

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
**SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH**

Review Petition No. 10 of 2023  
In Petition No. 06 of 2023  
Date of Order:04.12.2023

Review Petition under Section 94 (f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 64 & 69 of the Punjab State Electricity Regulatory Commission (Conduct of Business Regulation), 2005 for reviewing/recalling the Order dated 05.09.2023 passed by this Commission in Petition No. 6 of 2023.

In the matter of: Punjab State Power Corporation Limited The Mall, Patiala,  
Punjab -147001

.....Review Petitioner

Versus

M/s Chandigarh Distillers and Bottlers Limited, Banur,  
Tehsil Mohali, District SAS Nagar, Pb.140601 Head office:  
SCO 140-141, Sector 34A, Chandigarh.

.....Respondent

Commission: Sh. Viswajeet Khanna, Chairperson

Sh. Paramjeet Singh, Member

PSPCL : Ms. Poorva Saigal, Advocate

Ms. Harmohan Kaur CE/ARR&TR, PSPCL

**ORDER**

1. Punjab State Power Corporation Limited (**PSPCL**) has filed the present Review Petition to review/recall the Commission's Order dated

05.09.2023 in Petition No. 6 of 2023, in so far as it relates to the issue of reduction in tariff on account of availing Accelerated Depreciation by M/s Chandigarh Distillers and Bottlers Ltd (**CDBL**). While submitting that the primary reason for the Commission to reject the contention of PSPCL vis-a-vis Accelerated Depreciation is that the PPA's provision – Article 2.1.1 (ii) has been specifically linked to 'Section 80(1)(A)' of the Income Tax Act, 1961, 1961, PSPCL has submitted that the Commission's Order suffers from following errors:

1.1 Article 2.1.1(ii) of the PPA, inter-alia, reads as under:

*"2.1.1 .....*

*ii. The generating company has undertaken not to avail the benefits of accelerated depreciation under section 80(1)(A) of the income Tax Act and the tariff will be based on this undertaking. If availed the benefits of Accelerated depreciation under section 80(1)(A) of the Income Tax Act then reduction of 08 paise per unit specified for Non-Fossil based Co-Generation Projects for the year 2012-13 or as applicable/ specified by PSERC for the year of commissioning will be made from the levelised fixed cost component of Tariff stated in Para (i) above and net Tariff payable shall be Rs. 4.87/- Unit or net tariff as applicable as per the year of commissioning."*

It is submitted that in Article 2.1.1(ii) of the PPA, Section 80(1)(A) cannot be read in isolation, it has to be read in a manner to give meaning to Accelerated Depreciation. The reference to Section 80(1)(A) is clearly an inadvertent clerical error as there exists no such Section in the Income Tax Act, 1961. In view of the above clear and palpable error, a purposive and contextual interpretation while considering the surrounding circumstances ought to have been given by the Commission. Even otherwise, Section 80IA of

the Income Tax Act, 1961 is also not related to Accelerated Depreciation and in fact deals with the tax holiday that a generator can avail for 10 consecutive years. Also, the PPA has to be read in consonance with Order dated 28.02.2013 passed by the Commission pursuant to which the PPA was entered into between the parties. The Tariff terms and conditions, including the duration of the PPA, the effectiveness of the incentive/subsidies and most importantly, the implication of Accelerated Depreciation have been decided in the said Order.

1.2 The Commission had specifically determined the Tariff considering the contingency in case, CDBL avails Accelerated Depreciation. In such a scenario, the execution of the PPA has to be construed as a ministerial act in so far as it concerns the Tariff, terms and conditions (including Accelerated Depreciation). The same was the understanding between the parties as is evident by the Undertaking given by CDBL on 18.03.2013. In the undertaking, CDBL referred to the Order dated 28.02.2013 passed by the Commission and has made no reference to the PPA or Section 80(1)(A) of the Income Tax Act, 1961 as inadvertently mentioned in the PPA. The Undertaking dated 18.03.2013, inter-alia reads as under:

*“....That the Company is not availing Accelerated Depreciation benefit. The Company is availing only normal depreciation.*

*In case we avail such Accelerated Depreciation benefit in future, we shall inform the Punjab State Power Corporation Limited (PSPCL) and shall abide by the decision of the PSPCL for reduction in Tariff on account of the above benefit as per PSERC Orders. ....”*

