



In the matter of:

Complaint No. 05/2024

**M/S Kundlas Loh Udyog, Village Balyana, P.O Barotiwala, Teh. Baddi,
Distt. Solan-174103**

-Appellant

Vs

- 1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan,
Shimla-171004**
- 2. Sr. Executive Engineer, Electrical Division, HPSEBL, Baddi HP
174103**
- 3. Assistant Executive Engineer, Electrical Sub-Division, HPSEBL,
Barotiwala-174103**

-Respondent

Complaint No. 05/2024 (Registered on 26/09/2024)
(Orders reserved on 28/10/2024, Issued on 06/11/2024)

Counsel for:

The Complainant: Sh. Rakesh Bansal, The Authorized Representative

**The Respondents: - 1. Sh. Kamlesh Sakhlani, Under Sectt Law.
2.Sh. Rajesh Kashyap, Advocate
3.Er. Vidur Gupta, Assistant Engineer, (E).**

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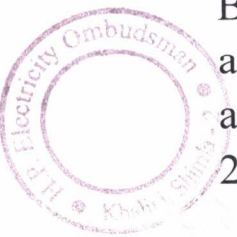
Er. Deepak Uppal

HP Electricity Ombudsman



Order

1. The case was registered and received on 26/09/2024, filed under Regulation 28(1)(b), of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the final Order dated 05/09/2024 passed by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1453/3/23/19.
2. The case was heard for admission on dated 30/09/2024. After listening counsels for both the parties, the Respondent Board was directed to submit reply within two weeks' time positively by 14.10.2024 and rejoinder if any, by the Complainant within one week thereafter the submission of the reply by the Respondent Board. The case was listed for hearing on dated 22/10/2024.
3. Case called, the matter was heard on 22/10/2024. The Respondent Board submitted reply on 18/10/2024 in compliance to this court order dt.30.09.2024 and subsequently, the Complainant submitted rejoinder cum written arguments on dt. 21/10/2024 which were taken on record. The case was listed for final arguments on 28/10/2024.
4. The final arguments were conducted on 28/10/2024. The counsel for Respondents and concerned Assistant Engineer appeared in the Court room along with the relevant record in compliance to the directions imparted through this court order dt.22/10/2024.
5. The deliberations made by the Assistant Engineer and his participation in discussions during final arguments were appreciable. Both Ld. Counsel (under Sectt. Law) for Respondent Board and authorized representative for the Complainant advanced their arguments to the brim and after hearing both the parties at length for 2 hrs., the arguments were concluded and order reserved.



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A-Brief Facts of the Case:

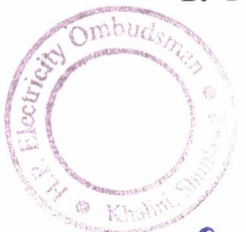
1. M/S Kundlas Loh Udyog, Village Balyana, P.O Barotiwala, Teh. Baddi, Distt. Solan-174103 bearing Consumer ID 100012001845 is a Large Industrial Power Supply (LIPS) Consumer of Respondent HPSEBL.
2. The complainant has undergone expansions in his industry multitudes from 31.10.19 to 1.06.2022 whereas, the Respondent stopped giving rebate for expansion in the bills from 01.11.2022. Complainant has cited the Tariff Order for FY 2021 notified on 01.06.2020 as its eligibility for expansion rebate up to 31.10.2023 and for a period of three years expiring on 04.05.2024, expiring on 31.05.2025 and expiring on 30.06.2026.
3. The complainant also contends for refund of electricity duty charged on refundable overcharged amount of rebate and for payment of interest on the excess amount billed to him up-to the time of refund; The detailed facts of the case stand placed under the heading “**The Complainant’s Submission**”, hence for the sake of brevity, the same are not reiterated again.

B-The Complainant’s Submission:

PROLOGUE/ BACKGROUND:

1. Facts of the Case

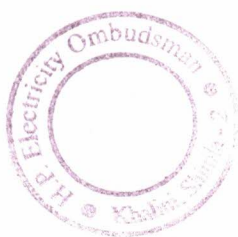
Date	Event	Annexure
31.10.2019	The complainant carried out expansion of his industry. The complainant carried out expansion of his industry. The contract demand of the complainant was	C1





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	increased from 7502 kVA to 8500 kVA. Bill issued at 8500 kVA upto 30.10.2020.	
30.10.2020	The contract demand of the complainant was further increased from 8500 kVA to 9400 kVA. Bill issued at 9400 kVA thereafter.	C2
05.05.2021	The complainant applied for further increase of contract demand which was sanctioned and released w.e.f. 05.05.2021. Bills thereafter issued based on 11400 kVA of contract demand.	C3
01.06.2022	The complainant increased the contract demand from 11400 kVA to 14000 kVA w.e.f. 01.06.2022 as a part of a fresh expansion.	C4
01.11.2022	The complainant noticed that the respondents totally stopped giving the rebate in the bills w.e.f. 01.11.2022. Initially, the complainant communicated verbally with the concerned SDO, who assured that the rebate will be given in the due course, once the same is updated in the computerized billing module. But, the same was refused verbally later.	C5
01.05.2023	The complainant increased the contract demand from 14000 kVA to 16000 kVA w.e.f. 01.05.2023 as	C6

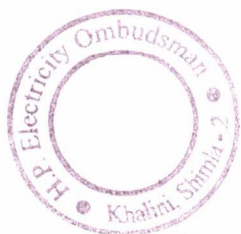


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	a part of expansion.	
17.06.2023	The complainant increased the contract demand from 16000 kVA to 17600 kVA w.e.f. 17.06.2023 as a part of expansion.	C7
14.06.2023	The complainant wrote to the concerned SDO and the Sr. Executive Engineer, Baddi requesting them to give rebate as per provisions of the tariff order which was discontinued w.e.f. 01.11.2022. The complainant did not receive any reply to his letter, neither denying nor accepting the claim of the complainant.	C8
13.07.2023	The complainant approached the Ld. Forum vide Complaint No. 1453/3/23/19	C9
13.03.2024	The respondents informed the Ld. Forum that the matter has been settled amicably. But, Forum observed that a confirmation in this regard was to be given by the complainant who was not present during that hearing and hence the matter was listed for 27.03.2024	C12
26.03.2024	The complainant sent an application by speed post informing the Ld. Forum of the status of the settlement between the parties. In Para No. 2 of the application that the parties have not reached a settlement. However, it was informed that a partial refund was given by the	C13



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	respondents for the past period. It was also stated in Para 3 of the application that the efforts for settlement were still in progress and that a decision was expected in two weeks.	
27.03.2024	Two members of the Forum were debarred from their duties as members of the Forum by the Hon'ble High Court of H.P. in CMPMO No. 449 of 2023 and hence the proceedings on 27.03.2024 could not conclude.	
13.07.2024	The complainant wrote a letter to the Respondent No. 2 and 3 stating that the rebate has been again discontinued in the bills issued in the months of June and July 2024.	C11
02.09.2024	The same members were re-appointed by the respondents in the Forum and a hearing was fixed on 02.09.2024. The complainant attended the proceedings on 02.09.2024 and a reply was submitted by the respondents, a copy of which was also handed over to the complainant. The matter was fixed for 05.09.2024 for rejoinder and final hearing on 05.09.2024	C10
05.09.2024	The complainant submitted rejoinder cum written arguments in writing, while a copy was also served to the respondents' representative	C11
05.09.2024	The Ld. Forum passes the impugned orders	C9



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2. Details of the Grievance:

2.1 The complainant submits that he approached the Ld. Forum with a grievance stating that after carrying out multiple expansions and increasing contract demand several times, the eligible rebate, which was applicable for three years as per relevant tariff orders, was prematurely withdrawn/discontinued by the respondents. The brief facts which are essential for the adjudication of this representation are that till the bill issued for the month of October 2022 in November 2022, the Respondent has paid the Rebate admissible in terms of the tariff order. Thereafter without any rhyme and reason, the same was discontinued by the Respondent. After trying to resolve this issue, the petitioner preferred the grievance before the Ld. Forum in the Month of July 2023, primarily complaining about the short-coming of the Respondent Board in prematurely stopping of the rebate, before the expiry of the time, as is admissible in terms of the Tariff Orders along with other consequential reliefs. While the matter was pending adjudication before the Ld. Forum, the respondent accepted its short coming and mentioned a figure of Rs. 1,78,11,164/- qua rebate to be due and admissible to the petitioner till November 2023. As the Respondent has accepted its shortcoming and has given a wrong figure, the petitioner in the rejoinder gave a detailed calculation establishing that the figure of Rs.



