HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

In the matter of: **Complaint No. 06/2025**

M/s Milestone Gears Pvt. Ltd. Unit IX, Village Katha, P.O Baddi, Distt. Solan- (H.P)-173205

– Complainant

Vs

1. **The Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
2. **The Assistant Executive Engineer, Elect. Sub-Divn., HPSEBL Baddi -173205 (H.P)**
3. **The Sr. Executive Engineer, Electrical Division, HPSEBL, Baddi- 173205 (H.P)** **-Respondent**

Complaint No.06/2025 (Registered on 12/03/25)

(Orders reserved on 07/04/2025, Issued on 09/04/2025)

Counsel for:

The Complainant: **-Sh. Manik Seith, Advocate**
-Sh.Rakesh Bansal, Authorized Representative

The Respondents: **-Sh. Rajesh Kashyap, Advocate**
- Er. Sourav, Dhiman, ESD, Baddi

QUORUM

Er. Deepak Uppal
HP Electricity Ombudsman

H.P. Electricity Ombudsman Khalini, Shimla-2

HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

Order

1. The case was registered and received on 12/03/25, 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 28.02.25 passed by the Consumer Grievance Redressal Forum at Kasumpti in Complaint 1454/202406/17.
2. Case called, the matter was heard for admissions on 18/03/2025 and was admitted to the extent of initiation of proceedings. The Respondent Board was directed to submit reply on or before 29/03/2025 with a copy of reply to the Complainant and Rejoinder if any, by the Complainant immediately thereafter the submission of the reply by the Respondent Board.
3. Sh. Manik Seith, the ld. Counsel for Complainant addressed some deliberations on Regulation 26(2)(a)(b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and apprised austerity of application which were appreciable. The case was listed for final arguments on dt. 07/04/2025.
4. Case called, the matter was heard. The Respondent Board submitted reply on 29/03/2025 in compliance to this court order dt. 18/03/2025 and the authorized representative for the Complainant submitted Rejoinder-cum-Written Arguments in the court room on dt. 07/04/2025 which was taken on record. The counsel for Respondents and concerned Assistant Engineer appeared in the Court room along with the record and with the mutual Conesus of both the parties, the final arguments were conducted.
5. The deliberations made by the Assistant Engineer representing Respondent Board and participation in discussions were appreciable. Both ld. Counsel for Respondent Board and the Authorized Representative for the Complainant advanced their arguments to the brim. After listening to both the parties at length, the arguments were concluded and order reserved.

H.P. Electricity Ombudsman Khalini, Shimla-2

A-Brief Facts of the Case:

1. M/s Milestone Gears Pvt. Ltd. Unit IX bearing Consumer ID 200012000301 is a Large Industrial Power Supply (LIPS) Consumer of Respondent HPSEBL.
2. It is observed from the contents of submissions that the Complainant is aggrieved, being Respondents silent on the issue of interest on excess amount that remained with the Respondent Board till it was refunded and subsequently adjust electricity duty in the manner as already is being allowed by the Commercial Wing of the respondents to other consumers;
3. The detailed analytical facts of the case stand placed under the heading **"The Complainant's Submission"**, hence for the sake of brevity, the same are confined to the relevant one and not reiterated.

B-The Complainant's Submission:

PROLOGUE/ BACKGROUND:

The Complainant submits that they are filing the said complaint through Sh. Aman Tondon, authorized representative of the firm, who has been authorized vide resolution to sign, institute, verify swear affidavits, suits, complaints, appeal and other proceedings to protect the interest of Milestone Gears Pvt. Ltd. Unit IX and to engage counsel(s)/Advocate (s)/ representatives (s). The complainant firm is filing the said complaint under Regulation Nos. 28(1)(b) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013 as the complainant is not satisfied by the orders dated 28.02.2025 passed by the Ld. Forum. The complainant/applicant company is a consumer under the Electricity Act, 2003 i.e. Section 2 sub-Section 15 and the respondents are distribution licensee under Section 2 sub-section 17 of the Electricity Act, 2003. The complainant company is also a consumer under Section 3 (d) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013. The

H.P. Electricity Ombudsman Khalini, Shimla respondents/non-applicants have failed to adhere to the provisions of tariff orders notified from time to time by the Himachal Pradesh Electricity Regulatory Commission under the Electricity Act, 2003

and have stopped allowing any further the legitimate rebate on energy charges for the period notified in the tariff orders. The complainant approached the Consumer Grievances Redressal Forum of HPSEBL, for redressal of his grievance, who, in the end of the proceeding dismissed the complaint without any relief to the complainant.

