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

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

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

 **APPEAL NO. 56/2019**

**Date of Registration : 01.10.2019**

**Date of Hearing : 17.11.2019**

**Date of Order : 26 .11.2019**

**Before:**

 **Er. Virinder Singh, Lokpal (Ombudsman), Electricity, Punjab.**

**In the Matter of :**

D.K.Industries,

Village Gehri Butter,

Tehsil sangat, Bathinda-Dabwali Road,

District Bathinda

 ...Petitioner

 Versus

Addl.Superintending Engineer,

DS City Division ,

 PSPCL, Bathinda.

 ...Respondent

**Present For:**

Petitioner : Sh.S.R.Jindal,

 Petitioner’s Representative (PR).

Respondent : 1. Er.Gagan DeepSingla

 Addl.Superintending Engineer,

 DS City Division ,

 PSPCL, Bathinda

 2. Er.Ravinder Pal Singh,

 AE,DS Sub-division,

 PSPCL,Bathinda.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 04.10.2019 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. T-225 of 2019, deciding that :

*“ After scrutinising the case, the Forum has decided as the refund related to period 10/2013 to 06/2016 that is beyond 2 years as required under Forum and Ombudsman Regulation-2016, therefore you may avail the opportunity under recent Commercial Circular no.48/2019 and approach the appropriate authority for redressal of your grievance.”*

**2**. **Facts of the Case:**

 The relevant facts of the case are that:-

1. The Petitioner was having initially a Medium Supply Category

connection with sanctioned load of 62 kW which was got converted into Large Supply Category with extension in load to 261.680 kW and CD as 290.750 kVA from 17.09.2013. The connection was taken for Plywood Factory at UPS Feeder.

1. The Petitioner applied for Peak Load Exemption for 100 kW load

with effect from 30.09.2013 which was allowed by the Dy. Chief Engineer, DS Circle, PSPCL, Bathinda vide Memo No.29859/LD1 dated 30.09.2013.

1. The Petitioner availed the Peak Load Exemption from 10/2013 to

15.06.2016 and deposited Rs 13,289/- per month as Peak Load Exemption Charges (PLEC) as per instructions and Peak Load Violation Charges amounting to Rs.49,630/- as per checking dated 20.01.2016 by MMTS.

1. The Petitioner applied for refund of PLE Charges vide its

application dated 27.10.2016 in view of Power Regulation (PR) Circular No.03/2005 dated 20.01.2005 as the Petitioner’s load was being fed from Urban Pattern Supply (UPS) Feeder(24 Hours Power Supply).

1. The Assistant Engineer, DS Sub-division, Sangat submitted the

Petitioner’s case of refund, vide Memo No.433 dated 09.05.2017 to the Accounts Officer (Field), PSPCL, Bathinda who, vide its letter No.1076 dated 19.05.2017, sent back to DS Office with some observations. The case was, then, againsent back to A.O.(Field) by the A.E, DS Sub-division, Sangat vide Memo No.529 dated 2405.2017**.** after attending the observations**.**

1. The Accounts Officer (Field) PSPCL, vide Memo No.1305 dated

13.06.2017, again advised the concerned Sub-division to refer the case to the Competent Authority as per Chief Engineer/Commercial, PSPCL, Patiala’s Memo No.452/456 dated 07.06.2017.

1. The Petitioner, vide letter dated 24.05.2017, requested the A.E, DS

Sub division, Sangat to refund the Peak Load Exemption Charges, as its connection was running on Urban Pattern Supply (UPS) Feeder.

1. The Assistant Engineer, DS Sub-division, PSPCL, forwarded the

case to Addl.SE, DS Division, PSPCL, Bathinda vide Memo No.873 dated 21.08.2017 and No.69 dated 24.01.2018 . In view of this, the Dy. CE, DS Circle, Bathinda, vide Memo No.14562/71 dated 04.07.2018, stopped the peak Load Exemption w.e.f. 04.07.2018.

1. The Petitioner did not get the refund of the PLE charges, recovered

from it during the period from 10/2013 to 06/2016 and filed a Petition dated 10.09.2019 in CGRF, Patiala who rejected the case on the ground that refund was beyond two years and also directed the Petitioner to avail the opportunity of instruction issued vide CC No.48/2019.

1. Aggrieved the Petitioner filed an Appeal in this Court and prayed

to direct the Forum to hear and decide the case of refund on merits in the interest of natural justice.

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

 Before undertaking analysis of the case, it is necessary to go through written submissions made by the Petitioner and reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner and the Respondent along with material brought on record by both the sides.

