COURT OF THE LOKPAL (OMBUDSMAN),

ELECTRICITY, PUNJAB,

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

 S.A.S NAGAR (MOHALI)

**Appeal No. 65/2017**

Date of Registration : 18.09.2017

Date of Hearing : 06.03.2018

Date of Order : 15.03.2018

**Before:**

**Er. Virinder Singh, LokPal (Ombudsman) Electricity**

**In the matter of:**

 Evershine Paper Mills,

 # C-81, Phase-V, Focal Point,

 Dhandari Kalan,

 Ludhiana.

 ….Petitioner

 Versus

Additional Superintending Engineer,

 DS Focal Point Division (Special),

 PSPCL, Ludhiana.

 ….Respondent

**Present For:**

Petitioner Shri Sukhminder Singh,

 Petitioner’s Representative (PR)

Respondent 1. Er. K.P.S. Sidhu,

 Addl. Superintending Engineer

 2. Shri Gursatinder Singh,

AAO (Revenue).

Before me for consideration is an Appeal filed in this Court against order dated 28.08.2017 of CGRF (Forum) in Case No. CG-149 of 2017 deciding that:

*“No refund is admissible to the Petitioner on account of rebate as per CC No. 49/2014.”*

**2. Facts of the case:**

1. The Petitioner was having a Large Supply category connection with Sanctioned Load of 1200kW and Contract Demand (CD) of 1100kVA. The Petitioner had got extended the CD from 498kVA to 1100kVA with effect from 03.12.2014.
2. The consumer submitted request dated 24.04.2015 followed by requests vide letters dated 30.10.2015, 21.12.2015 and 18.01.2016 for rebate in view of provisions contained in Commercial Circular (CC) No. 49/2014 dated 16.10.2014.
3. The Addl. S.E. DS Focal Point Division (Special), PSPCL, Ludhiana, forwarded the case, vide endst. dated 21.12.2015 and 01.02.2016, to the Addl. S.E, CBC, PSPCL, Ludhiana. The matter was again taken up by the said DS Division, vide letter no. 1754 dated 25.04.2017, with the CBC, PSPCL, Ludhiana for issue of RBS as per CC No. 49 / 2014. Accordingly, CBC, Ludhiana prepared calculation sheet, after extracting the consumption history of the consumer, and sent the same vide e-mail dated 25.05.2017, with the remarks that Refund was not admissible due to the reason that the average kVAh consumption of previous three years was greater than the current consumption as per CC No. 49/2014 .

**(iv)** Not satisfied with the above decision of the CBC, the Petitioner, filed an Appeal in the Forum which, during the course of hearing on 04.08.2017 directed the Respondent that “pro-rata calculations for the year 2011-12 to 2013-14 should be applied only on the months from December to March and revised calculations of the rebate admissible to the Petitioner, if any, be submitted to the Forum keeping in view the instructions contained in CC No.49/2014.”

**(v)** The Forum passed order accordingly on 28.08.2017 (Refer Para 1, Page 2).

 **(vi)** Aggrieved with the decision of the Forum, the Petitioner filed an Appeal in this Court and prayed to set aside the decision of the Forum, allow the Appeal and also allow refund/rebate of Rs. 4,78,921/- alongwith applicable interest for delay of more than two years in the interest of natural justice and fairness.

**3. Submissions made by the Petitioner and the Respondent:**

I have gone through written submissions made by the Petitioner in the Appeal and written reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner and the Respondent alongwith material brought on record by both the sides.

1. **Submissions of the Petitioner:**

PR made the following submissions for consideration of this Court:

**(i)**  The extension in CD from 498 KVA to 1100 KVA was released to the Petitioner on 03.12.2014. The CBC had worked out pro rata enhanced consumption from 04/2011 to 03/2014 (base years) with extended CD which was 1,31,43,455 units and yearly average kVAh consumption was worked out as 43,81,152 units. Similarly, when enhanced consumption from 04/2014 to 11/2014 and actual recorded kVAh consumption from 12/2014 (due to extension in CD from 03.12.2014) was taken into account, so, average consumption for the year 2014-15 came to 48,60,073 kVAh/units. As such, rebate of Rs. 478921 (48,60,073-43,81,152 x Rs.1/-) was admissible to the Petitioner. This calculation had been made by taking the date of extension in CD as 01.12.2014 but the amount of refund should further increase by few thousand of rupees by considering the actual date of extension in CD i.e. 03.12.2014 (as confirmed by the Respondent).