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1,78,11,164/- which was calculated by the Respondent board is short by Rs. 33,25,783.22/-. It is further submitted that, without prejudice to the calculation, the Respondent started giving the benefit of the rebate to the petitioner till the month of the April, 2024 for the bill issued in May 2024. After the same, the Respondent again stopped with giving the benefit of the rebate, despite that fact that almost two more years were still pending out of three years period allowed in terms of the mandate of the tariff orders.

2.2 The Complainant submits that another relief sought by the complainant was the consequential relief dependent on the primary relief. The other relief was related to the “payment of Electricity Duty” which is dependent on the inquiry of the shortcoming related to the premature withdrawal of rebate. The relief sought in terms of electricity duty was no different than that was allowed in the past to the complainant and the other consumers as well.

2.3 The Complainant submits that the other relief that the complainant had sought was in terms of interest, which too was a consequential relief, to be granted, if and only if, the principal relief qua inquiry of the shortcoming related to the premature withdrawal of rebate was granted by the Forum.



3. Grounds/ Contentions of the Complainant:

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The Complainant submits that feeling aggrieved and dissatisfied by the impugned orders passed by the Consumer Grievances Redressal Forum, the petitioner is left with no other option/ remedy but to file the present representation on the following grounds:

- 3.1** That the Ld. Forum while passing the impugned orders dated 05.09.2024 has failed to function in the manner that has been notified under the HPERC (CGRF and Ombudsman) Regulations, 2013. The Ld. Forum was duty bound to follow the procedure laid down in the said regulations as it is constituted under the said regulations;
- 3.2** That the Ld. Forum while rejecting the complaint has held that since the complainant has not given the exact calculation at the time of filing of the complaint and that no exact claim has been claimed as to what amount of rebate, electricity duty and interest is to be payable by the Respondent board to the complainant, the complaint is evasive and cannot be adjudicated. It is respectfully submitted that the Ld. Forum has erred in law as well as in fact as the same is grossly against the Regulation 2013 as well as the settled law in this regard.
- 3.3** That the Forum has stated that since the claim was not properly substantiated in monetary terms, the same is evasive and rejected the complaint. It is important to note that the forum has erred in appreciating that there is no requirement under the 2013 Regulation to give a substantial monetary claim along with the complaint. The only requirement in terms of Chapter IV of the



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2013 Regulation is the “Submission of Grievances”. Now the Grievance is defined under Regulation 3(e) of the 2013 Regulation. Perusal of the same would show that the same is the intimation of “*any fault, imperfection, shortcoming or inadequacy*” to the forum. It is also important to note the manner in which the same is to be filed is also stated in the 2013 Regulations in the form of Annexure II to the said Regulations. The Ld. Forum in the impugned order has although observed the grievance in paragraph no. 3 of the impugned judgment but in paragraph no. 7 has held that there is no *precise or specific monetary claim*. It is further held in paragraph no. 7 that the complainant seeks *recovery of money*” and is “*bound to state the precise claim*”. It is submitted that what is mandatory as per the 2013 Regulation is the submission of grievance, which is itself recorded by the Ld. Forum at paragraph 3 of the impugned order. It is further submitted that the observation made by the Ld. Forum in paragraph no. 7 that the complainant seeks *recovery of money*” through the complaint is itself factually contradictory to paragraph no. 3 of the impugned order where the forum itself observes that the complainant has approached the forum as the Respondent Board has stopped giving the rebate. It is submitted that the Forum has confused and mixed the issue of “stoppage of the Rebate” with the “recovery of the money”. It is submitted that the recovery of money is a consequential relief, which will be dependent upon the inquiry



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of the grievance, which is related to the premature stoppage of the Rebate in terms of the tariff order.

3.4 That the forum has further observed in paragraph no. 8 of the impugned order that the complainant has given the exact calculation in the rejoinder and not at *first instance* while filing the complaint before the forum. For this reason, Ld. Forum rejected and did not take into account the calculations given by the Complainant. It is submitted that the Ld. Forum grossly erred in law, in rejecting the calculations submitted by the complainant in the rejoinder. It is submitted that a figure was given by the Respondent board towards the payment of the amount, which is stated to be full and final, in accordance with the stand of the Respondent Board. To counter the same amount, in the rejoinder, the complainant has submitted the counter calculations, which was necessarily to be looked by the Ld. Forum, to inquire into the grievance. Further the Ld. Forum erred in law also, to not take calculation into consideration while inquiring upon the grievance as the pleadings in the rejoinder forms the substantial part of the pleadings in the main *lis* and cannot be ignored on the pretext that it was “subsequently filed”.



The Ld. Forum also erred in law in holding at paragraph 9 of the impugned order that there is a settlement of grievance by the

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respondent as they have already granted the rebate to the complainant upto 02.12.2023, in the tune of Rs. 1,78,11,164/-. It is pertinent to mention here that the said finding that there is a settlement is absurd as the Ld. Forum finding in paragraph 8 of the impugned judgment is without any discussion, whatsoever- Whether the rebate is prematurely stopped; If yes, upto what period the complainant is eligible for the rebate; whether the calculation given about the shortage of the rebate by the complainant is proper, etc etc. It is submitted that without there being any discussion over the above, the “finding” of the forum that the rebate is already given to the complainant and that there is settlement of the grievance is misconceived, improper and a violation of the principle of natural justice.

3.5 That the Ld. Forum has further held in paragraph 11 of the impugned order that as no precise claim has been filed by the complainant in *the first instance* related to the refund of the electricity duty, hence the same cannot be adjudicated. The same is bad legally and factually as the same is filed by the complainant in its rejoinder which forms the substantial part of the pleading and further, that it's a consequential relief based upon the inquiry of the grievance submitted by the complainant. Without there being any adjudication qua the grievance of the complainant of the premature stoppage of the rebate, there cannot and could not be any inquiry upon the refund on the rebate on the electricity duty.



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3.6 That the Ld. Forum has further held in paragraph 12 of the impugned order that *“No-where in the Tariff Orders passed by the Ld. HPERC has the rebate on expansion or excess consumption, been considered to have the net effect of reduction in actual consumption”*. It is submitted that the Ld. Forum has erred as the Electricity Duty is applicable at an ad valorem rate on the amount of energy charges computed under the tariff. The tariff clearly says *“Energy Charges shall be 10% lower than the approved Energy Charges corresponding to the respective Category for a period of three years for quantum of energy consumption corresponding to proportionate increase in Contract Demand*. Therefore, with the lower energy charges as a result of the rebate, the electricity duty will also be lower. The Electricity Duty Act does not mandate electricity duty on the basis of per unit consumption. The complainant in his grievance had only prayed for a consequential relief in terms of electricity duty, provided the main relief in terms of rebate is granted. It is pertinent to mention here that the electricity duty is applied on reduced energy charges from all consumers in the bills issued by the respondents. Surprisingly, the Forum didn't even notice that the refund amount calculated and refunded by the respondents also included the element of electricity duty and is the principle is thus agreed and accepted by the respondents as well.