1. Facts of the Case

Date	Event	Annexure
30.11.2021	The complainant set up a new industrial unit and a new industrial connection was released to the complainant. The complainant commenced commercial production w.e.f. 30.11.2021 (**Annexure C1**).	C1
26.09.2023	In the tariff order for the financial year 2021-22, it was notified that a rebate in energy charges will be allowed to the new industrial units which come into production after 01.06.2021. Para 13 (d) (**Annexure C2**) of the of the LIPS tariff order is reproduced below: "d. *For new industries coming into production on or after 01.06.2021, the energy charges shall be 15% lower than the approved energy charges for*	C2 & C3

H.P. Electricity Ombudsman Khalini, Shimla-2

	the respective category for a period of 3 years." The respondents carried on billing without allowing this rebate till this date, which is a legitimate right of the complainant as per the tariff order. The rebate that was to be allowed to the complainant amounts to Rs. 22,67,514. 54 upto the bill issued in the month of May, 2024, while the rebate period is still pending for a period of further six month i.e. upto the bill issued in the month of December, 2024. The respondents consequentially also overcharged the electricity duty on the overcharged amount of energy charges, which upto this date is calculated upto Rs. 1,58,579.15. This discrepancy in the bills was pointed out in the process of audit of the electricity bills.	
24.06.2024	The complainant aggrieved by the non-refund is approaching the Forum for necessary redressal of his grievance.	
17.01.2025	During the proceedings the respondents refunded an amount of Rs. 24,40,073/- only on account of	

	rebate calculated without any relief in terms of consequential reduced electricity duty. The respondents not even pay interest as was prayed by the complainant.	
28.02.2025	The CGRF disposed of the said grievance ordering no relief in electricity duty and interest on delay in adjustment of rebate.	

2. Grievance details:

2.1 The Complainant submits that they approached the Ld. Forum with a grievance regarding non-adjustment of rebates applicable to new industries under the provisions of the relevant tariff orders for the year 2021-22. The complainant prayed to the CGRF to allow the rebate computed by the complainant @ 15% as per tariff order for FY 21-22 for a period of three years. The respondents had issued the bills without allowing rebate for the entire period of three years. The complainant also prayed for the corresponding relief in the electricity duty as per the billing pattern adopted and approved by the Commercial wing of the respondents, which levies electricity duty on energy charges net of rebate. The complainant also prayed for interest in terms of clause 5.7.3 of the Electricity Supply Code, 2009, for the period of delay in allowing the appropriate rebate. The Ld. Forum turned down the relief sought by the complainant by not allowing corresponding impact on electricity duty. The Forum also disallowed the interest on the amount of rebate that has been refunded with delay by the respondents. Aggrieved by the

H.P. Electricity Ombudsman Khalini, Shimla-2

orders passed by the Ld. Forum, the complainant is filing this representation to this Hon'ble Appellate Authority.

3. **Grounds/ Contentions of the Complainant:**

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 orders passed by the Ld. CGRF are bad in law and deserve to be quashed and partially set aside as Ld. Forum has not passed the relief in terms of electricity duty on the amount of rebate, which automatically results if the bills are overhauled by the respondents. The applicability of the electricity duty is purely based on energy charges net of night concession and the rebates, which is also a pattern adopted by the Commercial Section of the respondents. The view of the commercial section of the respondents is also displayed in the Note 6 of the Electricity Bill attached at Annexure C-5 attached with this representation. The Foot Note 6 to the bill reads as :

"**6.** ***ED, LVSS, LVMS Charges calculate on net energy charge = (Energy Charge after considering NTC and Rebate***)."