1.3 The finding of the Commission that the terms and conditions of the contractual relationship between the parties are governed by the PPA alone is not in accordance with judgement passed by the Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Limited v. Tarini Infrastructure Limited & Ors.* [(2016) 8 SCC 743] has, inter-alia, held as under:

*“12...In the present case, admittedly, the tariff incorporated in PPA between the generating company and the distribution licensee is the tariff fixed by the State Regulatory Commission in exercise of its statutory powers. In such a situation it is not possible to hold that the tariff agreed by and between the parties, though finds mention in a contractual context, is the result of an act of volition of the parties which can, in no case, be altered except by mutual consent. Rather, it is a determination made in the exercise of statutory powers which got incorporated in a mutual agreement between the two parties involved. ”*

Further, it is well settled that the term 'Tariff' in itself includes terms and conditions of tariff such the billing, payment, rebate, delayed payment, regulation of power supply etc and not just Tariff. (Reference – The decision of the Hon'ble Appellate Tribunal dated 04.09.2012 in the case of *BSES Rajdhani Power Limited Vs. Delhi Electricity Regulatory Commission -Appeal No. 94 and 95 of 2012*). Therefore, in the present case, when the PPA terms and conditions have been derived out of the Order dated 28.02.2013 passed by the Commission; this Commission has the jurisdiction to rectify any inadvertent/clerical error that may have crept into the PPA.

1.4 The finding of the Commission namely, to proceed on the basis of 'Section 80(1)(A)/Section 80IA' of the Income Tax Act, 1961 is contrary to the following well settled principles of law:

a) Provisions of a contract should not be interpreted in a manner to lead to an anomalous or absurd result- When there is no Section 80 (1)(A)/80IA under the Income Tax Act, 1961 which deals with Accelerated Depreciation, no meaning can be attributed to the same in Article 2.1.1(ii) of the PPA;

b) Words of a Contract must be given a purposive meaning- The use of the phrase Accelerated Depreciation in Article 2.1.1 (ii) of the PPA and the Undertaking given has to be given a purposive interpretation; (*Refer -The decision of the Hon'ble Supreme Court in the case of Dr. Jaishri Laxmanrao Patil Vs. The Chief Minister & Anr. [(2021) 8 SCC 1]*)

c) The Articles and Clauses of an agreement cannot be read in isolation and these must be read harmoniously to gather the true intention of the parties to the agreement – Article 2.1.1(ii) as read with Article 2.1.1(vi) along with the Recitals of the PPA and the Undertaking have to be read together; (*Refer – The decision of Hon'ble Appellate Tribunal in the case of M/s Ind-Bharath Energies (Maharashtra) Ltd. Vs. Maharashtra State Electricity Distribution Co. Ltd. [APL 91/2010]*).

d) Courts have the power to correct/rectify and to bring out the effect of a particular clause of the Contract in exercise of its inherent power if, a mistake which has crept in that particular clause is advertent or palpable in nature. (Reference –

Judgement dated 28.03.2012 passed by the High Court of Gauhati in the case of *Sukhendu Bikash Lashkar Vs. Narayan Chandra Bhowmik*).

1.5 In addition to the above, the Commission in the Order dated 05.09.2023 has held that CDBL is availing depreciation. It, however, has not considered that Depreciation claimed under Section 32 of Income Tax Act, 1961 @ 80% rate as per Written Down Value method is nothing but Accelerated Depreciation as is clear from the following:

- a) Judgement passed by the Hon'ble Supreme Court in the case of *Gujrat Urja Vikas Nigam Limited Vs. EMCO Limited and Ors. [(2016) 11 SCC 182]* wherein it was observed that the principle of Accelerated Depreciation is provided for under Section 32 (1)(i) of the Income Tax Act, 1961 read with Rule 5 (1A) of the Income Tax Rules, 1962.
- b) Gujarat Electricity Regulatory Commission in Determination of Tariff for Procurement of Power by the Distribution Licensees and Others from Biomass based Power Projects and Bagasse based Co-generation Projects. (Order No. 4 of 2013-Page 31).
- c) Maharashtra Electricity Regulatory Commission in Determination of Generic Tariff for the third year of the first Control Period under Regulation 8 of the Maharashtra Electricity Regulatory Commission (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2010 (Order No. 10 of 2012-Page 27).
- d) A perusal of the financial documents such as the Balance Sheets and Income Tax Returns (ITR) of CDBL, submitted on

25.11.2020, without an iota of doubt, also clearly show that CDBL is in fact, availing Accelerated Depreciation under Section 32 of Income Tax Act, 1961 as per Written Down Value method at the rates prescribed in the Appendix I of Rule 5 of the Income Tax Rules, 1962 which includes 80% depreciation rates on Plant & Machinery.

