated 25.02.2020. In the conclusion part of the decision, the Forum mentioned that “Forum came to the unanimous conclusion that the Threshold Rebate for the FY 2016-17 was not considered for decision being time barred as per instructions contained in Regulation 2.25 of CCHP”.

1. The said decision of the Forum was totally arbitrary, biased,

illegal and unjustified. The Appellant was not satisfied with the decision of the Forum, hence, the present Appeal was filed in this Court.

1. Hon’ble PSERC introduced the Policy of threshold

consumption rebate to maximize the electricity consumption by industry for productive use of surplus power available with PSPCL for the overall development of the State. The billing at reduced rate (as approved rate) was required to be done, once the consumer crossed the target consumption (threshold limit). The consumer was not required to submit any specific request for availing threshold consumption rebate (as admissible). If the PSPCL had not allowed admissible rebate, then, concerned office (billing office) was at fault. Thus, if the admissible rebate was denied to any consumer just by considering the claim as time barred, then, basic purpose of encouraging the industry to use more surplus power, shall be defeated. It appeared that the Forum failed to understand all this while arriving at biased conclusion to disallow the admissible rebate to the Appellant.

1. The case for threshold consumption rebate, as admissible for the

FY 2016-17 and 2017-18, was filed before the Forum in view of Instruction issued vide CC No. 31/2016, 49/2017 and clarification was issued vide CC No. 14/2018 dated 19.03.2018. The Forum did not consider the period of two years from the date of clarification i.e. 19.03.2018 while considering the claim of threshold consumption rebate as time barred.

1. The Forum had considered the Rebate for the FY 2016-17 as

time barred as per provisions contained in Regulations 2.25 of PSERC (Forum and Ombudsman), Regulation-2016 reproduced as under:

 “The Forum shall entertain only those complaints where the representation is made within 2 years from the date of cause of action in case, the complainant approaches the Forum directly or within 2 months from the date of receipt of the orders of respective Dispute Settlement Committee constituted under CCHP.

Provided that the Forum may, for reasons to be recorded in writing, entertain a complaint which does not meet the aforesaid requirements.”

 The Forum had the authority as per Regulation 2.25 (referred to above) to entertain the complaint even after a period of two years of the cause of action. The Forum had entertained numerous cases of refund of interest on Security (consumption) even from the year 2007-08 onwards i.e. more than ten years after the cause of action. Further, a similar case filed by M/s. Arora Iron & Steel Rolling Mills Ltd., (CGL-150 of 2019) had already been decided by the Forum after a period of two years. The case of the Appellant was also admitted but surprisingly, in its judgment, the Forum disallowed the rebate as admissible for the year 2016-17.

1. The refund case of the Appellant was registered by the

Forum as Case No. CGL-013/2020 without any observation/objection. The proceedings in the case were also conducted on regular basis, in routine. Even, during proceedings, the Forum directed the Respondent to submit reply on the Petition alongwith calculation sheet/RBS of refundable amount relating to the year 2016-17 and 2017-18. The Respondent also confirmed the refundable amount as ₹ 7,81,104/- i.e. ₹ 6,04,397/- for FY 2016-17 and ₹ 1,76,707/- for FY 2017-18 without any objection/reservation. Further, during oral discussion, in the proceedings, there was no talk about inadmissibility of rebate in view of Regulation 2.25 of CCHP either by the Respondent or by the Forum. Had the Forum informed the Appellant to explain the reasons of delay in filing the refund cases, the specific representation explaining the reasons of delay and request for condoning the delay would have been given although there was no delay if the date of clarification issued vide CC No. 14/2018 dated 19.03.2018, was considered. But, the Forum, after thought and with biased approach, did not allow the admissible rebate through judgment/final order darted 25.02.2020 to the utter surprise of the Appellant.

1. It was general principle of law not to deny the justice, simply

on the ground of some delay in filing the Case/Appeal. However, the Forum which had been constituted to redress the grievances of the consumers of the utility, had given rise to grievance by denying the legitimate refund (which would have been allowed by the concerned office without any specific request from the consumer/petitioner). Moreover, the Appellant did not want any interest for delay in providing rebate through regular bills, on the part of PSPCL. The Appellant was just claiming actual amount of threshold consumption rebate as admissible for the FY 2016-17. However, the Appellant had been discriminated by the Forum (as the Forum had registered numerous cases of refund even after a period of two years) and the reasons were best known to them.