The view of the Ld. Forum is bad in law as the same is not in line with the provisions of the Electricity Duty Act. 2009 according to which the electricity duty is calculated on energy charges, meaning thereby the reduced rate of energy charges in the cases where rebate is applicable.

3.2 That the orders passed by the Ld. CGRF are bad in law and deserve to be quashed and set aside as the Ld. Forum has incorrectly interpreted the meaning of clause 5.7.3 of the Supply Code, 2009. Clause 5.7.3 of the Supply Code, is a provision which is applicable in case of refund of excess billed amount by the licensee. The Ld. Forum also ignored the provision of Regulation 26(2) which two mandates the refund along with interest. It is submitted that the CGRF went against the express terms of the Clause 5.7.3, which is very clear and restricted in its applicability to a situation mentioned therein and that the same is in no way, relatable to the facts of the present case. Clause 5.7.3. is reproduced below for the perusal of the Hon'ble Ombudsman below:

> *"5.7.3 If on examination of a complaint, the licensee finds a bill to be erroneous, a revised bill will be issued to the consumer indicating a revised due date of payment, which will not be earlier than ten days from the date of delivery of the revised bill to the consumer. If the amount paid by the consumer under para 5.7.1 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. <u>The licensee will pay to such consumer simple interest on the excess amount @ 15 percent</u> per annum, or where the rate is fixed by the Commission at the rate so fixed, on daily basis from the date of payment till such time the excess amount is adjusted."*

3.3 That the Hon'ble Ombudsman has allowed the payment of interest on refund of rebates in several cases during this year in Case Numbers 10, 11 and 12 of 2024. The complainant is also eligible for interest on the basis of equity.

3.4 That the orders passed by the Ld. Forum are bad in law and deserve to be quashed as the Ld. Forum as the orders passed by the Forum are biased. The Ld. Forum being the part of internal redressal mechanism of the respondents have acted partially and has a bias towards the respondent who is their direct employer. The quorum of members which

H.P. Electricity Ombudsman Khalini, Shimla-2

has passed the impugned orders are direct employees of the respondent Board and no independent member has signed the orders.

3 Prayer

I In view of above the complaint prays as below:

a) To quash and set aside or partially modify the orders dated 28.02.2025 passed in Complaint No. 1454/202406/17 for the reasons stated in the representation;

b) To direct the respondents to adjust electricity duty in the manner as already is being allowed by the Commercial Wing of the respondents to other consumers;

c) 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 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;

d) To direct the respondents to compensate the complainant towards cost of the complaint amounting to Rs. 1,00,000/-.

e) To Call for the record of the case.

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:

I. PRELIMINARY SUBMISSIONS

1. The Respondent submits that the present complaint as filed by the complainant is not maintainable either in law or on facts. The complainant is seeking reliefs that are either beyond the scope of the HPERC (CGRF and Ombudsman) Regulations, 2013, or contrary to the binding tariff orders issued by the Hon'ble Himachal Pradesh Electricity Regulatory Commission (hereinafter "HPERC"). The complaint deserves outright dismissal for want of legal merit and jurisdiction.
2. The Respondent submits that there exists no justiciable cause of action in favour of the complainant. The grievance raised pertains to benefits and adjustments which have already been accorded in accordance with the applicable rules and regulations. The respondent has acted *bonafidely* and strictly in compliance with the relevant tariff orders and directions of the HPERC.
3. The Respondent submits that the impugned order passed by the Learned Consumer Grievances Redressal Forum (Ld. CGRF) is based on correct interpretation and application of the applicable regulations, circulars, and tariff orders. The Ld. Forum has meticulously considered all relevant facts and submissions before rightly rejecting the complaint. The reasoning and findings recorded in the impugned order are cogent and do not warrant any interference from this Hon'ble Authority.
4. The Respondent submits that the complainant has approached this Hon'ble Ombudsman with unclean hands. Material facts, including the timely adjustment of rebate amounting to ₹24,40,073/- in the energy bill for January 2025, have been willfully suppressed. This conduct disentitles the complainant to any equitable relief from this Hon'ble Forum.