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- 3.7 That the LD. Forum has further held in paragraph 13 of the impugned order that the no precise claim has been filed by the complainant in *the first instance* related to the interest, hence the same cannot be adjudicated. The same is bad legally and factually for the reasons stated *supra*.
- 3.8 That the LD. Forum has further held in paragraph 14 of the impugned order that non-payment of the rebate in the bills will not make the charges undue. It is further held that the complainant has not laid challenge to the specific bill. Therefore, the Ld. Forum rejected the contention qua the interest. It is submitted that non-payment of the rebate in the bills will definitely attract the interest as the rebate is to be given in the regular electricity bills and if the same is not given, then the same becomes due and will attract the interest. It is submitted that the same is the settled principle of law and that the Ld. Forum could not have deviated from the same.
- 3.9 That the Ld. Forum has also held in Paras 15 and 16 that the complainant is not eligible for interest on excess payment recovered as this is not a case of erroneous billing. The Ld. Forum has failed to establish that the bills issued by the respondents were erroneous. The rebate which forms a part of the tariff, was required to be adjusted in the bills on monthly basis and even the calculation of refund amount was carried out on each bill basis. In the past also the complainant was given



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rebate in the monthly bills. In Para 16, the Ld. Forum has observed that *"The Forum also does not find any reference to payment of Interest that may be paid by the Respondent on expansion rebate, in the Tariff Orders passed by the HP Electricity Regulatory Commission"*. The general rules regarding the payment of interest finds mention in the Clause 5.7.3 of the Supply Code but not each tariff. Clause 5.7.3 would have no relevance if the Ld. Forum is to be believed. The Ld. Forum thus deviated from the provisions of the Supply Code, 2009 as well as 26(2)(a)(ii), which too provide for the payment of interest on the amounts refundable to the consumers. The Ld. Forum has wrongly understood the meaning of undue charges and have wrongly concluded that such interest is only applicable on undue charges and also that no bill is disputed by the complainant. In fact, many bills fall under the dispute / grievance filed by the complainant. The rebate was due for month-wise deduction in each bill, which if not done shall automatically inflate the bills and over-recovery will result. Undue charges and not providing the due rebates is one and the same thing as rebate is a monetary relief. Not giving rebate in the bill amounts to overcharging of rates of energy charges, whereas the complainant was to be charged at the rates which are less by 15% than the normal rates of energy charges. The impugned orders passed by the Forum finds no discussion on what was due to the complainant and what was not due. It is



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further stated that regulation 26(2)(a)(ii), does not give any option to the Forum with regards to the interest. It is a mandatory provision. Similarly, the clause 5.7.3 does not give an option to the respondents to pay or not to pay interest. It is a mandatory clause that has been included for the protection of the consumers.

3.10 That the tariff orders notified by the Commission are binding on the respondents as per which rebate is required to be allowed to the complainant at such rates as notified in the tariff orders on the energy consumption proportionate to the increase in contract demand.

3.11 That the Ld. Forum in its orders dated 05.09.2024 has instead granted relief to the respondents rather than the complainant who had filed the grievance. The Ld. Forum even has gone to grant relief to the respondent even beyond their pleadings.

3.12 That the respondents have not even disputed in their reply the claim of interest made by the complainant nor any comments specific to the payment of interest, whereas the Ld. Forum has adjudicated on the issue without any contest from the respondents.

3.13 That the Ld. Forum has disposed the instant grievance in a haste without completing inquiry in the matter and has left the



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grievance open and has allowed the complainant to approach the respondents for balance of any grievance. The HPERC (CGRF and Ombudsman) Regulations does not allow such incomplete disposal of the grievance.

3 Prayer

The Complainant in view of above submits prays as below:

- a) To quash and set aside the orders dated 05.09.2024 passed in Complaint No. 1453/3/23/19 for the reasons stated in the representation;
- b) To issue directions to the respondents to grant rebates until the expiry of three years from the date of increase of contract demand, which are valid upto 30.06.2026 for the expansions already carried out by the complainant;
- c) To direct the respondents to refund the amount of Rs. 33,25,783.32 less paid upto issuance of bill in the month of Feb, 2024 remaining to be refunded even after processing of partial refund;
- d) To direct the respondents to refund the further rebate w.e.f. bill issued in the month of June, 2024 onwards till the expiry of three years calculated from the last expansion;
- e) To direct the respondents to adjust the corresponding amount of electricity duty reduced due to reduction in energy charges after adjusting rebate, as was being done in the past;
- f) To direct the respondents to pay interest on the amount charged in excess and the amount that is refundable to the complainant, at simple interest @ 15% p.a. on daily basis, from the date of



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payment on the past amounts refunded with delay and the amount due for refund as per Sub-regulation 5.7.3 of the Supply Code, 2009 or the HPERC (CGRF and Ombudsman) Regulations, 2013 as may be considered appropriate in the present case;

- g) To direct the respondents to compensate the complainant towards cost of the complaint amounting to Rs. 3,00,000/-.
- h) To Call for the record of the case.
- i) Any other or further orders which this Hon'ble Forum may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the complainant company and against the respondents/distribution licensees.

C- The Respondent's Submission:

Preliminary submissions:

1. The Respondent submits that the present complaint is not maintainable in the eyes of law.
2. The Respondent submits that there exists no cause of action in favour of complainant and against the respondents.
3. The Respondent submits that the Id Forum vide impugned order dated 05-09-2024 has rightly dismissed the complaint filed by the complainant by appreciating all relevant material, regulations governing the field and the tariff order issued by the Hon'ble HPERC, as such there is no such interference warranted by this Hon'ble Ombudsman.



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4. The Respondent submits that the complainant has suppressed the material facts before this Id Forum as such the complaint as preferred is liable to be dismissed.

Reply on Merits:

1. The Respondent submits that the contents of these insofar as they pertain to the matter of record are not denied rest of the averments which are contrary to the record are wrong and incorrect hence denied.
2. The Respondent submits that the contents of this para are admitted to the extent that the complainant is eligible for the rebate in terms of the mandate of the tariff order issued by the Hon'ble Commission for the respective financial years. It is submitted that the respondents have already granted the rebate to the complainant w.e.f. November 2019 to December 2023 on account of the multiple expansions, amounting to Rs 1,78,11,164/- through sundry. It is submitted that the rebate has been allowed till May 2024. It is submitted that for the purpose of the expansion rebate, it is imperative that the industry has to undergone the expansion i.e. increase in contract demand with increase in the connected load. It is submitted that the respondents have already granted the rebate as stated in the para supra and in future as and when the connected load of the complainant is increased the corresponding rebate as per the tariff order may be applicable.



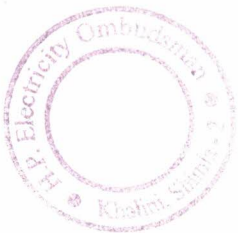
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Reply to Ground of Representation:

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- 3.1 The Respondent submits that the contents this para are wrong and incorrect hence denied. It is submitted that Id Forum has passed the impugned order strictly in line with the Regulations issued by the Hon'ble Commission. The contentions of the complainant are totally baseless and self-contradictory in nature.
- 3.2 The Respondent submits that the contents of this para are wrong and incorrect hence denied. It is submitted with the utmost respect that complainant has totally misconceived and misunderstood as the instant matter is governed by its own applicable statute and merits. The instant matter is governed by the tariff orders passed by the Ld. HPERC under Electricity Act, 2003 and regulations and rules framed there under.
- 3.3 The Respondent submits that the contents of this para are wrong and incorrect hence denied. It is submitted that complainant is trying to make out a case on the very hypothetical grounds, as such the Id CGRF has rightly dismissed the complaint.
- 3.4 The Respondent submits that the contents of this para are wrong and incorrect hence denied. It is submitted that complainant is trying the mix and match the entire matter and trying to interpret the tariff order directly or indirectly in his favour. It is submitted that Id Forum has passed the impugned order strictly in line with the Regulations issued by the Hon'ble Commission.