1. In view of position explained above, the matter be looked into

on merits and the refund of ₹ 6,04,397/- relating to threshold consumption rebate for the FY 2016-17 be allowed in the interest of natural justice and fairness.

1. **Submissions in the Rejoinder**

The Appellant made the following submissions, vide e-mail dated 15.06.2020, in its rejoinder to the reply of the Respondent as under:

(i) During proceedings, the Forum was convinced with the claim made for rebate for the FY-2016-17 and FY-2017-18. The Forum directed the Respondent to get the RBS prepared from the CBC. Accordingly, the respondent submitted RBS for admissible rebate of ₹ 6,04,397/- for the FY-2016-17 and ₹ 1,76,707/- for the FY-2017-18, during proceedings held on 10.02.2020. During discussions on the calculations as per RBS, the Appellant agreed with the calculations (RBS) as submitted by the Respondent and this fact had been mentioned in decision of the Forum. There was no discussion/objection from the Respondent regarding time barred claim for the FY-2016-17 and the Forum also did not object to the claim for the FY-2016-17 and as per order of the Forum, even RBS was got prepared from the CBC for admissible rebate of ₹ 6,04,397/- (FY-2016-17). However, to the surprise of the Appellant, the Forum only allowed the rebate of ₹ 1,76,707/- relating to FY-2017-18 but denied the claim of ₹ 6,04,397/- for the FY-2016-17 by stating that it had become time barred (as per Regulation 2.25 of CCHP). While arriving at the conclusion, the Forum did not consider the fact that it was the duty of the Respondent to allow rebate for FY 2016-17 and 2017-18 as and when, it became due and the delay was on the part of the Respondent’s office. Thus, the decision of the Forum to allow the claim of rebate of only ₹ 1,76,707/- relating to FY-2017-18, was biased, unjustified and liable to be quashed.

(ii) The Forum should have also considered the fact that delay in adjustment of threshold consumption had caused financial loss to the Appellant in the shape of interest on the amount of rebate due to the Appellant, which would have been allowed in the FY 2016-17. As such, the Court may consider the claim of interest due to the Appellant on refundable amount of ₹ 6,04,397/- (FY 2016-17) and on ₹ 1,76,707/- (FY-2017-18) from the date, it became due in the FY 2016-17 and onwards. The Respondent, in its reply, had only stated that thedecision of the Forum in the case of M/s Arora Rolling Mills Pvt Ltd was still pending and had not been implemented as clarification had been sought from the office of CE/Commercial, PSPCL, Patiala. First of all, the case of the Appellant was not similar to the case of M/s Arora Rolling Mills Pvt Ltd which was very much evident from the documents supplied by the Respondent with the reply (especially the Memo No.1295 dated 20.12.2019 of CE/Commercial addressed to Secretary, PSERC). Secondly, even in the case of M /s Arora Rolling Mills Pvt Ltd., the Respondent, in its reply, had confirmed that the Hon’ble PSERC ,vide letter no. 2605 dated 29.01.2020, had replied to PSPCL that clarification regarding calculation of threshold limit had already been given vide letter No. 2388 dated 07.03.2018. Hon’ble PSERC had also mentioned that in case, any further clarification of Tariff Order was required, PSPCL may file a Petition for the same. It was more than 4 months since Hon’ble PSERC, vide letter dated 29.01.2020 had again clarified the position to PSPCL, and the present case of the Appellant had nothing to do with the case of M/s Arora Rolling Mills Pvt Ltd, being altogether different case. Thus, the plea of the Respondent was not convincing at all.

(iii) Delay in the claim/adjustment ofthreshold consumption rebate (which was on the part of the Respondent’s office) may be condoned for the sake of justice. In view of the submissions made, the Appeal may be allowed and order be passed for refund of ₹ 6,04,397/- relating to threshold consumptionrebate for the FY 2016-17 with applicable interest due to the Appellant on refundable amount of ₹ 6,04,397/- for the FY 2016-17 and on ₹ 1,76,707/- for FY-2017-18, from the date, it became due till actual payment/adjustment, on the principle of natural justice and fairness.

