

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

**Petition No. 67 of 2012
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 further for taking necessary action under Section 142 of the Electricity Act, 2003.

AND

In the matter of: Shakti Land Developers, C/o Vishal Mega Mart, Shakti Tower, near BMC Chowk, G.T.Road, Jalandhar (A/c No.GC 43/0651) through its Partner Shri Manjit Singh S/o Shri Mela Singh

Versus

1. Punjab State Power Corporation Limited (PSPCL), through its Chairman cum Managing Director, Patiala.
2. Assistant Executive Engineer, Commercial Sub Division No.3, Model Town, Commercial Division, PSPCL, Jalandhar

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

ORDER

Shakti Land Developers, Jalandhar has filed this petition under clause 23 of General Conditions of Tariff approved by the Commission, for restraining the Punjab State Power Corporation Limited (PSPCL) from recovering any amount earlier allowed to the petitioner on account of H.T.

Rebate @ 7.5% of consumption charges from August, 2006 to December, 2009 and for directing the respondents to pay 7.5% H.T. rebate upto 31.03.2010 as per Tariff Order for FY 2009-10. The petitioner has also prayed for necessary action against the respondents under Section 142 of the Electricity Act for violating the provisions of Tariff Order.

2. The petitioner has submitted that the erstwhile Punjab State Electricity Board had been allowing 7.5% HT Rebate on consumption charges to all NRS consumers who were getting electricity at 11 kV. The petitioner was getting 7.5% HT Rebate on its consumption charges from the date of release of connection since August, 2006. In the bill issued for the month of January, 2010, the respondents failed to give the Rebate of 7.5% without giving any notice and opportunity of being heard. Further, Assistant Engineer, Commercial Sub-Division No.3, Commercial Division, Model Town, PSPCL, Jalandhar, respondent No.2 issued memo No.1378 dated 15.06.2012 to the petitioner, mentioning therein that as per Commercial Circular No.36/2006, NRS consumers having load more than 100 kW, were not entitled to get 7.5% voltage rebate. It was further mentioned in the said memo that as per the instructions, the account of the petitioner had been audited and Rebate given, amounting to Rs.11,97,871/- for the period from August 2006 to December 2009, was found recoverable. The petitioner was asked to deposit the same with the bill dated 28.06.2012 and in case the petitioner failed to deposit the same, then the action would be taken against the petitioner. The respondents issued another letter dated 27.07.2012 asking the petitioner to deposit the said amount of Rs.11,97,871/- in six monthly installments. Apprehending disconnection of its electricity supply, first installment was deposited by the petitioner. The petitioner informed the respondents vide letter dated 20.08.2012 about the Order of this Commission passed in a similar matter and requested the respondents to adjust the amount of first installment against the next bill. The petitioner has submitted that it has already paid five installments under threat of disconnection of its electricity supply.

3. The petitioner has further submitted that clause SV. 3.2 of Schedule of Tariff for Non-Residential Supply (NRS) clearly provides for 7.5% Rebate on

electricity consumption for supply given at 11 kV. The respondent has wrongly and illegally demanded the amount of HT Rebate already given to the petitioner. Impugned demand of Rs.11,97,871/- was totally wrong, illegal, in violation of the provisions of General Conditions of Tariff and Schedule of Tariff and also against the provisions of the Electricity Act, 2003, Limitation Act, Principle of Natural Justice & Equity and is liable to be set aside. The petitioner has further submitted that there was no fraud and misrepresentation on the part of the petitioner for getting 7.5% HT Rebate. The petitioner has relied upon the decision of this Commission in a similar matter in Petition No.41 of 2012. The petitioner has prayed that the impugned demand of Rs.11,97,871/- raised by the respondents from the petitioner be set aside and the respondents be directed to refund the amount deposited by the petitioner on this account. The petitioner has further prayed that direction be issued to the respondents to allow 7.5% HT Rebate to the petitioner on the consumption upto 31.03.2010 as per Tariff Order for the year 2009-10. The petitioner has also prayed that during the pendency of the present petition before the Commission, the impugned demand be stayed in the interest of justice.

4. The petition was admitted vide Order dated 18.12.2012 and PSPCL was directed to file reply by 04.01.2013. PSPCL submitted vide C.E./ARR & TR memo No.5020/21 dated 04.01.2013 that Appeals had been filed by PSPCL against the Orders of the Commission passed in Petition No.37 of 2012 and 29 of 2012 and have been admitted as Appeal No.202 of 2012 and 203 of 2012 by Hon'ble ATE, New Delhi. The Notice to respondents had been issued in the main Appeal as well as for Interim Order for grant of stay of the impugned Orders of the Commission. The matter has been listed for final disposal on 29.01.2013. PSPCL prayed for time to file reply till the decision of Appeals by Hon'ble APTEL. The Commission allowed the time to PSPCL till 01.02.2013 for filing the reply vide Order dated 10.01.2013. PSPCL filed a copy of memo No.1099/1103/ACD dated 06.09.2012 whereby PSPCL has conveyed its decision that all cases regarding refund of the amount on account of 7.5% rebate already allowed may be kept pending till the final decision of the Appeals by the Hon'ble APTEL. PSPCL again prayed for

adjournment of the case. Accordingly the case was fixed for filing of reply by PSPCL and hearing on 26.03.2013. PSPCL again filed a request for further adjournment of the case beyond 05.04.2013 as the Appeals were fixed before Hon'ble APTEL on that date. Accordingly, the Commission adjourned the case to 23.04.2013 vide Order dated 01.04.2013. Further adjournments were allowed by the Commission for 21.05.2013, 16.07.2013 and 20.08.2013 on the similar requests of PSPCL. The Commission then directed PSPCL vide Order dated 26.08.2013 to file reply on merit by 04.09.2013 without linking this petition with the outcome of the Appeals pending before the Hon'ble APTEL as the Hon'ble APTEL had not passed any interim Order staying the Orders of this Commission passed in the similar matters. 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.

5. 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.

6 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.

7 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.

8 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.

9. 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.

10. The Commission, accordingly, allows the petition and sets aside the impugned demand amounting to Rs.11,97,871/- raised by the respondent No.2, Assistant Executive Engineer, Commercial Sub-Division No.3, Model Town, Commercial Division, PSPCL, Jalandhar vide memo No.1378 dated 15.06.2012. The Commission further directs the respondents to refund the amount already recovered from/deposited by the petitioner against the demand amounting to Rs.11,97,871/- and to allow HT Rebate at the rate of 7.5% of the consumption charges for the months of 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