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3.5to 3.13 The Respondent submits that the contents of this para are totally wrong and incorrect hence denied. It is specifically denied that the Id Forum has passed order by ignoring the rules and regulations governing the field. However, it is submitted that if the order of the Id Forum is perused, it will leave no manner of doubt that the impugned order is well reasoned and speaking one which dealt each and every issue involved in the case.

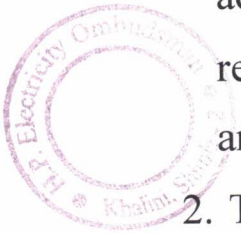
4. The Respondent submits that keeping in view the facts and circumstances narrated herein above, it is most respectfully prayed that the representation/complaint of the complainant is liable to be dismissed.

D-The Complainant's Additional Submission through Rejoinder and Written Arguments:

Rejoinder and Written Arguments:

1.The Complainant submits that nothing in this rejoinder may be taken as admittance of any contents of the reply unless they are specifically admitted in this rejoinder. The submissions made in the representations may also be considered part and parcel of the written arguments.

2. The Complainant submits that the preliminary submissions made by the respondents are baseless. The respondent has stated that the

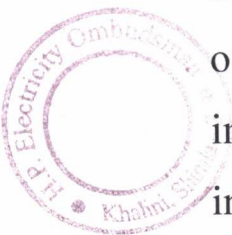


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complaint is not maintainable but have cited no reasons as to why the representation is not maintainable. Also, there is sufficient cause of action when the CGRF has not redressed the grievance fully and the complainant is still aggrieved by the impugned orders dated 05.09.24 passed by the Ld. CGRF.

3. The Complainant submits that the Ld. Forum has grossly erred while passing the impugned orders dated 05.09.2024 for the reasons stated in the representation and the orders passed by the Ld. Forum deserve to be quashed.
4. The Complainant submits that the statement of the respondents that the complainant has suppressed the facts is completely without any basis or justification.
5. The Complainant submits that the respondents in para 2 of the reply on merits have admitted that the complainant is eligible for the rebate in terms of the mandate of the tariff orders for the respective financial years. At the same time the respondent has also agreed that the complainant has already been granted the rebate w.e.f. Nov, 19 to Dec, 23 on account of multiple expansions. It has also been admitted that the rebate has been allowed upto May, 2024. But the respondents have not been able to cite any reason in the reply, which prompted them to stop the rebate after May, 2024 for the remaining period out of the three years eligibility. The respondent has submitted that it is imperative that the industry has to undergo expansion i.e. increase in contact demand with increase in connected load. This is a wrong statement as connected load has no relevance in any of the tariffs for

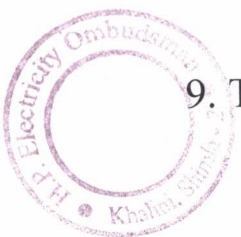


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the calculation of rebate / lower energy charges. However, in the case of the complainant even the connected load has been increased several times. The last increase is reflected in the bill issued in the month of June 23 when the connected load was increased from 16000 KW to 20000 kW and the contract demand was increased from 14000 kVA to 16000 kVA. The respondents are making wrong submissions before the Hon'ble Electricity Ombudsman with a purpose to mislead.

6. The Complainant submits that the reply to the Para 3.1 of the representation is a mis-statement on the part of the respondents. On one hand they have already admitted giving the rebate for the part period, whereas they have stopped giving rebate beyond a certain period without assigning of any reason to such stoppage. No incidence of self-contradiction has been reproduced as such. Therefore, no inference can be drawn out of this para of reply.
7. The Complainant submits that in reply to the Para 3.2 of the representation once again the respondent has used words such as misconceived, misunderstood, statute, regulations etc. The statement made by the respondent in this para of reply is not even worth the value of the words.
8. The Complainant submits that the contents of the reply to para 3.3 are denied and are merely words without any substantiation.
9. The Complainant submits that the contents of the reply to para 3.4 are also denied and there is nothing tangible, meaningful in this para.



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There is no question of interpretation of tariff in the whole representation.

10. The Complainant submits that the contents of the reply to para 3.5 to 3.13 are once again only for the purpose of making a statement even though that the respondents do not have any ground to challenge the grievance of the complainant. Instead of admitting their error, they are trying withhold what is due to the complainant.

11. The Complainant submits that the respondents must be asked to explain the specific reason for premature stoppage of rebate. The respondents are responsible for increasing the interest burden on the utility by not making the timely payment of this rebate and must be made personally responsible for such actions.

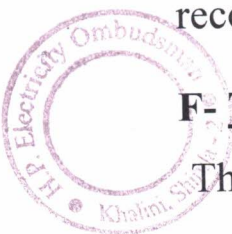
12. The Complainant submits that in view of above, it is prayed that the Hon'ble Forum may issue necessary directions to the respondents to grant relief as prayed for in the representation and in the above submissions and issue orders as may deem fit in the facts and circumstances of the matter.

E- The Complainant's written Arguments:

The Complainant submitted Rejoinder-cum- Written arguments, hence the same is considered as part and parcel of the written arguments for record purpose.

F- The Respondent's written Arguments:

The Respondent did not submit any written arguments instead preferred oral arguments.



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G- The Arguments of both during proceedings :

1. The final arguments were conducted on 28/10/2024 and both the parties were given opportunity to argue their contentions to the brim.

A. The Complainant :

The authorised Representative for Complainant confined arguments on the following points:

- a. that the expansion rebate, was applicable for three years expiring on 04.05.2024, expiring on 31.05.2025 and expiring on 30.06.2026. as per relevant tariff orders.
- b. that it was prematurely withdrawn/discontinued by the respondents.
- c. that till the bill issued for the month of October 2022 in November 2022, the Respondent had paid the Rebate admissible in terms of the tariff order. Thereafter without any reason, the same was discontinued by the Respondent.
- d. that the refund of expansion rebate stands paid from Nov. 19 to Dec.23 and upto May,24.
- e. that at the end of this issue, during the course of arguments, the authorized representative for complainant also apprised that except for differential amount of Rs.33,25,783/- which was less paid upto issuance of bill in the month of Feb,2024 and falls within the stages of enhancements dt. 31.10.19 & 30.10.20, rest amount stands refunded by the Respondents.
- f. On the issue of rebate on electricity duty, the authorized representative for Complainant put forth his contentions during arguments that he is liable to avail refund of electricity duty charged on refundable overcharged amount of expansion rebate and further deliberated that such type of rebate had also been given earlier to consumers by the Respondents.



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- g. In the last he put forth his contentions that he may be allowed the payment of interest on the excess amount billed to him up-to the time of refund.

B-The Respondent:

Contrary to above averments argued by the authorized representative for Complainant, the Ld. Counsel (Under Sectt. Law) for Respondents argued each and every point of contentions at large by supplementing arguments with relevant Tariff Orders and Acts.

- a. The Assistant Engineer appearing in the court room confirmed the status of refund of expansion rebate paid from Nov. 19 to Dec.23 and upto May,24 which was an appreciable step on the prudent efforts put up by the Respondent Board for judicious settlement of legitimate claim within the ambit of prevalent provisions of Tariff Order.
- b. During the course of arguments, the said Assistant Engineer was asked to update the issue of differential amount of Rs.33,25,783/- which was contented to be less paid upto issuance of bill in the month of Feb,2024. The officer informed that the expansion rebate in respect of stages dt. 31.10.19 & 30.10.20 has been considered as single enhancement due to having persistent connected load and not shown increase in the connected load with increase in contract demand.
- c. The Ld. counsel for respondents (Under Sectt. Law) in his arguments reiterated para 6.28.4 "Petitioner's Response & para 6.28.5 "Commission's Observation" from Tariff Order dt. 15.03.2024 for FY- 25 and pin pointed substantial expansion in industries.