H.P. Electricity Ombudsman Khalini, Shimla-2

II. REPLY ON MERITS

1. The Respondent submits that the rebate on account of "New Industrial Connections" has already been duly calculated for the period from April 2021 to March 2024. The total rebate of ₹24,40,073/- has been credited to the account of the complainant and reflected in the monthly energy bill for January 2025. This factual position has been concealed by the complainant. There is no pending claim or shortfall that survives for adjudication.
2. The Respondent submits that the contents of the complaint, to the extent they are based on the official record, are not denied. However, all other allegations, assertions, and statements made therein, which are inconsistent with the record or are speculative in nature, are specifically denied being false and baseless.

III. REPLY TO GROUNDS OF REPRESENTATION

3.1 The Respondent submits that the grounds taken in the representation are incorrect and misleading. The impugned order dated 28.02.2025 has been passed by the Ld. Forum after due consideration of all relevant regulations, including those framed under the Electricity Act, 2003. The complainant's allegations are devoid of substance and reflect a deliberate attempt to mislead the Hon'ble Ombudsman by cherry-picking irrelevant extracts and distorting the regulatory framework.

3.2 The Respondent submits that the complainant has misinterpreted the tariff order and overlooked the governing legal framework. The eligibility, quantum, and application of rebates are governed by the tariff orders issued by the Hon'ble HPERC, and not by any assumption or subjective understanding of the consumer. The matter has been rightly evaluated by the Ld. Forum based on the principles laid down under the Electricity Act, 2003 and the regulations issued thereunder.

H.P. Electricity Ombudsman Khalini, Shimla-2

3.3 The Respondent submits that the complainant is attempting to draw arbitrary and self-serving inferences from the tariff orders and is selectively quoting portions of the regulatory provisions to build a distorted narrative. The interpretation adopted by the Ld. Forum is legally sound and consistent with regulatory intent.

3.4 The Respondent submits that it is vehemently denied that the Ld. Forum ignored any rule, regulation, or tariff provision. The impugned order is a reasoned and well-documented decision which comprehensively addresses every issue raised in the complaint. The order leaves no scope for doubt regarding the correctness of the respondent's action or the regulatory compliance undertaken in computing and granting the rebate.

PRAYER

In light of the facts, submissions, and legal position as elucidated hereinabove, it is most respectfully prayed that this Hon'ble Electricity Ombudsman may graciously be pleased to dismiss the representation/complaint of the complainant as being devoid of any merit, and uphold the order dated 28.02.2025 passed by the Ld. Consumer Grievances Redressal Forum in the interest of justice and fair play.

D-<u>The Complainant's Additional Submission through Rejoinder -cum- Written Arguments:</u>.

1. The Complainant Submits that the contents of the Para 1 of the Preliminary Submissions are denied. There is no issue of jurisdiction in the present matter. The complainant has acted within his rights in approaching the Hon'ble Ombudsman being unsatisfied by the orders passed by the CGRF. The bona fide of the case are explained in detail in the representation.
2. The Complainant Submits that the contents of the para 2 of the Preliminary Submissions are totally denied.

H.P. Electricity Ombudsman Khalini, Shimla-2

3. The Complainant Submits that the contents of the Para 3 of the Preliminary Submissions are denied as the Forum has not allowed the relief which is admissible to the complainant under the law.
4. The Complainant Submits that the contents of the Para 4 of the Preliminary Submissions are denied and objected to. There is no suppression of the fact that Rs. 24,40,073/- were refunded in the energy bill, which is more than clear in the documents attached with the representation. Also, the refund is clearly mentioned in the Section "Facts of the Case" in the Representation. Also it would be noted that the complainant has excluded from the prayer that the balance of rebate is pending.
5. The Complainant Submits that the contents of this para 1 of the Reply on Merits, are denied to the extent that the factual position has been concealed in the representation with regard to the refund. The complainant has even attached the calculation sheet made by the respondents at Page 35 of the representation.
6. The Complainant Submits that the contents of the para 2 of the Reply on Merits are denied.
7. The Complainant Submits that the contents of para 3.1 to 3.4 of the Reply to the Grounds of the Representation are totally denied.

