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

 **ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 39/2020**

 **Date of Registration : 18.08.2020**

 **Date of Hearing : 09.09.2020**

 **Date of Order : 09.09.2020**

**Before:**

 **Er. Gurinder Jit Singh,**

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

**In the Matter of :**

 M/s. Gripwell Tools Industries,

 # C-104, Focal Point Extension,

Jalandhar City

**Contract Account Number: 30000855445**

 ...Appellant

Versus

Senior Executive Engineer,

DS East Division,

PSPCL, Jalandhar.

 ...Respondent

**Present For:**

Appellant : 1. Sh. Sushil K Vatta, CA,

 Appellant’s Representative (AR).

 2. Sh. JP Singh

 Appellant’s Representative (AR).

Respondent : 1. Er. Sunny Bhagra,

 Senior Executive Engineer,

 DS East Division, PSPCL,

 Jalandhar.

 2. Geetesh Kalia,

 Revenue Accountant (RA).

Before me for consideration is an Appeal preferred by the Appellant against the order dated 12.06.2020 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. T-160 of 2020, deciding that:

*“Forum observed that the refund of ToD Rebate claimed by Petitioner is for the F.Y 2014-15 but applied for refund in 2020 after time span of 5 years which is much older than 2 years and hence time barred as per Regulation 2.27(c) of Forum and Ombudsman Regulations, 2016. Therefore, the present case cannot be considered further for Registration, being time barred.”*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 18.08.2020 i.e. after more than one month of receipt of the decision dated 12.06.2020 of the CGRF, Ludhiana in Case No. T-160 of 2020. An application for condonation of delay in filing the Appeal was also received alongwith the Appeal. Since the Appeal related to refund of PLEC and non grant of ToD rebate, the Appellant was not required to deposit the requisite 40% of the disputed amount for filing the Appeal in this Court. Accordingly, the Appeal was registered and a copy of the same was sent to the Senior Executive Engineer/ DS East Division, PSPCL, Jalandhar for furnishing written reply/ parawise comments and also to the office of CGRF, Ludhiana for sending the case file under intimation to the Appellant vide this office letter nos. 735-37/OEP/A-39/2020 dated 18.08.2020.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 09.09.2020 at 12.00 Noon and intimation to this effect was sent to both the sides vide letter nos. 784-85/A-39/2020 dated 28.08.2020. As scheduled, the hearing was held on 09.09.2020 in this Court and was attended by the representatives of both the sides.

**4. Condonation of Delay**

At the start of hearing on 09.09.2020, the issue of condonation of delay was taken up. The Appellant’s Representative stated that the Forum had decided the case of the Appellant in its proceedings dated 12.06.2020. But due to COVID-19 Pandemic and continued lockdown across the state of Punjab, the Appellant was not able to seek any professional advice/guidance in the matter for the preparation of Appeal for consideration of this Court. Accordingly, the Appeal could not be preferred within stipulated period of one month of receipt of the order of the Forum. The Appellant’s Representative requested the Court to condone the delay in filing the Appeal beyond the stipulated time limit in the interest of justice. The Respondent did not object to the request of the Appellant’s Representative for condonation of delay in filing the Appeal in this Court.

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

*“No representation to the Ombudsman* shall lie unless:

*The representation is made within one month from the date of receipt of the 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.”*

It was observed that non condonation of delay would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Therefore, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant’s Representative was allowed to present the case.

**5.** **Analysis and Findings**

The issue requiring adjudication is the legitimacy of the order dated 12.06.2020 of CGRF, Ludhiana in Case No. T-160 of 2020 deciding not to register the case due to its being more than two years old and time barred as per applicable regulations.

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

1. The Appellant has preferred the present Appeal in this Court against the order dated 12.06.2020 of CGRF, Ludhiana in Case No. T-160 of 2020 deciding as under:

 *“Forum observed that the refund of ToD Rebate claimed by Petitioner is for the F.Y 2014-15 but applied for refund in 2020 after time span of 5 years which is much older than 2 years and hence time barred as per Regulation 2.27(c) of Forum and Ombudsman Regulations, 2016. Therefore, the present case cannot be considered further for Registration, being time barred.”*

I observe that the Appellant has, in the present Appeal and also during hearing on 09.09.2020, not referred to any Regulation vesting this Court with the power to review/decide the case wherein the Forum had not registered/entertained the grievance of any consumer in which the date of cause of action is more than two years. The Appeal submitted in this Court is based only on merits of the case/grievance of the Appellant relating to refund of PLEC/ToD rebate for the financial year 2014-15. The Appellant had not explained the reasons for delay in filing the case before the Forum after five years from the date of cause of action. Delay of each day is required to be explained with documentary evidence but the Appellant had failed to give any justification for delay. Delay cannot be condoned in a mechanical way suo-motu without any request from the Petitioner/Appellant.

 I also observe that the case can be adjudicated on merits in this Court only if the same is, prima facie, maintainable. Since the Appellant has not brought any evidence on record of this Court about maintainability of the present Appeal in this Court, it is not appropriate to deliberate and analyse the case on merits.

1. A perusal of the case file of the Forum has revealed that the Appellant did not submit any application alongwith its petition/complaint for entertaining the same giving reasons for filing it five years after the date of cause of action. The Appellant only submitted the details of its grievance and request for allowing relief on merits but application/request for condonation of delay in filing the petition/complaint within limitation period was not submitted to the Forum.
2. During hearing on 09.09.2020, the Appellant’s Representative stated that the order dated 12.06.2020 of the Forum was not a speaking and reasoned order.

I find that the order dated 12.06.2020 of the Forum was a speaking order wherein the Forum had observed that the refund of ToD Rebate claimed by the Appellant was for the FY 2014-15 but the Appellant applied for the refund to the Forum in 2020 after time span of 5 years which was much older than 2 years and was time barred as per Regulation 2.27(c) of Forum and Ombudsman Regulations, 2016. Accordingly, the Forum decided that the case of the Appellant could not be considered further for Registration, being time barred.

I observe that the Forum was within its jurisdiction to pass the aforesaid order as per provisions contained in Regulation 2.27(c) of PSERC (Forum and Ombudsman) Regulations, 2016 which reads as under:

 ***“2.27*** *The Forum may reject the grievance at any stage, through a speaking order, under the following circumstances:*

*(c)**In cases where the grievance has been submitted two years after the date on which the cause of action has arisen or after two months from the date of receipt of the orders of DSC; and”.*

1. From the above analysis, it is concluded that the order dated 12.06.2020 passed by the Forum is in accordance with the applicable Regulations which, in turn do not provide for entertaining any representation in this regard by this Court. Accordingly, the present Appeal is not maintainable/ sustainable.

**6.** **Decision**

As a sequel of above discussions, the order dated 12.06.2020 of the CGRF, Ludhiana in Case No. T-160 of 2020 is upheld.

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

**8**. 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)

 September 09, 2020 Lokpal (Ombudsman)

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