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- d. On the issue of Interest, there were no specific counter arguments except, may be allowed as per provisions if applicable.
 - e. The issue of rebate on electricity duty was argued by the said counsel for respondents threadbare and in his long arguments, quoted Himachal Pradesh Electricity Duty Act 2009 & referred Section-2(c) narrating definition of “consumption” and Section-3(c) on “Levy of Electricity Duty on Consumption or Supply of Energy” and declined in his arguments on applicability of refund of electricity duty charged on refundable overcharged amount of expansion rebate as contended by the Complainant, being the domain and privilege of Government.
 - f. Giving further affect to his arguments, the Ld. Counsel mentioned chapter five on “Settlement of dispute and appeal thereof” of Himachal Pradesh Electricity Duty Rules 2010 for apprising “Adjudicatory Authority” and “Appellate Authority” for settlement of Electricity duty related disputes.
2. The arguments made by the counsel for respondents were quite informative and appreciable. Thereafter, listening to both the parties at length, the arguments were concluded and order reserved.

H- Consumer Grievance Redressal Forum Complaint No. 1453/3/23/19 dated 05/09/2024:

The relevant extract of the above order is reproduced for reference and record:

- 1.(6) Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and the HP Electricity Supply Code, 2009, including amendments thereto, and the Tariff Orders passed by the HP Electricity Regulatory Commission, record and

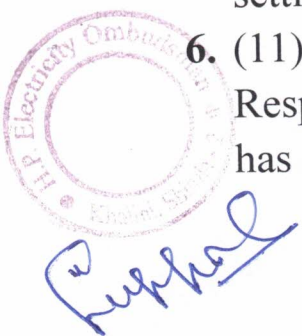


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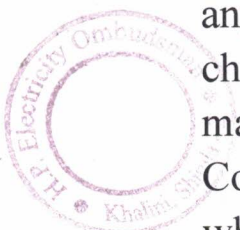
HP Electricity (Duty) Act, 2009 and facts along-with pleadings of the parties. We have heard the parties at length. The considered opinion of the Forum has been gathered after examining and analysing fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;

- 2.(7) At the outset Forum does not find any precise or specific monetary claim nor is there any specific challenge to any bill that may have been raised by the Respondent. Forum observes that if the Complainant seeks recovery of money, then the Complainant is bound to state the precise amount claimed up to the time of filing the complaint in July 2023;
3. (8) On bare perusal of the complaint, Forum finds that the Complainant has clearly not filed any monetary claim in its complaint towards primary amount to be paid as expansion rebate by the Respondent and the amount of Electricity Duty and Interest payable. Forum also finds that the Complainant has made an elusive attempt to raise a perpetual grievance extending also into the future upto 30.06.2026. Forum also finds that it is only after the Reply was filed by the Complaint No 1453/3/23/19 Respondent, did the Complainant begin to raise shortfall in the payments of rebate made by the Respondent to the Complainant;
4. (9) It thus becomes amply clear to the Forum that the complaint has been filed in the most elusive manner which results in unending dispute or litigation and which ought to be rejected;
5. (10) However, the Forum from Reply submitted by the Respondent finds that the Respondent has already granted the rebate to the Complainant up to 02.12.2023 of Rs 1,78,11,164/- and thus there is settlement of grievance;
6. (11) On the issue of payment or refund of Electricity Duty by the Respondent to the Complainant, it is reiterated that the Complainant has in the first instance not filed any precise claim in this regard.





7. (12) However, Forum is still inclined to look into the facet of payment of the Electricity Duty by the Complainant to Respondent on actual consumption of electricity made by it. No-where in the Tariff Orders passed by the Ld HPERC has the rebate on expansion or excess consumption, been considered to have the net effect of reduction in actual consumption. Such a proposition would be absurd as actual consumption remains actual and not nominal. Complainant has nowhere shown that the Complainant has not consumed the electricity billed to it. The Electricity Duty is payable by the Complainant on the actual electricity consumption in accordance with the HP Electricity (Duty) Act, 2009 and thus any monetary rebate, such as expansion rebate on energy charges due to actual electricity consumption, does not entitle the Complainant for refund of Electricity Duty which is paid as energy charges but on actual electricity consumption by the Complainant. Thus, the Forum holds that the Complainant is not at all eligible for any refund of Electricity Duty, whether claimed or not; Complaint No 1453/3/23/19
8. (13) On the issue of payment of Interest by the Respondent to the Complainant, it is reiterated that the Complainant has in the first instance also not filed any precise claim in this regard;
9. (14) However, the Forum is still also inclined to look into the facet of payment of Interest on rebate. On bare examination of sub regulation 26(2)(ii) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 which is in terms of Interest to be paid on undue charges that have been paid by the Complainant consumer, no-where has the Complainant shown to the Forum that the bills paid by the Complainant contained undue charges and neither is any bill disputed by the Complainant which may be carrying undue charges. Non-Payment of Rebate in a bill by the Respondent does not make the bill to become un-due. It has to be shown by the Complainant that the charges included in the bill were not due and which were paid by the Complainant, such as to invoke this provision



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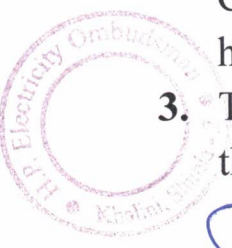
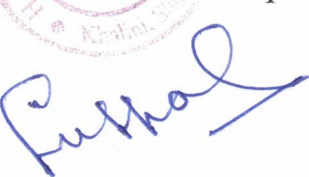


of regulations, and this aspect is conspicuously missing in the filing by the Complainant;

10. (15) Also, on bare examination of code 5.7.3 of the HP Electricity Supply Code, 2009, Forum finds this to be with regard to Interest on excess payment made due to erroneous billing and this is also not the case of the Complainant. Eligibility for Rebate has to be assessed by the Respondent. Merely the non-Payment of Rebate by the Respondent in a bill by the Respondent does not make the bill to become erroneous. This rebate is separate and it may be a case that such rebate is paid separately by the Respondent. This aspect is also conspicuously missing in the filing by the Complainant;
11. (16) The Forum also does not find any reference to payment of Interest that may be paid by the Respondent on expansion rebate, in the Tariff Orders passed by the HP Electricity Regulatory Commission. Complaint No 1453/3/23/19 Complainant in this regard is at liberty to approach the HP Electricity Regulatory Commission;
12. (17) Thus, the contention of the Complainant with regard to Interest on expansion Rebate is also rejected. The Forum holds that the Complainant is not at all eligible for any Interest on expansion rebate; (18) In the event of balance grievance of Complainant, if any, for any difference in rebate receivable by it, the Complainant is at liberty to approach the Respondent;

I-Analysis of the Complaint:

1. The case file bearing Complaint No. 1453/3/23/19 and orders passed on dated 05/09/2024 by the Consumer Grievance Redressal Forum Kasumpti, Shimla-171009 have been requisitioned and gone through.
2. The submissions made by both the parties, rejoinder submitted by the Complainant have also been incorporated in totality in this order to have composite view of the entire case.
3. The documents annexed and placed on record, arguments made by both the parties have also been gone through.