1.6 The relevant extracts of various judgments on the scope of review petition is also attached with the review petition. In particular, the Review Petitioner relies on the decision in Lily Thomas -v- Union of India (2000) 6 SCC, wherein the Hon'ble Supreme Court has held as under:

*“52. The dictionary meaning of the word 'review' is 'the act of looking, offer something again with a view to correction or improvement'. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji [(1971) 3 SCC 844: AIR 1970 SC 1273], held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary Implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.”*

1.7 It is, therefore, prayed that the Commission may be pleased to:  
a. Allow the Review Petition;

- b. Review and modify the Order dated 05.09.2023 passed in Petition No. 6 of 2023 to the extent stated in the present Review Petition; and
  - c. Pass any such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.
2. In the hearing on admission held on 15.11.2023, Ld. Counsel for PSPCL reiterated its submissions made in the Review Petition. On being asked by the Commission whether it is basing its pleading on the basis of an error in the PPA as claimed by the Review Petitioner although the same was signed by the parties with mutual consent, or on an error apparent on the face of record in the impugned Order, Ld. Counsel for PSPCL submitted that in addition to the submissions made in the Review Petition the section of IT Act mentioned in the PPA as '80(1)(A)' has been wrongly mentioned as '80-IA' in the Order. After hearing the Review Petitioner, the Order was reserved.

**3. Observations and Decision of the Commission:**

The Commission has gone through the submissions made in the review petition and arguments made during the hearing. The Review Petitioner is seeking review/recall of the Commission's Order dated 05.09.2023 in Petition No. 6 of 2023, in so far as it relates to the issue of setting aside the recovery notice issued by PSPCL citing reduction in tariff on account of the Accelerated Depreciation availed by M/s Chandigarh Distillers and Bottlers Ltd (CDBL) in terms of Article 2.1.1(ii) of the PPA. The Commission observes and decides as under:



3.1 Section 94(1)(f) of the Electricity Act specifies that the Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure (CPC) in respect of reviewing its decisions, directions and orders. Also, in line with Order 47 Rule 1 CPC enumerating the grounds on which a review can be sought, Regulation 64(1) of PSERC (Conduct of Business) Regulations, 2005 provides as under:

**“64. Review of the decisions, directions and orders:-**

*(1) Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/ order of the Commission.”*

Further, on the issue of review of an order/decision by a Court under Order 47 rule 1 of the CPC, the Hon'ble Supreme Court in case of Parsion Devi & Ors vs Sumitri Devi & Ors [1987 (8) SCC 715], has held that:

*“Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In*

*exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has limited purpose and cannot be allowed to be 'an appeal in disguise'.*

*..... There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction....."*

3.2 Accordingly, in light of the Hon'ble Supreme Court Order, the Commission examines the review petition as under:

a) The Commission observes that PSPCL's contentions regarding the issue of an inadvertent clerical error in linking of Accelerated Depreciation with section 80(1)(A) of the IT Act under Article 2.1.1(ii) of the PPA already stands considered, discussed and analysed in detail in the Commission's Order dated 05.09.2023, which reads as under:

*"6.3.2 ....., the Commission, while determining tariff for the Petitioner's project at Rs. 4.95/kwh by taking into account depreciation at standard book depreciation rate of 5.28% per annum (based on Straight Line Method), has also quantified further reduction of 08 paise/unit in the tariff in case of availing the Accelerated Depreciation. **However, while incorporating the provision of the tariff determined by the Commission in the PPA, reduction in tariff on account of accelerated depreciation has been specifically linked to availing of the same under the 'Section 80-1A', though the Commission's Order dated 28.02.2013 based on CERC's determination in its Order in its suo-motu Petition No. 35/2012 referred to above does not mention Section***

**80-1A. The PPA could have incorporated the parameters as stated in the Commission's Order reproduced in Para 6.3.1 (c) above.**

6.3.3 The Petitioner's plea is that PSPCL has misconstrued the terms of the PPA. It was pleaded that as per Clause 2.1.1(ii) of the PPA, it had undertaken not to claim accelerated depreciation benefits u/s 80-1A of the Income Tax Act..... The action is warranted only on violation of the said provision i.e. if it avails the accelerated depreciation under Section 80-1A of the Income Tax Act as stated in the PPA.

