

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 4 of 2013
Date of Order: 02.01.2014**

In the matter of : Petition under clause 23 (Interpretation of Tariff) of General Conditions of Tariff issued by the PSERC and for restraining the respondents from recovering any amount earlier, allowed to the petitioner on account of 7.5% H.T. Rebate for the period from August 2006 to December 2009, and for directing the respondents to refund the amount already recovered from the petitioner on account of HT Rebate and further for issuance of a direction to the respondents to pay 7.5% H.T. rebate upto 31.3.2010 as per Tariff Order for the year 2009-2010 and for grant of any other relief, order or direction which this Commission may deem fit and proper in the facts and circumstances of the case.

AND

In the matter of Shri Gursharan Singh S/o Shri Jagjit Singh, partner of Eminent Developers & Promoters, 10, The Mall, Amritsar.

Versus

1. Punjab State Power Corporation Limited through its Managing Director, The Mall, Patiala
2. Assistant Executive Engineer, Commercial, Civil Lines Sub Division, Punjab State Power Corporation Limited, Amritsar, District Amritsar.

Present: Smt.Romila Dubey, Chairperson
 Shri Virinder Singh, Member
 Shri Gurinder Jit Singh, Member

ORDER

This petition has been filed by Shri Gursharan Singh S/o Shri Jagjit Singh, partner of Eminent Developers & Promoters, 10, The Mall, Amritsar, under clause 23 of General Conditions of Tariff for restraining the respondents from recovering any amount earlier allowed to the petitioner on account of 7.5%

H.T. rebate for the period from February 2007 to November 2009 and for directing the respondents to pay 7.5% HT rebate upto 31.03.2010 as per Tariff Order for FY 2009-10. The petitioner has submitted that it has a NRS electricity connection bearing Account No.GC 21-412 from erstwhile Punjab State Electricity Board (now PSPCL – respondent No.1) initially for sanctioned load of 89.69 kW, which was enhanced to 349.50 kW and then was enhanced by an additional load of 497.250 kW on 31.01.2007. As such, total sanctioned load of the petitioner is 797.250 kW. The petitioner is getting supply at 11 kV and has installed 11 kV transformer/sub-station within its premises (a commercial complex) for the purpose. PSPCL, the distribution licensee gives electricity supply upto 11 kV sub-station. Thereafter the electricity is distributed to the different shops by the petitioner on its own. PSEB was giving 7.5% HT rebate on consumption charges to all NRS consumers (including the petitioner from February 2007) who were getting electricity on 11 kV lines. The respondents stopped giving 7.5% HT rebate on their own, without giving any opportunity of being heard, from December, 2009 onwards. In the bill issued by respondents in January 2010 dated 16.01.2010, the respondents did not give rebate of 7.5% for the consumption for the month of December 2009. The petitioner represented on 29.03.2010, to the Executive Engineer, PSPCL, Civil Lines Division, Amritsar against non-grant of 7.5% rebate and request was made to grant the same. The firm, thereafter, wrote the letter to this Commission. The Commission vide letter dated 21.05.2010 informed the firm that the Commission in its Tariff Order for the FY 2009-10 has decided to discontinue all voltage rebates with effective from 1st April, 2010. The respondents issued memo No.1684 dated 28.06.2012 mentioning that as per audit party report, the petitioner was not entitled to get HT rebate of 7.5% and Rs.4,58,995/- are recoverable for the period from February, 2007 to November 2009. The petitioner was asked to deposit this amount in 15 days. Thereafter the respondents issued bill dated 23.10.2012 and demanded the above said amount of Rs.4,58,995/- earlier allowed to the petitioner on account of 7.5% HT rebate. The petitioner has submitted that from the bare perusal of the clause SV 3.2 of Schedule of Tariff it is amply clear that 7.5% HT rebate on electricity consumption was rightly given to the petitioner. The petitioner has further submitted that the Commission had made it clear to the petitioner vide letter

dated 21.05.2010, that the Commission had decided to discontinue all voltage rebates with effect from 1st April, 2010, meaning thereby that the petitioner was entitled to get voltage rebate of 7.5% upto 31.03.2010. Therefore, the impugned demand raised by the respondents on account of already allowed 7.5% rebate, was totally wrong and illegal and in violation of the provisions of General Conditions of Tariff and the Schedule of Tariff framed by the Commission and demand is liable to be set aside. The petitioner has further submitted that there was no fraud and misrepresentation on the part of the petitioner to get this rebate on monthly consumption from February, 2007 to November, 2009. The petitioner has also relied upon the decision of this Commission in a similar matter in Petition No.41 of 2012. The petitioner has also submitted that after receipt of the impugned demand vide bill dated 23.10.2012, the petitioner approached the respondents to withdraw the same but was threatened the disconnection of the electricity connection and was told to deposit the same in 8 installments. The petitioner has deposited two installments under protest to avoid disconnection. The petitioner has prayed that in view of its submissions impugned demand of Rs.4,58,995/- be set aside and respondents be directed to refund the amount already deposited by the petitioner to avoid disconnection. The respondents be further directed to allow the 7.5% HT rebate on consumption upto 31.03.2010 as per General Conditions of Tariff, Schedule of Tariff and Tariff Order for FY 2009-10. The petitioner has also prayed that during pendency of the petition, the impugned demand be stayed in the interest of justice.

2. The petition was admitted vide Order dated 23.01.2013. PSPCL was directed to file reply by 18.02.2013. Further recovery of the impugned demand was stayed and it was directed that the supply of the petitioner shall not be disconnected on this account during the pendency of this petition.