4. The relevant Acts, Supply Codes, Tarif Orders have been referred to for the sake of clarity.
5. M/S Kundlas Loh Udyog, Village Balyana, P.O Barotiwala, Teh. Baddi, Distt. Solan-174103 bearing Consumer ID 100012001845 is a Large Industrial Power Supply (LIPS) Consumer of Respondent HPSEBL.
6. The complainant contends as under:
 - a. that he has undergone expansions in his industry many times from 31.10.19 to 1.06.2022 and in totality increased contract demand from 7502Kva to 17600Kva in different intervals during the said period.
 - b. that the eligible rebate, which was applicable for three years as per relevant tariff orders, was prematurely withdrawn/discontinued by the Respondents w.e.f from 01.11.2022.
 - c. that the Tariff Order for FY 2021 notified on 01.06.2020, cites eligibility for expansion rebate up to 31.10.2023 and for a period of three years expiring on 04.05.2024, expiring on 31.05.2025 and expiring on 30.06.2026 respectively.
 - d. that till the bill issued for the month of October 2022 in November 2022, the Respondent had paid the Rebate admissible in terms of the tariff order. Thereafter without any rhyme and reason, the same was discontinued by the Respondent.
 - e. that the respondent accepted its short comings and mentioned a figure of Rs. 1,78,11,164/- qua rebate to be due and admissible to the petitioner till November 2023. However, the figure of Rs. 1,78,11,164/- which was calculated by the Respondent board is short by Rs. 33,25,783.22/-.
 - f. It is further submitted that, without prejudice to the calculation, the Respondent started giving the benefit of the rebate to the petitioner till the month of the April, 2024 for the bill issued in



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May 2024. After the same, the Respondent again stopped with giving the benefit of the rebate,

g. The complainant also contends for refund of electricity duty charged on refundable overcharged amount of rebate which he contends was no different than that was allowed in the past to the complainant and the other consumers as well.

h. that the payment of interest on the excess amount billed to him up-to the time of refund.

7. The Respondent contends as under:

a. The Respondent contends to the extent that the complainant is eligible for the rebate in terms of the mandate of the tariff order issued by the Hon'ble Commission for the respective financial years.

b. that the respondents have already granted the rebate to the complainant w.e.f. November 2019 to December 2023 on account of the multiple expansions, amounting to Rs 1,78,11,164/- through sundry and further added that the rebate has been allowed till May 2024.

c. that for the purpose of the expansion rebate, it is imperative that the industry has to undergo the expansion i.e. increase in contract demand with increase in the connected load. It is submitted that the respondents have already granted the rebate as stated above and in future as and when the connected load of the complainant is increased the corresponding rebate as per the tariff order may be applicable.

8. The above contentions of Complainant and response of Respondent Board gathers considered opinion to originate the following issues and for the sake of brevity, the detailed analysis has been done alongwith findings and the same has not been repeated above.



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J-Issues in Hand:

Issue No-1: Whether the instant appeal is maintainable?

Issue No-2:

Whether the stages of expansion 31.10.19 & 31.10.20 considered as single enhancement due to having persistent connected load and not shown increase in the connected load with increase in contract demand as contended by the Respondent during arguments, is legitimate?

Issue No-3:

Whether the Complainant is liable to avail refund of electricity duty charged on refundable overcharged amount of expansion rebate?

Issue No-4:

Whether the Complainant is liable to avail the payment of interest on the excess amount billed to him up-to the time of refund as contended by him in his appeal?

K-Findings on the Issues:

Issue No-1: While going through the reply submitted by the Respondents, it has been observed that in a very vague manners it has been mentioned that the instant complainant is not maintainable without citing any specific reason. Even during arguments no such averments were presented by the respondents which could have drawn attention of this authority towards maintainability. Also, during pleadings conducted with CGRF, no such question arose on maintainability. In view of above, the complaint was held



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maintainable for adjudications of grievances in the public interest to curb such arguments in future.

This closes the findings on issue-1

Issue No-2:

1. While doing findings on issue-1, this authority feels it vital to examine the essence of arguments conducted on 28/10/2024 whereby it was brought to the notice by the authorized representative for complainant that except for differential amount of Rs.33,25,783/- which was less paid upto issuance of bill in the month of Feb,2024, rest amount stands refunded by the Respondents.
2. Scrutiny of above arguments nourishes that the Complainant is satisfied with the settlement on expansion rebate resorted in line with the prevalent Tariff Orders except for differential amount of Rs.33,25,783/-The above statement of the Complainant immediately draws further attention towards the counter arguments given by the Assistant Engineer as respondent appeared in the court on the issue of differential amount of Rs.33,25,783/- which were quite alarming.
3. The officer's counter arguments provided that the expansion rebate in respect of stages dt. 31.10.19 & 30.10.20 had been considered as single enhancement due to having persistent connected load and not shown increase in the connected load with increase in contract demand. This authority feels it pertinent to mention here that this very aspect of considering enhancement of stages 31.10.2019 & 30.10.2020 as single enhancement by the respondent came to notice first time during arguments only, which was not even mentioned in the reply submitted by the respondents and in view of



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intricacy involved, in the interest of justice, it needs to be examined for prudent judgement.

4. For judicious judgement, this authority feels convinced on the arguments the Ld. counsel for respondents (Under Sectt. Law) also who reiterated para 6.28.4 "Petitioner's Response & para 6.28.5 "Commission's Observation" from Tariff Order dt. 15.03.2024 for FY- 25 and stressed upon substantial expansion in industries.
5. After referring to the documents placed on record, detailed arguments conducted on the contentions, referring to the relevant tariff orders FY 2021 notified on 01.06.2020 read with latest Tariff order FY25 notified on 15.03.2024 and Acts, in the interest of justice, it is felt necessary to reproduce the relevant para of the tariff order dt. 15.03.2024 as under:

"10.7.34 For existing industries which have undergone expansion during 01.06.2020 to 31.05.2021, Energy Charges shall be 10% lower than the approved Energy Charges corresponding to the respective category for a period of three years for quantum of energy consumption corresponding to proportionate increase in Contract Demand.

Provided that such expansion, if undertaken during 01.06.2021 to 31.03.2024 and/or shall be undergoing expansion on or after 01.04.2024 shall be 15% lower than the approved energy charges for respective category for a period of three years for quantum of energy consumption corresponding to proportionate increase in contract demand.

Example: *In case of Contracted Demand is increased by an industry from 2 MVA to 3 MVA, the monthly units' consumption for the purpose of lower Energy Charges shall be considered in proportion of the Original Contracted Demand and Increased Contracted Demand. i.e., in case the monthly consumption is 6 LUs, the lower Energy Charges shall be applicable on 2 LUs while 4 LUs shall be billed at the regular Energy Charge.*

10.7.35 The above-mentioned rebate on Energy Charges shall be applicable during normal and peak hours. In case of night hours, night-time concession shall only apply."



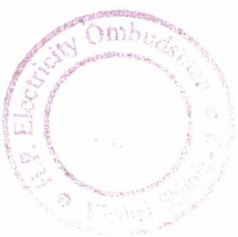
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6. Further analysis is indicative that in the above extract, the Hon'ble Commission mentions the word monthly consumption as highlighted above which is also relevant if increases with increase in contract demand.
7. Let us examine the situation on consumption pattern considering the bills placed on record during the stages of so-called expansion on dt. 31.10.19 & 30.10.20 to arrive at legitimate consensus.

	Contract Demand (Kva)	Bill dated.	Consumption (kVAh)	Connected Load (Kw)
01.10.2019	7502	11.11.2019	4299450	7400
31.10.2019	8500	11.12.2019	4199450	9400
30.10.2020	9400	08.12.2020	5036800	9400

8. The above analysis reveals as under:
- a. that both the stages (8500 kVA & 9400 kVA) are followed by same connected load of 9400 kw and in one case where the contract demand enhances to 8500 kVA, there appears to be receding trend in the consumption pattern (normal & peak hours) as compared to the earlier contract demand of 7502Kva and also the next stage where the contract demand enhances to 9400 kVA, there is no substantial increase in the consumption.
9. In view of above comprehensive scrutiny, it is also inferred that the said expansion appears to be contractual one or enhancement in kVA without affecting substantial increase in monthly



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consumption, which does not indicate an expansion in terms of physical growth. This authority also agrees with Ld. CGRF findings on this issue which also provides transparent views on the term so called expansion.