1. **Submissions during Hearing**

Apart from reiterating the submission made in its Appeal followed by rejoinder to the written reply of the Respondent, the Appellant’s Representative gave a brief (in writing) of oral submissions and stated during hearing as under:

1. The Appellant raised two issues before the Forum i.e. for rebate

admissible as per CC No. 31/2016, for the FY 2016-17 for ₹ 6,04,397/, and as per CC No. 49/2017, for the FY-2017-18 for ₹ 1,76,707/-. Both the issues were discussed during proceedings and also in the observations part of the judgment of the Forum. However, in the decision part, the Forum had given the decision for admissible rebate of ₹ 1,76,707/- for the FY 2017-18 and decision was silent about 2nd issue relating to rebate admissible to the consumer as per CC No. 31/2016 for the FY 2016-17 amounting to ₹ 6,04,397/-. Thus, decision of the Forum was totally wrong and illegal.

1. The Forum was convinced with the entitlement of rebate for

2016-17 and 2017-18 during proceedings/discussion on the case and therefore, directed the Respondent to get the RBS prepared from the CBC. Accordingly, the Respondent submitted RBS for admissible rebate of ₹ 6,04,397/- for the FY 2016-17 and ₹ 1,76,707/- for the FY 2017-18. However, as per decision the Forum had not passed order for giving rebate for FY 2016-17 on the ground that it had become time barred (as per Regulation 2.25 of CCHP).

1. It was nowhere prescribed in the instructions issued, vide CC

No. 31/2016 and 49/2017, that, the consumer should submit specific request for the threshold rebate. Rather, it was clearly prescribed in instructions issued, vide CC No. 31/2016 dated 05.08.2016, that “the billing at the reduced rate shall be done once the consumer crosses the target consumption.” Thus, suo motu action was required to be taken by PSPCL office for adjustment of rebate in the regular energy bills as and when, it became due to the Appellant.

1. The decision of the Forum, be set aside, the Appeal be allowed

and orders be passed for allowing the Appeal, the refund of ₹ 6,04,397/-and ₹ 1,76,707/- relating to threshold consumption rebate for the FY 2016-17 and FY 2017-18 respectively, with applicable interest due to the Appellant on refundable amount of ₹ 6,04,397/- for the FY 2016-17 and on ₹1,76,707/- for FY 2017-18, from the date, it became due till actual payment/adjustment on the principle of natural justice and fairness.

1. **Submissions of the Respondent**
2. **Submissions made in the Written Reply**

The Respondent, in its defence, submitted the following, vide Memo No. 1020 dated 27.05.2020, for consideration of this Court:

1. The Appellant was presently having a LS Category connection, bearing account No. 3002810240/E32-FP69-00932 running in the name of M/s Jasmel Singh.
2. The consumer got its load/CD extended to 449.610 kW/499.500 kVA (under LS category) with effect from 18.04.2015 and further got extended to 1000 kW /1000 kVA (under LS category) w.e.f. 31.10.2017.
3. The consumer got a case registered in the office of the CGRF, Ludhiana as CGL- 013/2020 and asked for threshold Rebate as per CC No. 31/2016 and CC No. 49/2017. In this connection, on directions from the Forum during proceeding, RBS was prepared by CBC, Ludhiana vide RBS No. 05/2020 dated 06.02.2020 of the total amount of ₹ 7,81,104/- comprising of amount of ₹ 6,04,397/- and ₹ 1,76,707/- as per CC-31/2016 and CC-49/2017 respectively.
4. In regard to the claim of the Appellant for the rebate of

threshold units as per CC No. 31/2016 and CC No. 49/2017, the Forum concluded that Threshold Rebate for the FY 2016-17 was not considered for passing order being time barred as per the instructions contained in Regulation 2.25 of CCHP. However, threshold unit rebate of ₹ 1,76,707/- for the year 2017-18 was admissible to the Appellant. Aggrieved with the said order of the Forum, the Appellant filed an Appeal in this Court.