**(ii)** Instructions contained in CC No. 49/2014 it prescribed that *“average consumption of three years shall be taken as threshold for allowing rebate. In case, period is less than three years or there is reduction or extension in load/demand, average consumption shall be worked out on pro-rata basis”.*

 Thus, the basis of allowing rebate was average consumption of three years (2011-12 to 2013-14) and in case of reduction or extension in Load/Contract Demand, average consumption of three years was required to be adjusted. For this purpose, the consumption of every month (till the extension in Load/CD was effected) was required to be increased proportionately to work out average adjusted consumption. It was nowhere prescribed in the circular that pro rata consumption was to be calculated only for the corresponding part of base period of three years. The Petitioner had worked out the amount strictly as per provisions of CC No.49/2014, while working out refund claim of Rs. 4,78,921/-.

**(iii)** The Forum, in order to deny justice, misinterpreted the clear instructions as per CC No. 49/2014 and directed the Respondent to submit revised calculations for the year 2011-12 to 2013-14 by working out pro rata consumption only for the months from December to March (due to extension in CD from 12/2014), just because these calculations were not in favour of the Petitioner (besides being against the spirit of CC 49/2014). The Forum ignored the fact that the basis of allowing rebate was average consumption of three years and in case of reduction or extension in Load/CD, consumption of three years was required to be adjusted, instead of few months of the year. It was brought to the notice of the Forum that it was nowhere prescribed in the circular that pro-rata consumption was to be calculated only for the corresponding part of base period of 3 years. But,even then, the Forum ignored the very genuine pleadings of the petitioner in this regard. Thus, the decision of Forum was wrong, biased and non speaking and the same was liable to be set aside.

1. **Submissions of the Respondent:**

 The Respondent, in its written reply and during the course of oral submissions, stated that the CBC, PSPCL, Ludhiana, while forwarding the revised calculation vide endst. no. 2539 dated 16.08.2017, rightly remarked that refund claimed was not due to the Petitioner as average kVAh consumption of previous three years was greater than current consumption as per CC No. 49/2014. Accordingly, the Forum decided the matter after considering all the facts and instructions contained in CC No. 49/2014. As such, the Petitioner was not eligible for any refund as per provisions ibid.

**4. Analysis and Decision:**

The issue requiring adjudication is the legitimacy of the admissibility of refund on account of rebate of Rs. 1/- per kWh/kVAh w.e.f. 01.04.2014 for the Financial Year 2014-15 for consumption in excess of average of consumption as recorded in the preceding three financial years.

*The points emerged are analysed, deliberated and decided as under:*

 I have perused CC No. 49/2014 dated 16.10.2014 issued by the PSPCL stating that Hon’ble PSERC, while determining the Annual Revenue Requirement (ARR) for the Financial Year 2014-15, approved the rebate of Rs. 1/- per kWh or kVAh on the category-wise Tariff for all categories, except Street Lighting and AP categories w.e.f. 01.04.2014 for the Financial Year 2014-15 as under:

***“(i)*** *The rebates shall be allowed for any consumption during the financial year exceeding the consumption worked out on the following methodology:*

 *The average consumption (including purchase of power under open access) of three years shall be taken as threshold for allowing rebate. In case, period is less than three years or there is reduction or extension in Load / Demand, average consumption shall be worked out on pro rata basis.*

1. *The billing at the reduced rates, after allowing the rebate, shall be done once the consumer crosses the target consumption as worked out under Step (i), e.g., if a consumer has average consumption of three years as 10,000 units, the consumer shall be entitled for billing at the reduced rate for any consumption exceeding the threshold consumption of 10,000 units during Financial Year 2014-15. The rebate shall be allowed to the consumer as and when the consumption of the consumer exceeds 10,000 units.*
2. *In case of consumers to whom kVAh tariff has been made applicable, their consumption threshold shall be worked out by using conversion factors as mentioned in Tariff Order.”*