10. In view of above findings, this authority is convinced with the arguments of the Assistant Engineer in respect of stages 31.10.19 and 31.10.2020 which had been considered as single enhancement due to having persistent connected load without increase in the connected load with increase in contract demand and upholds the action taken by the Respondent Board on settlement of above stages of enhancements considering single enhancement. Hence, the differential amount if it pertains to the said stages as raised by the Complainant, does not hold good and the refund on the expansion rebate as stands settled by the Respondent Board in the instant case is considered as maintained subject to authentication of calculations/computations by the concerned at their ends. However, the above findings do not include the interest part as prayed by the Complainant which shall be dealt separately in this order.

This closes the findings on issue -2

Issue No-3:

1. The findings on this issue attract contentions of the authorized representative for Complainant submitted through appeal as well as during final arguments that he is liable to avail refund of electricity



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duty charged on refundable overcharged amount of expansion rebate and further deliberated that such type of rebate had also been given earlier to consumers by the Respondents.

2. While doing findings on this issue, it is also imperative to give cognizance to the arguments given by the Ld. Counsel for respondents (Under Sectt. Law) on Electricity Duty and quoted Himachal Pradesh Electricity Duty Act 2009 & referred Section-2(c) narrating definition of “consumption” and Section-3(c) on “Leavy of Electricity Duty on Consumption or Supply of Energy” and declined in his arguments on applicability of refund of electricity duty charged on refundable overcharged amount of expansion rebate as contended by the Complainant, being the domain and prerogative of Government.
3. Giving further affect to his arguments, the Ld. Counsel mentioned Chapter-V on “Settlement of dispute and appeal thereof” of Himachal Pradesh Electricity Duty Rules 2010 for apprising “Adjudicatory Authority” and “Appellate Authority” for settlement of Electricity duty related disputes.
4. After going through the CGRF order dt 05.09.2024, referring to the documents placed on record, detailed arguments advanced on 28/10/2024, mentioning of relevant tariff orders, Himachal Pradesh Electricity Duty Act 2009 and Electricity Duty Rules 2010, this authority feels it necessary to reproduce relevant extracts of both Electricity Duty Act 2009 and Electricity Duty Rules 2010 for depiction of effective consensus and justice:



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A. THE HIMACHAL PRADESH ELECTRICITY (DUTY) ACT, 2009

*"2. (c) **"consumption"** in relation to electricity means electrical consumption per Kilowatt/KVA recorded as KWh or KVAh. by a licensee or consumer;*

3. Levy of electricity duty on consumption or supply of energy.

*— (1) There shall be levied and **paid to the State Government on the energy**, generated from any source, consumed by the Board, any licensee, electricity trader or generating company or **supplied by the Board**, such licensee, trader or company to the consumer, a duty to be called the electricity duty, in the following manner, namely: -*

(v) industrial consumers, —

(a) small industrial consumers - @ 9%,

(b) medium and large industrial consumers - @ 13%,

*(3) **For the purpose of computing the electricity duty, the consumption shown by the meter, starting after the first meter reading date, after the issuance of the notification under subsection (1) of section 3 shall be considered.***

*(2) It shall be the duty of the Board or the licensee consuming or **supplying electricity for consumption** to pay or collect the electricity duty from all the consumers in its area of consumption or supply in such form and pay the same to the State Government quarterly or in such manner, as may be prescribed.*

4. Collection and payment of electricity duty. —

*(1) The State Government shall have the first charge on the electricity duty and **neither the Board nor any licensee shall, without the previous sanction of the State Government, utilize this duty to reimburse itself for any amount**, which the State Government may owe to the Board or the licensee/ or any other agency.*

(2) It shall be the duty of the Board or the licensee consuming or supplying electricity for consumption to pay or collect the electricity duty from all the consumers in its area of consumption or supply in such form and pay the same to the State Government quarterly or in such manner, as may be prescribed.

8. Recovery of duty. —



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*(1) Any electricity duty due under this Act, or penalty imposed under section 7, **which remains unpaid, whether by a consumer to the Board or to the distributing licensee, or by the Board or the distributing licensee to the State Government, shall be recoverable as an arrears of land revenue or by deduction from the amounts payable by the State Government to the Board or the distributing licensee or such consumer.***

11. Power to exempt from payment of electricity duty. —

*(1) The State Government may, in public interest, by notification in the **Official Gazette, exempt any licensee, consumer or person from the payment of the whole or part of the electricity duty** for such period and subject to such conditions as may be specified in such notification.*

B. THE HIMACHAL PRADESH ELECTRICITY (DUTY) RULES, 2010
Chapter-III

10. Refund of excess duty. -

*If duty has been paid in excess of what is payable under the Act by the consumer or occupier of Diesel Generating Plant, **the Chief Electrical Inspector shall authorize the refund of the excess duty so paid to the consumers concerned.***

Chapter-V

14. Settlement of disputes and appeal thereof. -

*(1) In the case of a dispute between **the Board or the licensee and the consumer** regarding the liability of the consumer for the payment of the duty **or exemption there from**, the Chief Electrical Inspector shall decide the matter. An appeal against the order of the Chief Electrical Inspector shall lie within 3 months from the date of service of said order to the Principal Secretary, Multipurpose Projects and Power to the State Government.*

5. Let us examine the contentions of Complainant under Issue-3 in line with above relevant extracts in microscopic manners. This authority Conceives that the complainant has misconception and overlooked the essence of above prevalent provisions and gathers considered opinion



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for prudent disposal of contentions within the ambit of above directives as below:

- a. It is mirror clear from above provisions of Electricity Duty Act 2009 under section 3 on **“Levy of electricity duty on consumption or supply of energy”** that the Electricity Duty is levied on consumption of energy and for the purpose of computation of the electricity duty, the consumption **shown by the meter, starting after the first meter reading date is taken.** This is clearly an indicative that for levy of Electricity Duty, the Govt. is concerned with actual consumption of energy irrespective of rebate on energy given by any agency except Govt. Hence, the contention of the Complainant in the absence of any such directions / orders / notification issued by the Government to avail refund on Electricity Duty on overcharged amount of expansion rebate is not tenable in the instant case.
- b. that in terms of above provisions of Electricity Duty Act 2009 read with relevant extracts of clause 10 of Electricity (Duty) Rules 2010, it is amply clear without doubt that if duty has been paid in excess of what is payable under the Act by the consumer, **the Chief Electrical Inspector shall authorize the refund of the excess duty so paid to the consumers concerned.** But the instant case is quite different where the expansion rebate stands given by the Hon'ble Commission but the status of the total energy consumption remains same unless Government announces refund in such type of cases where



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Hon'ble Commission allows exemption on energy consumption. Thus, the said contention does not hold good in the instant case.

- c. In this context this authority also agrees with the findings of Ld. CGRF under para-12 of his said order which for the sake of reference is reiterated as under:

"No-where in the Tariff Orders passed by the Ld. HPERC has the rebate on expansion or excess consumption, been considered to have the net effect of reduction in actual consumption".

- d. Let us discuss another contention of the Complainant that such type of rebate had also been given earlier to consumers by the Respondents. This authority after referring to above mentioned relevant provisions of Electricity Duty Act 2009 and Electricity Duty Rules 2010 feels alarming and is convinced without any doubt that it is only the domain of Government to allow rebate/refund on Electricity Duty and in case, earlier such rebate stands granted as contented by the Complainant without any order/notification issued by the Government, warrants recovery in terms of **"Clause 8. Recovery of duty"** as reproduced above which further provides clear understanding that any "Electricity Duty" due under this Act, which remains unpaid, whether by a consumer to the Board shall be recoverable as an arrears of land revenue or by deduction from the amounts payable by such consumer.