1. **Submissions of the Petitioner**:

 The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner got extension in load from 62 kW to 261.680 kW with contract demand of 290.750 kVA with conversion of category from Medium to Large Supply Category effect from 17.09.2013 for Plywood Factory at UPS Feeder.
2. The Respondent directed the Petitioner to observe evening Peak Load Hours Restrictions as applicable at that time as per Power Regulation, whereas the feeder at which, the connection was released was UPS Feeder and in view of PR Circular No.03/2005dated 20.01.2005, the evening Peak Load Hours were completely exempted for the Industry situated at this Feeder.
3. The Assistant Engineer also provided PR Circular No.05/2013 dated 11.04.2013 for availing Peak Load Exemption, if required under rules, by paying Peak Load Exemption Charges as per Circular.
4. The Respondent and the Petitioner were not well aware about the exemption of Peak Load Hours Restrictions at UPS Feeder, (24 Hours Power Supply) however, the Petitioner applied 100 kW Peak Load Exemption w.e.f. 30.09.2013,which was allowed by the Dy. Chief Engineer, PSPCL, Bathinda vide its MemoNo.29859/LD dated 30.09.2013.
5. The exemption was availed by the Petitioner during the period from 10/2013 to 06/2016 and deposited Rs 4,88,164/- as Peak Load Exemption Charges against rules as it was exempted to the Petitioner as per rules.
6. The Petitioner on coming to know about wrong recovery of Peak Load Exemption Charges for the period from 10/2013 to 06/2016, protested before the Respondent vide letter dated 27.10.2016 and continued to pursue till date for refund of the excess recovery of Peak Load Exemption Charges, but in vain.
7. The Petitioner filed a Petition before the Forum who, after hearing, rejected the same on the ground that the refund related to two years old and directed the Petitioner to avail opportunity of instructions issued vide CCNo.48/2019.
8. Through the refund pertained to the period from 10/2013 to 06/2016, the matter was taken up and pursued with the Respondent from 27.10.2016 to date.
9. The Respondent has already referred the case for refund to the higher authorities, hence it was not a time barred case ( 2 years old) as held by the Forum, vide its letter dated 17.09.2019, as the Petitioner continued to make correspondence for the refund of illegal/wrong recovery of Peak Load Exemption Charges, but in vain.
10. Commercial Circular No.48/2019 dated 05.09.2019 issued by Chief Engineer/Commercial, PSPCL, Patiala (in modification of Clause 93.5 of ESIM) referred to by the Forum issued instructions to enhance the powers of various authorities, relating to the AEE/AE of Sub-division to pursue the matter with the authority for obtaining necessary approval as required under rules.
11. The Forum did not give directions to the Petitioner to refer the mater for approval before the Committee.
12. In view of the submissions made above, the Appeal be allowed in the interest of justice.
13. **Submissions of the Respondent:**

 The Respondent, in its defence, submitted the following for consideration of this Court**:**

1. The Petitioner was having a Large Supply Category connection with sanctioned load of 261.68 kW and contract demand (CD) of 290.750 kVA.
2. The Petitioner had represented about the refund of Rs. 4,88,164/- on account of Peak Load Exemption Charges paid by it during the period from 10/2013 to 06/2016.
3. Peak Load Exemption was allowed to the Petitioner by the Dy. Chief Engineer/DS Circle, PSPCL, Bathinda, vide its letter No.29859/LD dated 30.09.2013 as per the request submitted by the Petitioner, (as also admitted by the Petitioner in its Petition itself) and amount of Rs 4,88,167/- as Peak Load Charges were imposed on the Petitioner in lieu of permission for the period from 10/2013 to 15.06.2016.
4. Peak Load Exemption was permitted to the Petitioner as per its request, due to which, the amount was charged.
5. In view of the submissions made above, the Appeal be decided.

**4.** **Analysis:**

The issue requiring adjudication is the legitimacy of the refund of Peak Load Exemption Charges(PLEC) recovered in excess from the Petitioner, during the period from 10/2013 to 06/2016, as per applicable regulations.

1. In present dispute, the Petitioner has prayed for refund of excess recovery of Peak Load Exemption Charges during the period from 10/2013 to 06/2016.

I find that the Petitioner applied for Peak Load Exemption for 100 kW load with effect from 30.09.2013 which was allowed by the Dy. Chief Engineer, DS Circle, PSPCL, Bathinda vide Memo No.29859/LD1 dated 30.09.2013. The Petitioner availed the Peak Load Exemption from 10/2013 to 15.06.2016 and deposited Rs 13,289/- per month as Peak Load Exemption Charges (PLEC) as per instructions of PSPCL and Peak Load Violation Charges amounting to Rs.49,630/- as per checking dated 20.01.2016 by MMTS.

I also find that the Petitioner applied for refund of PLEC for the Period from 10/2013 to 06/2016, vide application dated 27.10.2016 after it came to know that evening peak load hours were completely exempted for the industry running on Urban Pattern Supply (UPS) Feeder as per provisions contained in Power Regulation (PR) Circular No.03/2005 dated 20.01.2005.