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.

H.P. Electricity Ombudsman Khalini, Shimla-2

G- The Arguments of both during proceedings :

1. The final arguments were conducted on 07/04/2025 and both the parties were given due opportunity to argue their contentions to the edge.
2. The authorised Representative for Complainant read out the contentions as submitted through Representation and informed the court that the Respondents have computed the rebate on account of "New Industrial Connections" for the period from April 2021 to March 2024 and total amount of Rs.24,40,073/- has been credited to the account of the complainant and reflected in the monthly energy bill for January 2025. The Assistant Engineer appeared as Respondents confirmed the same. The act of Respondents on this settlement in the interest of justice was appreciable.
3. The Id. Counsel and Authorised Representative for Complainant contended that in terms of clause 5.7.3 of the Electricity Supply code 2009, the respondents have not credited the interest due on the excess amount refunded towards rebate.
4. The Authorised Representative for Complainant further argued that he is entitled to avail refund of electricity duty charged on refunded overcharged amount of rebate as the applicability of the electricity duty is purely based on energy charges net of night concession and the rebates, which is also a pattern adopted by the Commercial Section of the respondents. The Id. Counsel for Complainant also added to his arguments that the foot note in the bills mentions about Electricity Duty being calculated on the net energy charges.
5. Thereafter, the ld. Counsel and Assistant Engineer appeared as Respondents advanced their arguments in context with interest on refunded amount of rebate and asserted that there is no provision in the tariff order to give interest on delayed rebate refunded and confined

H.P. Electricity Ombudsman Khalini, Shimla-2

arguments to the specific para of the order dt. 28.02.2025 issued by the ld. CGRF and further regarding electricity duty, inspite of above arguments of the Complainant on the view of Commercial Wing, the Respondents adhered that this is domain of Govt and the contentions of the Complainant on this account are not a viable proposition.

6. However, after listening to the arguments of Respondents on the applicability of interest, the Authorised Representative for Complainant argued that the clause 5.7.3 of the Supply Code is clear which provides that if the excess amount remains with the Respondent, the same is liable to be refunded along with interest in terms of prevalent provisions as it stands refunded in the instant case being excess amount retained and warrants compliance to the said provisions of supply code.

7. The Assistant Engineer appeared as Respondents after listening to the arguments emphasized that unless the bill is considered erroneous as per clause 5.7.1 of the supply code, the mandate of clause 5.7.3 cannot be exercised which was not a convincing one and this authority observed that here was a misconception with the Respondents to understand the essence of implementation of said clause 5.7.1 of the supply code read with clause 5.7.3.

8. This authority considered it proper to address the intricacy and added opinion that the bills in question are disputed when one informs licensee either through some written communication or files a representation before the competent court of law. The disputed amount in question already apprehended as an excess amount that stands paid to licensee, subject to final outcome of the findings of the pleadings. In case the judgement falls in favour of the Complainant, the disputed amount is considered as an excess amount remained with the Respondent and in exercise to the provisions of clause 5.7.1 read with 5.7.3 warrant refund

H.P. Electricity Ombudsman Khalini, Shimla-2

of excess amount alongwith interest as per provisions. After listening, both the parties agreed in principle on conception of said clauses which are operative.

9. The arguments advanced by both the parties were appreciable and after listening to both the parties at length, the arguments were concluded and order reserved.

H- <u>Order dt. 28/02/2025 of Consumer Grievance Redressal Forum :</u>

<u>ORDER</u>

1. (15) Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the Ld HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 (or the CGRF Regulations), HP Electricity Supply Code, 2009 and amendments thereto, various Tariff Order passed by the Ld HPERC and record as facts along with pleadings of the parties. Forum has heard the parties at length. The considered opinion of the Forum has been gathered after considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;

2. (16) Forum observes that the Respondent, has simply without citing any reason or justification, submitted in its Reply that it has made the payment of rebate in the electricity bill for January 2025 i.e after the complaint was filed. It is expected of the Respondent that the said refund may have been given by it after ascertaining the Complainant's eligibility for the same. Forum is constrained to observe that if an action to make the payment of rebate could have been taken during the pendency of complaint, then such action could also have been taken