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6. In terms of above analysis and findings, this authority draws considered opinion that the contention of complainant to avail rebate on Electricity Duty are based on surmises and even during submissions/arguments no such documents were placed on record which could have satisfied the modalities of provisions of clause- 8 of Electricity Duty Act-2009 & clause-10 of Electricity (Duty) Rules 2010, does not hold good in the present circumstances. Hence, not tenable.

This closes the findings on issue -3

Issue No-4:

1. While going through the contents of Complainant's appeal it has been observed that the Complainant contends to avail the payment of interest on the excess amount billed to him up-to the time of refund.
2. This kind of relief sought by the complainant draws attention of this authority for examination of prevalent provisions of supply code whether the same provides any mandate for applicability of interest in the instant case. The relevant provisions for the ease of findings are reproduced as under:

- a. Very specific part of the relevant extract of clause 5.7.3 of supply code 2009 is reproduced for analyzing applicability of the complainant for availing interest in the instant case which provides as under:

*“if the amount paid by the consumer is in excess of the revised bill, such excess amount will **be refunded through** adjustment first against any outstanding amount due to the licensee and then against the amount becoming due to the licensee immediately thereafter. The licensee*



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*will pay to such consumer interest on the excess amount--
-----"*

- b. Regulation 26a(ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman)

"to return to the complainant the undue charges paid by the complainant along with interest at the rate-----"

3. After resorting to detailed analysis on the contentions, listening to both the parties during arguments, it is asserted as under:

- a. that the Respondent stopped admissible expansion rebate after the bill for the month of October 2022 paid in the month of November 2022.
- b. that as per record, thereafter the Respondent paid Rs. 1,78,11,164/- as expansion rebate to the petitioner till November 2023 as due and admissible.
- c. It is further gathered from the record that the Respondent again started giving the benefit of the rebate to the petitioner till the month of the April, 2024 for the bill issued in May 2024. After the same, the Respondent again stopped with giving the benefit of the rebate.

4. While doing findings on this issue, from above analysis, it is conceded that the respondents stopped the expansion rebate in between and thereafter again started giving the benefit of the rebate without citing any concrete reason which are for the time being left for the outcome of committee to be constituted.

5. From this flip flop kind of action by the Respondent Board on its whims and fancies, this authority conceives considered opinion that the word "stopped rebate" gives meaning "not due" and word



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“started again” gives meaning “due” and lands to clear understanding that this unpredictable action of respondent makes complainant liable to avail interest during the intervention period of stop and start and attracts provisions of relevant extracts of clause 5.7.3 of supply code 2009 & Regulation 26----as reproduced under para 2(a)&(b) above. These views are not in consistent with the opinion of CGRF, as the above provisions provides such privilege in general irrespective of contentions, if appropriate.

6. While scrutinizing relief sought by the Complainant in respect of interest @15% towards refund claimed, this authority is of the opinion that the complainant has ignored the prevalent regulation and relied upon clause 5.7.3 of Supply Code (2nd Amendment) dt. 31st July, 2018, which is reproduced as under:

“4 Amendment of para 5.7.3- *In para 5.7.3 of the said code, for the words “interest on the excess amount at twice the SBI’s Short Term PLR prevalent on the first of April of the relevant year” the words “simple interest on the excess amount @15% per annum, or where the rate is fixed by the Commission at the rate so fixed, on daily basis” shall be substituted.”*

7. Whereas the complainant has not sought interest on refund as per amended Regulation 26 notified in 20th January, 2022 as Himachal Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) (Second Amendment) which is read as under:

“12. Amendment of Regulation 26.-



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(1) *In Sub-clause (ii) of clause(a) of Sub- regulation (2), for the words and figure “15percent”, the words and figure “12 percent” shall be substituted;”*

8. From the above analysis, the considered opinion is drawn that for claim of interest on refund sought on expansion rebate only, the amended Regulation 26 notified in **20th January, 2022** as Himachal Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) (Second Amendment) be considered instead of clause 5.7.3 of Supply Code (2nd Amendment) which was notified earlier on 31st July, 2018 and accordingly the legitimate rebate on interest during stop and start period shall be 12% instead of 15% if applicable after the findings of the committee.
9. In terms of above analysis and in the absence of not placing any reason on record of abrupt **“Stop and Start”** action, this authority concludes the findings on issue-4 and holds that complainant is liable to avail interest in intervening period of stop & start of expansion rebate if no such genuine reasons of stop and start lies with the Respondents. However, in view of the intricacy involved, in the public interest, **the implementation of these findings shall be subject to the outcome of Division level committee** to be constituted in the presence of one representative of complainant as per directions issued in this order under heading **“L-Order”** below.

This closes the findings on issue -4.

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L-Order:

1. The order passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti Shimla on dated 05/09/2024 in Complaint No. 1453/3/23/19. is upheld partially.
2. The issue raised by the Complainant for interest on refund of expansion rebate is sustained in principle with the following directions to the Respondent Board in line with findings on Issue-4 under the heading “J-Findings on the Issues” : -
 - a. To constitute a committee on Division level with one representative from Complainant side for prudent settlement of Issue-4 without prejudice.
 - b. Before implementations of findings of Issue-4, the Committee shall scrutinize the record prudently to assess the reasons of abrupt stop & start of expansion rebate in many occasions in the instant case and also examine whether any such provisions exist in the prevalent Tariff Orders which prompted Respondents to resort to this kind of unpredictable action in flip-flop manners.
 - c. After diligent examination of record, if found appropriate with legitimate reasons, the committee shall assess the amount of interest to be paid on expansion



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rebate only and on nothing else, during “Stop and Start” period of the different stages of expansion rebate after October,2022 onwards in line with the findings on Issue-4 to prevent further litigation thereof.

- d. The Committee to finalize the ambiguity within 15 days excluding holidays to the satisfaction of the Complainant from the date of issue of this order to avoid onus on individuals.
- e. The committee shall not allow any rebate and interest on electricity duty in line with the findings on Issue-3 under the heading “J-Findings on the Issues” unless or until, the Government issues or has issued such notification in the past during the disputed period to allow refund in consonance with relevant provisions of Electricity Duty Act-2009, this prerogative being the domain of the Government.

- 3. The Respondent Board is at liberty to make adjustment of amount so assessed by the committee payable to Complainant towards interest on expansion rebate if applicable, following methodology mandated as per clause 5.7.3 of supply code 2009 and rate of interest in terms of prevalent provisions as per amended Regulation 26 notified in 20th January,2022 of Himachal Pradesh Electricity Regulatory Commission



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**(Consumer Grievance Redressal Forum and Ombudsman)
(Second Amendment) in the ensuing bills.**

- 4. Under the powers drawn in terms of Regulation 37 (3)(d) (e) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, both Complainant and Respondent Board are directed to keep awareness of the subsequent Amendments to be issued by the Government and Hon'ble Commission respectively to avoid litigations and violations in future thereof.**
- 5. The Respondent Board is further directed to avert intervention of Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for appropriate action by the Commission under the provisions of the Electricity Act, 2003 and onus on individuals.**
- 6. The parties are at liberty to avail remedies as permissible under law.**
- 7. No cost to litigation.**
- 8. In terms of above findings, the Complaint filed by M/S Kundlas Loh Udyog, Village Balyana, P.O Barotiwala, Teh. Baddi, Distt. Solan-174103 is hereby disposed of.**



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9. The order is placed at site and conveyed telephonically for the convenience of reference.

Given under my hand and seal of this office.

Dated: 06/11/2024

Shimla



[Signature]
06/11/2024
Electricity Ombudsman