I observe that the Petitioner request for refund ibid was justified as per provision contained in Power Regulation (PR) Circular No.03/2005 dated 20.01.2005 reproduced below:

*“It has been decided that Evening Load Hours Restrictions shall not be applicable on Large Supply Consumers being fed from following categories of Feeders:*

1. *24 Hours 3-Phase 3-Wire Urban Pattern Supply Feeders*
2. *24 Hours 3-Phase 4-Wire Urban Pattern Supply Feeders*
3. *Mixed Rural Feeders”*
4. As per material on record, the Assistant Engineer, DS Sub-division, Sangat submitted the Petitioner’s case of refund, vide Memo No.433 dated 09.05.2017 to the Accounts Officer (Field), PSPCL, Bathinda who, vide its letter No.1076 dated 19.05.2017, sent back to DS Office with some observations. The case was, then, againsent back to A.O.(Field) by the A.E, DS Sub-division, Sangat vide Memo No.529 dated 2405.2017**.** after attending the observations**.** The Accounts Officer (Field) PSPCL, vide Memo No.1305 dated 13.06.2017, again advised the concerned Sub-division to refer the case to the Competent Authority as per Chief Engineer/Commercial, PSPCL, Patiala’s Memo No.452/456 dated 07.06.2017. The Petitioner, vide letter dated 24.05.2017, requested the A.E, DS Sub division, Sangat to refund the Peak Load Exemption Charges, as its connection was running on Urban Pattern Supply (UPS) Feeder. The Assistant Engineer, DS Sub-division, PSPCL, forwarded the case to Addl.SE, DS Division, PSPCL, Bathinda vide Memo No.873 dated 21.08.2017 and No.69 dated 24.01.2018 . In view of this, the Dy. CE, DS Circle, Bathinda, vide Memo No.14562/71 dated 04.07.2018, stopped the peak Load Exemption w.e.f. 04.07.2018. The Petitioner did not get the refund of the PLE charges, recovered from it during the period from 10/2013 to 06/2016 and filed a Petition dated 10.09.2019 in CGRF, Patiala who rejected the case on the ground that refund was beyond two years and also directed the Petitioner to avail the opportunity of instruction issued vide CC No.48/2019 dated 05.09.2019 which provides as under:

*“After submission of audit note by Audit Party in the sub division regarding arrears to be debited to the consumer accounts and amount pertaining to the audit period, AEE/AE may or may not accept it after discussions with Audit Officers, the Committees as under shall decide such cases (whether the amount as worked out by Audit is chargeable or not) as per the financial powers to the Committees as under. These Committees shall also decide refund cases pertaining to the Audit period.*

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| --- | --- | --- | --- |
| *Sr.No* | *Authority to approve*  | *Amount involved* | *Period for deciding case* |
| *3.* | *Committee consisting of EIC/CE/DS concerned along with**a)Chief Auditor for Central, South & West Zone**b) The following officer from the Commercial Organization for respective zone:**(ii) Dy.CE/SE/Sales-2 for South and West Zones* | *Above Rs 2,00,000/-**in each case* | *2 months* |

 In view of the above, the remedy available is to refer the dispute to the Committee Comprising of EIC/CE/DS, Chief Auditor and Dy. C.E/S.E(Sales-2) for deciding this matter. Accordingly, the Respondent will refer the dispute within 15 days of receipt of this order to the committee who will decide the matter within 30 days of the date of receipt of the said reference. In case, the Petitioner is not satisfied with the decision of the said committee, it shall submit a representation to the Dispute Settlement Committee concerned for review.

**5. Conclusion**:

From the above analysis, it is concluded that the Petitioner is entitled to refund of Peak Load Exemption Charges, for the period from 10/2013 to 06/2016, deposited incorrectly in terms of provisions contained in PR Circular No. 03/2005 dated 20.01.2005 and its case for refund is required to be considered by the committee empowered to decide such matter vide Commercial Circular No.48/2019 dated 05.09.2019. In case, the Petitioner feels aggrieved with the decision of the said Committee, it has the option to approach the concerned Dispute Settlement Committee for review.

**6.** **Decision:**

As a sequel of above discussions, the order dated 04.10.2019 of the CGRF, Patiala in Case No. T-225 of 2019 is modified in terms of conclusion arrived at in para 5. Accordingly, the Respondent is directed to send the refund case of the Petitioner within 15 days from the date of receipt of this order to the committee empowered to decide such cases as provided in CC No.48/2019 dated 05.09.2019. The said committee shall decide the case within 30 days of receipt of reference from the Respondent (DS Division). In case, the Petitioner is not satisfied with the decision of this committee, it has the remedy to make a representation to the Dispute Settlement Committee concerned which will adjudicate the dispute within one month from the date of receipt of the case from the Petitioner.

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

**8.** In case, the Petitioner 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.

(VIRINDER SINGH)

November 26, 2019 Lokpal (Ombudsman)

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