1. The decision of CGRF, Ludhiana concerning the case of M/s Arora Iron Steel Rolling Mills Pvt. Ltd (Case no. CGL-150 of 2019) was yet to be implemented and a clarification in regard to the decision of CGRF Ludhiana was sought by office of the Respondent from Chief Engineer/Commercial, PSPCL, Patiala vide Memo No. 4839 dated 08.11.2019. In response, Chief Engineer/Commercial, PSPCL, Patiala requested to the Secretary, PSERC Chandigarh, vide letter no. 1295 dated 20.12.2019, to clarify the matter. In response, a reply was given vide their letter no. 2605 dated 29.01.2020, that clarification regarding calculation of threshold limit in case of contract demand (CD) had already been given vide letter no. 2388 dated 07.03.2018 and also mentioned that in case, any further clarification of Tariff Order was required, PSPCL may file a Petition for the same. Accordingly, the matter was under consideration of CE/Commercial, Patiala regarding filing necessary Petition with Hon’ble PSERC.
2. **Submissions during Hearing**

During hearing on 17.06.2020, the Respondent reiterated the submissions already made in its written reply and contested the submissions of the Appellant in its rejoinder and also orally during hearing. The Respondent also stated that the Appellant had never given any request in writing in the office of the Respondent for giving threshold units rebate, for 2016-17 and 2017-18, after their becoming due at the close of the relevant financial year. The Respondent added that decision of the Forum was correct.

**6.** **Analysis and Findings**

The issue requiring adjudication is the legitimacy of not considering/allowing grant of threshold units Rebate, as per Tariff Order for the FY 2016-17, on the plea that the claim was time barred and Rebate had been claimed more than two years after the date of cause of action.

*My findings on the points emerged, deliberated and analysed, are as under:*

1. In the present Appeal, the Appellant stated that it had a Large

Supply category connection after conversion from Medium Supply with sanctioned load of 449.610 kW and contract demand as 499.500 kVA as on 18.04.2015.The Appellant got its load and CD extended to 1000 kW and 1000 kVA respectively with effect from 31.10.2017. The Appellant filed a case in the Office of the CGRF, Ludhiana on 31.12.2019 (registered on 06.01.2020) for grant of threshold units Rebate in terms of provisions of Tariff Order for the FY 2016-17 and FY 2017-18 read with Commercial Circular (CC) No. 31/2016 (for FY 2016-17) and CC No. 49/2017 (for FY 2017-18) respectively.

1. In its present Appeal received in this Court on 09.03.2020, the

Appellant’s Representative prayed for allowing only Threshold Units Rebate amounting to ₹ 6,04,397/- as per Tariff Order FY 2016-17 /CC No. 31/2016 and stated specifically that it was not claiming interest for the delay in giving/allowing the said Rebate, if this Court ordered to give the said Rebate. However, in its rejoinder sent by e-mail dated 15.06.2020 and in its written brief submitted during hearing on 17.06.2020, the Appellant’s Representative also claimed applicable interest on the Threshold Consumption Rebate amounting to ₹ 6,04,397/-/for FY 2016-17 and ₹ 1,76,707/- for FY 2017-18 from the dates , the same became due till their actual payment/adjustments in the bills.

I find that the claim for payment of interest on the Threshold Consumption rebate for FY 2016-17 and FY 2017-18 was not raised at the time of preferring Appeal in this Court on 09.03.2020 and is an after thought. I also find it was specifically mentioned in the Appeal that the Appellant did not want any interest for delay in giving Rebate through regular bills on the part of the PSPCL and that the Appellant was just claiming actual amount of threshold consumption rebate as admissible for the FY 2016-17.

 In this connection, I have gone through the provisions of Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016 and observations of the Forum which reads as under:

“Forum further observed that threshold unit rebate for the year 2016-17 was to be applied by the Petitioner within two years from the date of close of year, which the Petitioner failed to apply and as per Regulation 2.25 of CCHP, Forum can entertain complaint where the representation is made within two years from the date of cause of action. As the Petitioner has applied threshold unit rebate for the year 2016-17 on 31.12.2019, so it becomes time barred and has not been considered for decision by the Forum. However, threshold units rebate for the year 2017-18 as calculated by the CBS is admissible to the Petitioner.”