H.P. Electricity Ombudsman Khalini, Shimla-2

by the Respondent ab-initio so as to prevent this litigation. However, because the contention and issue of the Complainant with regard to its entitlement of rebate admissible to New Industries has been settled by the Respondent which is also acknowledged by the Complainant with further statement that no amount is pending, thus nothing survives on this contention and issue for further determination by the Forum. The issue raised by the Complainant with regard to its entitlement for rebate admissible to New Industries is accordingly disposed;

3. (17) Thus, the only issues of refund of Electricity Duty and Interest raised by the Complainant, remain for determination by the Forum, which are dealt hereinafter--

4. (18) On the issue of refund of Electricity Duty (ED) raised by the instant Complainant, Forum is inclined to specifically look into the facet of the Electricity Duty –

5. (19) Forum, from bare perusal the HP Electricity (Duty) Act, 2009 finds that Electricity Duty (ED) is a levy by the Government. This is collected by the Respondent on behalf of the Government on actual consumption of electricity made by consumer or supply of electricity by the licensee in accordance with the HP Electricity (Duty) Act, 2009. 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 or on reduction of ED. Other-wise also, such a proposition would be absurd for the simple reason that actual consumption remains actual and not nominal and also because the Electricity Duty is the specific domain of the Government as well as property of the government and not the Respondent's or the HPERC's. This Electricity Duty while being applicable on electricity consumption or supply is simply to be

H.P. Electricity Ombudsman Khalini, Shimla-2

calculated on energy charges. Further, the Complainant has no-where shown that it has not consumed the electricity which has been billed to it. Thus, any monetary rebate cannot have any effect what-so-ever on reduction of Electricity Duty nor can these entitle the Complainant for its refund;

6. (20) In view of foregoing, Forum holds that while the Electricity Duty is the specific domain of the Government however, the Complainant is still not at all eligible for any refund of Electricity Duty by the Respondent that may have arisen from rebates being claimed by it or rebates that may have been passed on to the Complainant by the Respondent or allowed by the HPERC. The arguments and contentions raised by the Complainant for refund of Electricity Duty is thus rejected and accordingly disposed.

7. (21) On the issue raised by the Complainant for payment of Interest in accordance with code 5.7.3 of the HP Electricity Supply Code, 2009, Forum does not find any reference to payment of Interest on rebates in the Tariff Orders passed by the HP Electricity Regulatory Commission. The Forum now proceeds to look into the specific facet of payment of Interest arising from the non-payment of said rebates, in accordance with regulations notified by the HPERC –

8. (22) Forum observes that on a claim raised for rebates raised by the consumer, at the outset the quantum and question of its eligibility and entitlement has to be assessed and established by the Respondent distribution licensee based on Tariff Orders passed by the Ld HPERC and Codes / Regulations notified by the HPERC. Once the same has been assessed, established, determined and paid by the distribution licensee, shall the question of payment of any Interest arise on the

H.P. Electricity Ombudsman Khalini, Shimla-2

principle amount so determined. At the same time, such shall have to permitted by the HPERC through its Regulations or Tariff Orders;

9. (23) 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 by the Complainant due to erroneous billing. Forum holds that mere non-inclusion of the said rebate by the Respondent in a bill does not make the bill to become erroneous;

10. (24) Forum from examination of Tariff Orders passed by the Ld HPERC and Code / Regulations notified by the HPERC, further observes that no provision has been made therein with regard to payment of Interest on delayed payment of the said rebate. This rebate is separate which is to be paid or not by the Respondent after ascertaining whether the industry is a new one;

11. (25) In view of foregoing, the Forum holds that the payment of Interest to the Complainant by the Respondent on delayed payment of Rebates by the Respondent has not been provided in Tariff Orders passed by the Ld HPERC and neither is it specified in Code / Regulations notified by the HPERC. In view of foregoing discussion, Forum holds and concludes that the Complainant is accordingly not entitled for any Interest in accordance with ibid code 5.7.3 of Supply Code, 2009 arising from delayed payment of the said rebate applicable for new industries. Thus, the contention raised by the Complainant with regard to refund of Interest on rebate is also rejected by the Forum and is accordingly disposed.