**On the other hand, PSPCL has submitted that, the nomenclature of 'Section 80-1A' used in Article 2.1.1(ii) is an inadvertent error, since for all intents and purpose, Accelerated Depreciation is only provided for under Section 32 of the Income Tax Act, 1961. PSPCL further submitted that ITRs of the Petitioner belies the Petitioner's claim and indicates that the Plant & Machinery has been depreciated at 80% on Written Down Value method, which constitutes Accelerated Depreciation.**

The Commission notes that the Petitioner has availed depreciation u/s 32 of the IT Act, 1961 which is an admitted position of the Petitioner even during arguments by Ld. Counsel. **As contended by PSPCL, the Petitioner's ITRs indicates availing of depreciation at 80% on the Written Down Value method.** However, keeping in view the settled position of maintaining sanctity of the contracts, the Commission is inclined to agree with the Petitioner that the terms and conditions of the contractual relationship between the parties are governed by the PPA alone. **The Commission notes that PSPCL has tried to assert that the nomenclature of 'Section 80-1A' used in the PPA is a mistake and an inadvertent error.** However, PSPCL's reliance, on the Hon'ble Supreme Court judgment dated 16.12.2005 (Civil Appeal No. 7534 of 2005 in the matter of Shree Hari Chemicals Export Ltd Vs Union of India & Ors), citing

*that wrong mentioning of a section would not be a ground to refuse relief if it is otherwise entitled thereto cannot be accepted in the impugned matter as the issue dealt therein was not the sanctity of the written contract entered into by the parties with mutual consent. **It is evident that while the details mentioned in the Commission's Order dated 28.02.2013 on accelerated depreciation preceded the signing of PPA dated 22.03.2013, yet a specific section 80-IA of the IT Act was inserted as a part of Article 2.1.1 of the PPA which was signed mutually by the present contesting parties. This section 80-IA was not a part of the Commission's Order dated 28.02.2013. Thus, at this stage, PSPCL cannot contend that it was an inadvertent error and a mistake in order to obtain a financial recovery. It is bound by the Clauses of the PPA signed by it.***

**[Emphasis supplied]**

- b) Also, no new and important matter or evidence has been produced by PSPCL which was could not be said to be within its knowledge when the impugned Order was passed by the Commission. PSPCL's other submission that the Commission has erred in giving the finding that the terms & conditions of the contractual relationship between the parties are governed primarily by the PPA and its assertion that the Commission has the jurisdiction to rectify any inadvertent/clerical error in the PPA is in the nature of an appeal in the guise of a review petition and does not fall under the scope of the review as discussed in Para 3.1 above. In this regard the Commission also refers to the Hon'ble Supreme Court Judgment in the case of Lily Thomas -v-

Union of India (2000) 6 SCC cited by PSPCL in its submissions, which has interalia also observed that:

*“52. The dictionary meaning of the word 'review' is 'the act of looking, offer something again with a view to correction or improvement'. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji [(1971) 3 SCC 844: AIR 1970 SC 1273], held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary Implication. The review is also not an appeal in disguise. ....”*

**c)** The Commission has also referred to the various judgments cited by PSPCL which also reiterate that the review jurisdiction lies when there exists some mistake/error on the face of the record and non-consideration of relevant documents. However, PSPCL was not able to support or establish any of these grounds or assert any new one except for its one submission made during the arguments that the section of the IT Act mentioned in Article 2.1.1(ii) of the PPA is '80(1)(A)' but has been wrongly mentioned as '80-IA' in a few places in the impugned Order.

After due consideration, the Commission Corrects the typographical error mentioned as “section 80-IA” appearing in the Commission’s Order dated 05.09.2023 in Petition No. 6 of 2023, with “section 80(1)(A)” and it be read as “section 80(1)(A)” wherever it is incorrectly recorded. However, the Commission is of the firm view that the above substitution does not in any way support PSPCL’s case to seek the

recall of the impugned Order on any of the other issues professed in the Review Petition which are neither new nor have been able to establish any error in the Order under review.

Sd/-  
(Paramjeet Singh)  
Member

Sd/-  
(Viswajeet Khanna)  
Chairperson

Chandigarh  
Dated: 04.12.2023