 I observed that the Forum, while hearing the case, directed the Respondent as under:

*“ Forum noted from the calculations done by CBC that consumption of the petitioner during the year 2011-12 to 2013-14 has increased proportionately for all the months keeping in view the enhanced CD which was increased in the month of December 2014. However during the year 2014-15 CD was extended from 498kVA to 1100kVA in the month of 12/2014. So, respondent is directed that pro-rata calculations for the year 2011-12 to 2013-14 should be applied only on the months from December to March and revised calculations of the rebate admissible to the petitioner if any be submitted to the Forum keeping in view the instructions contained in CC No.49/2014.”*

I find that in compliance to above directions of the Forum, the Addl. S.E, CBC, PSPCL, Ludhiana, on being requested by the Addl. S.E, DS Focal Point Division (Special), vide endst. no. 2539 dated 16.08.2017, sent the revised calculation sheet with the remarks that refund was not admissible in this case due to the reason that average kVAh consumption of previous three years (2011-12 to 2013-14) was greater than the current consumption (2014-15) as per instructions contained in CC No. 49/2014.

From the above analysis, it is concluded that in view of provisions contained in CC No. 49/2014, the average consumption is to be worked out on pro rata basis in the event of reduction or extension in Load/CD. Since the extension in CD was allowed/released in the present case on 03.12.2014, pro rata consumption has to be worked out as has been done by the CBC, PSPCL, Ludhiana, as evidenced from its revised calculation sheet sent, vide endst no. 2579 dated 16.08.2017, to the Addl. S.E, DS Focal Point Division (Special), Ludhiana. It is very much clear from the perusal of CC No. 49/2014 that rebate is to be allowed/worked out by giving due consideration to the CD while making comparison of the consumption during 2014-15 vis-a-vis average of consumption (based on corresponding CD) during the years 2011-12 to 2013-14. Since the Contract Demand of the Petitioner was increased from 498kVA to 1100kVA w.e.f. 03.12.2014, he has no moral and legal right for asking to enhance his pro-rata consumption corresponding to 1100kVA for previous those financial years in full as against the legitimate provision for consumption corresponding to 498kVA from 1st April to 2nd December and corresponding to 1100kVA from 3rd December to 31st March. The philosophy behind this rebate was not to distribute largesses but to incentivise the industry in Punjab to increase its Power Consumption and produce more Power to compensate the burden of fixed charges on consumers due to surplus power in the State of Punjab. It, therefore, proves beyond doubt that the Petitioner is not entitled to any refund on account of rebate approved by the Hon’ble PSERC and allowed by the PSPCL vide CC No. 49/2014 as consumption during the Financial Year 2014-15 is less than average consumption of the preceding three years i.e. 2011-12 to 2013-14.

 **As a sequel of above discussions, the order dated 28.08.2017 of the Forum in Case No. CG-149 of 2017 is upheld.**

**5.** The Appeal is dismissed.

**6.** Engineer-in-Chief/Commercial, PSPCL, Patiala shall issue instructions for reviewing/examining the cases, wherein Rebate admissible as per CC No. 49/2014, was inadvertently allowed by misinterpretation of instructions contained therein as has been noticed in the instant case. Such a possibility can not be ruled out as comparison of the consumption in the Financial Year 2014-15 with that of average of consumption of preceding three years (2011-12 to 2013-14) might have been made irrespective of consideration of Load/CD existing then. This exercise must be completed within three months from the date of this order and the consumers be charged correctly (without interest). A certificate of compliance done shall be submitted by the Engineer-in-Chief/Commercial, by 2nd July, 2018.

**7.** In case, the Petitioner or the Respondent (Licensee) is not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate Bodies in accordance with Regulation 3.28 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations – 2016.

 (VIRINDER SINGH)

March 15, 2018 LokPal (Ombudsman)

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