Instead of filing reply on merit, PSPCL submitted vide letter dated 13.02.2013 that the subject cited matter was sub-judice before the Hon'ble APTEL and this case be adjourned to next date after the decision of Hon'ble APTEL in Appeal pertaining to the similar matters. Accordingly, PSPCL was directed to file reply by 18.04.2013 vide Order dated 27.02.2013. PSPCL informed vide letter dated 15.04.2013 that the similar matter was fixed before

Hon'ble APTEL on 03.05.2013 and therefore, all such cases pending before this Commission be adjourned till the decision of Appeals by Hon'ble APTEL in similar matters. This petition was again adjourned to 21.05.2013 and PSPCL was again directed to file reply by 17.05.2013 vide Order dated 25.04.2013. The petition was further adjourned to 16.07.2013 in similar circumstances. In its Order dated 26.08.2013, the Commission directed PSPCL to file reply on merit by 04.09.2013 as a last chance.

3. PSPCL filed its reply dated 02.09.2013. PSPCL submitted that in terms of Tariff Orders from FY 2005-06 and 2006-07, a rebate of 7.5% has been allowed to consumers taking supply of electricity at 11 kV. The same is provided in the Schedule of Tariff notified by the Commission. PSPCL had been representing to the Commission for providing rebate only to those consumers, whose connected load was less than 100 kW. The Commission continued the pre-existing methodology for providing rebate to the consumers which were amended with effect from 01.04.2010. PSPCL further submitted that the said Tariff Orders did not specifically deal with the aspect as to whether the rebate would be given for supply at 11 kV even if as per Conditions of Supply and Character of Service, the supply was to be given only at 11 kV and not at lower voltage level. PSPCL has relied upon clause 13.5 of General Conditions of Tariff and clause SV.2 Character of Service of the Schedule of Tariff. PSPCL has submitted that PSERC had failed to appreciate these provisions. PSPCL has further submitted that the Tariff Order for FY 2006-07 did not specifically deal with the mechanism of providing rebate or otherwise provided that the rebate was to be given irrespective of fact that as per the Character of Service, the supply was to be given at 11 kV, but merely continued the existing practice. PSPCL submitted that for the reasons explained in its reply, the petition is without any merit and the petitioner is not entitled to any relief as claimed in the petition. The demand raised by the respondents is legal, valid as per the rules and regulations. The petition is liable to be dismissed with costs.

4. During hearing on 01.10.2013, both the petitioner and PSPCL submitted that the Hon'ble APTEL had reserved the Order in Appeals filed by PSPCL against Orders passed by the Commission in similar matters and the

same may be awaited before deciding this petition. The petitioner also submitted that it did not intend to file rejoinder to the reply of the petition.

After hearing the arguments of the parties on 15.10.2013, the Commission decided to close the hearing of the case. The Order was reserved.

5. The Commission observes that clause 13.5 of the General Conditions of Tariff approved by the Commission states that Medium Supply, Small Power, Domestic Supply and Non-Residential Supply consumers shall be allowed a rebate of 7.5% on their consumption charges including demand charges, if any, or monthly minimum charges where supply is catered at 11 KV or higher voltage against the supply voltage of 400 volts specified in the character of service.

Further, Schedule of Tariff for Non-Residential Supply, approved by the Commission also has a provision for 7.5% rebate on consumption charges or monthly minimum charges if the supply is catered at 11 KV. The Commission has nowhere, in the General Conditions of Tariff and Schedule of Tariff, denied the rebate of 7.5% to NRS consumers catered at 11 KV.

The General Conditions of Tariff and Schedule of Tariff, approved by the Commission were sent to the erstwhile Board (now PSPCL) vide Commission's letter no. 1372 dated 6.3.2006 for making the same effective from 1.4.2006.

6. The Commission further observes that the erstwhile Board (now PSPCL) in its ARR and Tariff Application for the financial year 2006-07 had proposed that the high voltage rebate of 7.5% being allowed to all DS/NRS consumers getting supply at 11 KV irrespective of their connected load, be allowed to those consumers in DS/NRS categories, connected at 11 KV where connected load is less than 100 KW. The Commission after considering the issue in detail, in para 5.2.2 of the Tariff Order for the FY 2006-07 issued on 10th May, 2006, decided to continue with the existing provisions for rebates and surcharges for availing supply at different voltages. This was never challenged by PSEB (now PSPCL) before Hon'ble APTEL.

7. The Commission, however, in its Tariff Order dated 08.09.2009 for the FY 2009-10, decided to discontinue all voltage rebates w.e.f. 1st April, 2010.

8. The Commission further notes that Section 56(2) of the Electricity Act 2003 provides:-

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”.

Thus, the impugned demand raised against the petitioner after more than two years is not in accordance with law and is illegal.

9. The Commission, accordingly, allows the petition and sets aside the impugned demand of Rs.4,58,995/- raised by the respondents from the petitioner. The Commission directs respondents to refund the amount deposited by the petitioner out of the impugned demand to avoid disconnection. The respondents are further directed to allow HT rebate at the rate of 7.5% of the consumption charges for the months of December, 2009 and January, February and March 2010 (upto 31.03.2010) to the petitioner by adjustment in the ensuing bills.

The petition is disposed of accordingly.

Sd/-

(Gurinder Jit Singh)
Member

Sd/-

(Virinder Singh)
Member

Sd/-

(Romila Dubey)
Chairperson

Patiala
Dated: 02.01.2014