12. (26) In view of foregoing discussion, Forum finds and holds that there is no contravention of Tariff Orders by the Respondent;

13. On aforesaid terms, the complaint is Disposed;

H.P. Electricity Ombudsman Khalini, Shimla-2

I-Analysis of the Complaint:

1. The case file bearing Complaint No. 1454/202406/17 and orders passed on dated 28/02/2025 by the Consumer Grievance Redressal Forum Kasumpti, Shimla-171009 have been requisitioned and gone through.
2. The relevant extract of the said order of the Ld. CGRF have been reproduced under the heading **"H"** above to arrive at legitimate conclusion.
3. The submissions made by the Complainant, reply submitted by the Respondents and Rejoinders-cum-Written Arguments submitted by the Complainant have been incorporated in entirety to have composite view of the entire case.
4. The documents annexed and placed on record; arguments offered by both the parties have also been gone through in depth.
5. The appropriate Acts, Supply Codes, Tarif Orders have been referred to for clarity.
6. M/s Milestone Gears Pvt. Ltd. Unit IX bearing Consumer ID 200012000301 is a Large Industrial Power Supply (LIPS) Consumer of Respondent HPSEBL.
7. The scrutiny of the contentions in ordinary terms reveal that the Complainant contends for interest on excess amount that remained with the Respondent Board till it was refunded and subsequently adjust electricity duty in the manner as already is being allowed by the Commercial Wing of the respondents to other consumers;
8. The further minute view on representation reveals following specific contentions which shall be subject to the outcome of the findings thereof:
   - **a.** To quash and set aside or partially modify the orders dated 28.02.2025 passed in Complaint No. 1454/202406/17 for the reasons stated in the representation;
   - **b.** To direct the respondents to adjust electricity duty in the manner as already is being allowed by the Commercial Wing of the respondents to other consumers;

H.P. Electricity Ombudsman Khalini, Shimla-2

c. 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 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;

9. The Respondents on the other hand have confined reply to the extent of CGRF order dt. 28.02.2025 and prayed for upholding the same.

10. The detailed contentions of both Complainant and Respondents for the sake of reference, can be seen under the heading **"B & C"** of this order respectively.

11. The contentions of the Complainant detailed under the heading **-B**, response of Respondent Board detailed under the heading-**C** & Rejoinder-cum-Written Arguments under the heading **-D** and Arguments conducted by both the parties at length & placed under the heading -G, gathers considered opinion to originate the following issues and for the sake of brevity, the detailed analysis also has been done along with findings of the issues to have transparent view on discussions.

J-<u>Issues in Hand</u>:

Issue No-1:

Whether the instant Representation is maintainable?

Issue No-2:

Whether the Complainant is entitled to avail the payment of interest as contended?

Issue No-3:

Whether the Complainant is entitled to avail refund of electricity duty charged on a refundable overcharged amount in the instant case?

K-Findings on the Issues:

Issue No-1:

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 present complaint as filed by the complainant is not maintainable either in law or on facts. The complainant is seeking reliefs that are either beyond the scope of the HPERC (CGRF and Ombudsman) Regulations, 2013, or contrary to the binding tariff orders issued by the Hon'ble Himachal Pradesh Electricity Regulatory Commission (hereinafter "HPERC"). The complaint deserves outright dismissal for want of legal merit and jurisdiction.

2. This authority asserts in the interest of justice that unless the Representation filed, falls beyond the jurisdiction of this authority which could be pronounced at the very outset non-maintainable or unless adjudicated, this authority feels judicious to honor the 'Hierarchy of Adjudication System' as advised by the Hon'ble High Court Shimla in order dt.27/03/2024 in CMPMO No. 449 of 2023 in the matter of "M/S Vardhman Ispat Udyog Vs HPSEBL".