1. The Appellant’s Representative submitted that during the

hearing of the case in CGRF, Ludhiana, the Respondent was directed to submit the Revised Bill Statement (RBS) for threshold units rebate for the years 2016-17 and 2017-18. Accordingly, RBS was prepared by CBC, Ludhiana for total amount of ₹ 7,81,104/- comprising the amount of ₹ 6,04,397/- and ₹ 1,76,707/- as per CC No.31/2016 and CC No. 49/2017 respectively. After hearing both sides, the Forum passed order dated 25.02.2020 deciding that the threshold units Rebate amounting to ₹ 1,76,707/- for the year 2017-18 be given to the Appellant after pre-audit.

1. As per material on record, the Forum observed that the

claim for the Rebate for the FY 2016-17 was time barred, hence, not considered for decision as per provisions contained in Regulation 2.25 of PSERC (Forum and Ombudsman) Regulation, 2016 . The observations of the Forum are reproduced as under:

 “The Forum shall entertain only those complaints where the representation is made within 2 years from the date of cause of action in case the complainant approaches the Forum directly or within 2 months from the date of receipt of the orders of respective Dispute Settlement Committee constituted under CCHP.

Provided that the Forum may, for reasons to be recorded in writing, entertain a complaint which does not meet the aforesaid requirements.”

1. The Appellant’s Representative contended the Forum had the

 authority, as per Regulation 2.25 (referred to above), to entertain the complaint even after a period of two years of the cause of action. The CGRF, Ludhiana had entertained numerous cases of refund of interest on Security (Consumption) even from the year 2007-08 onwards i.e. more than ten years after the cause of action. Further, in a similar case filed by M/s. Arora Iron & Steel Rolling Mills Ltd., (CGL-150 of 2019) had already been decided by the Forum after a period of two years. The case of the Appellant was also admitted but surprisingly, in its decision, the Forum disallowed the rebate as admissible for the year 2016-17.

 I observe that no documentary evidence was brought on record of this Court by the Appellant to prove that it had represented to the Forum in writing during proceedings to entertain its time barred representation as per provision to Regulation 2.25 referred to above.

I find that the Respondent, in its reply, stated that the decision of CGRF, Ludhiana concerning the case of M/s Arora Iron Steel Rolling Mills Pvt. Ltd (Case no. CGL-150 of 2019) was yet to be implemented and a clarification in regard was sought by office of the Respondent from Chief Engineer/Commercial, PSPCL, Patiala vide Memo No. 4839 dated 08.11.2019. In response, Chief Engineer/Commercial, PSPCL, Patiala requested the Secretary, PSERC Chandigarh, vide letter no. 1295 dated 20.12.2019, to clarify the matter. In reply there to, it was intimated vide their letter no. 2605 dated 29.01.2020, that clarification regarding calculation of threshold limit in case of contract demand (CD) had already been given vide letter no. 2388 dated 07.03.2018 where in it was also mentioned that in case, any further clarification of Tariff Order was required, PSPCL may file a Petition for the same. Accordingly, the matter was under consideration of CE/Commercial, PSPCL, Patiala regarding filing necessary Petition before Hon’ble PSERC.

 I also find that the Appellant’s Representative, in its rejoinder, changed its earlier version (in the Appeal) and stated that the present Appeal was not similar to that of M/s Arora Iron Steel Rolling Mills Pvt. Ltd.

1. It is observed that the Appellant prayed to this Court for

condonation of delay in filing the Petition in CGRF, Ludhiana for getting the threshold units rebate for FY 2016-17, by citing clarification issued vide CC No.14/2018 dated 19.03.2018. A perusal of the material available on record shows that the Appellant had not prayed for the same while filing the Petition in CGRF, Ludhiana. The Appellant has, in its submissions in the present Appeal, taken the date of cause of action from 19.03.2018 i.e. when the CC No.14/2018 was issued.

I have perused the contents of CC No.14/2018 and noticed that Honorable PSERC had given clarification regarding calculation of threshold limit in case of changes in CD as per Tariff Order for FY 2017-18/CC No. 49/2017. The clarification was given in view of reference made by EIC/Commercial, PSPCL to Secretary, PSERC vide Memo No.175-76 dated 16.02.2018**.** It was clarified by PSERC that decisions contained in Tariff Order for FY 2016-17 and FY 2017-18 for working out threshold consumption for a Financial Year in case, there is reduction or extension in load/demand did not provide for any adjustment in current year’s consumption. However, in case of Appellant, there was no change in load/CD during 2016-17. The clarification dated 19.03.2018 is not applicable to the case of Appellant for FY 2016-17.

It is thus clear that the provision for adjustment of consumption on pro-rata basis has been made only in case of reduction/extension in load/demand taking place in any of two previous financial years to work out the threshold consumption for that financial year. Hence, PSPCL circulated, vide CC No.14/2018, clarification given by the Commission to work out the threshold consumption on pro-rata basis if there was any increase/decrease in load/CD in current Financial Year for Tariff Order 2016-17 and 2017-18.

1. The Appellant’s Representative was also asked during hearing

to intimate as to whether, it had applied or submitted any request in writing to the Respondent after 01.04.2017 (the date for eligibility for giving rebate for 2016-17) for grant of Threshold Units Rebate for FY 2016-17. In response, the Appellant’s Representative stated that no such request was made in writing till 31.12.2019 when a case was filed in office of the CGRF, Ludhiana.

The Respondent also confirmed that there was no evidence on record of DS Focal Point Division (Special), PSPCL, Ludhiana to the effect that any such written request was ever given in the office of the Respondent.

1. Both Appellant and Respondent were given an opportunity to

settle mutually the time barred issue relating to rebate for 2016-17.In response, the Respondent stated that the claim of the Appellant was without merit and could not be considered at this stage. He stated that the case may be decided on the basis of record available and as per regulations applicable from time to time.

 From the above analysis, it is concluded that the claim of the Appellant for grant of Threshold Units Rebate amounting to ₹ 6,04,397/- for FY 2016-17 as per CC No. 31/2016 is time barred as per regulations. At the same time, the Appellant did not produce any documentary evidence that presented to the Forum to condone the delay in claiming the rebate during proceedings therein. Besides, the Appellant did not represent to the Respondent for giving/allowing the said Rebate after its becoming due on 1st April, 2017 (date of cause of action) till the date of filing a Case on 31.12.2019 (registered on 06.01.2020) before CGRF, Ludhiana. That is why, the said Rebate for FY 2016-17 being more then two years old at the time of filing Petition no. CGL-013 of 2020, was not considered for decision by the Forum in view of provisions of Regulation 2.25 of PSERC (Forum and Ombudsman) Regulation, 2016. Further, the Appellant had not submitted any documentary proof/evidence in the Appeal for condoning delay of two years and nine months approximately in filing the claim. The Appellant, being a LS Category consumer, ought to be aware of regulations/instructions uploaded on the website of PSPCL and should have pointed out the fact of not giving/allowing the desired Rebate, after its becoming due on 1st April 2017, by giving its request in writing to the licensee. At the same time, the Appellant has no locus stand-in to claim interest on amount of Rebate for FY 2017-18 ordered to be given after pre-audit by the Forum after having stated specifically in the present Appeal that it was not claiming interest on the Rebate. Such a submission in writing by the Appellant was, in a way, admission of its lapse in not taking appropriate remedy at appropriate time.

7. **Decision**

As a sequel of above discussions, the order dated 25.02.2020 of CGRF, Ludhiana in Case No. CGL-013 of 2020 is upheld. It is also held that no interest shall be payable on the Threshold Units Rebate of ₹ 1,76,707/- for FY 2017-18 ordered to be given to the Appellant after pre-audit vide aforesaid decision of CGRF, Ludhiana.

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

**9.** In case, the Appellant 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.

 (GURINDER JIT SINGH)

June 19, 2020 Lokpal (Ombudsman)

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