3. However, no such averments were cited even during arguments by the Respondents which could have substantiated their contentions and drawn attention of this authority towards maintainability.

4. In view of above and exercising the provisions in terms of regulation 33(2,3) read with 36(2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 where the Ombudsman is guided by the principle of natural law of justice, this authority feels judicious to give opportunity in terms of Regulation 33(3), the relevant extract of which is read as" *Provided further that no representation*

H.P. Electricity Ombudsman Khalini, Shimla-2

shall be rejected in respect of sub-clauses (a),(b),(c) unless the Complainant has been given an opportunity of being heard", warrants contentions to be heard which cannot be judged unless an opportunity of being heard is given in terms of said provisions and might carry reasonable arguments in the interest of justice. So, in due cognizance to the above provisions and subject to the outcome of the proceedings, the Complaint is held maintainable only for initiation of proceedings /adjudications of grievances in the public interest.

This closes the findings on issue-1

Issue No.-2

1. While going through the contentions it has been observed that the Complainant contends to avail interest on the excess amount refunded/ billed to him.
2. This authority is of the considered opinion that unless the status of New industry, expansion /installation is recognized by the Respondent Board subject to completion of all codal formalities, the Complainant does not become entitle for such rebate/refund as well as its consequential benefits i.e interest etc.
3. After examining the documents placed on record and arguments conducted, this authority asserts that in the instant case the Respondent Board recognized the action of installation of new unit as legitimate in terms of provisions and refunded an amount of Rs.24,40,073/- in energy bill of January,2025 while the proceedings were operative before the ld. CGRF in Complainant No. 1454/202406/17 and ld. CGRF also added in para (16) of its order dt.28.02.2025, the very relevant part of the said para is replicated for the sake of clarity as under:

   para (16) "*It is expected of the Respondent that the said refund may have been given by it after ascertaining the Complainant's eligibility for the same.*"

H.P. Electricity Ombudsman Khalini, Shimla-2

"However, because the contention and issue of the Complainant with regard to its entitlement of rebate admissible to New Industries has been settled by the Respondent which is also acknowledged by the Complainant with further statement that no amount is pending, thus nothing survives on this contention and issue for further determination by the Forum. The issue raised by the Complainant with regard to its entitlement for rebate admissible to New Industries is accordingly disposed;"

4. In view of the above findings and arguments conducted, this authority draws unambiguous inferences that the above amount was released by the Respondent Board only when arrived at legitimate mutual consensus that the excess amount kept on paying by the Complainant since inception of New Industry had been erroneously charged by the Respondent contrary to the provisions which was ultimately refunded after assessing the eligibility of the Complainant in terms of prevalent provisions of the Tariff Order for FY 21-22 notified on 01.06.2021 and in consonance with the spirit of provisions of clause 5.7.3 of the supply code. This authority appreciates the steps taken by the Respondent Board towards refund appended in due honor to the provisions constituted for the purpose.

5. In view of above, this authority deduces that the action of refund of said amount construes an excess/undue amount paid by the Complainant that remained with the Respondent Board, was released after completing all codal formalities of reorganization of installation as New industry and further in exercise of the following provisions, makes the Complainant also eligible to avail interest in the instant case:

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:

H.P. Electricity Ombudsman Khalini, Shimla-2

"--------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 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------"

6. While scrutinizing relief sought by the Complainant in the instant case in respect of interest @15% towards refund, this authority concedes that the complainant has ignored the prevalent regulation and relied upon clause 5.7.3 of Supply Code (2nd Amendment) dt. 31st July, 2018 in isolation 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 given cognizance to the rate of interest i.e. 12% for the period falling within the scope of amended Regulation 26a(ii) notified on 20th January,2022 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) (Second Amendment) which is read as under:

"12. Amendment of Regulation 26.-

(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, it is conceived that in analytical terms, for the claim of interest on refund sought, needs computation of interest in terms of clause 5.7.3 of Supply Code (2nd Amendment) dt. 31st July, 2018 @15% for the period till applicable read in conjunction with the Regulation 26a(ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) (Second Amendment) notified on 20th January,2022 @12% for the period falling within the scope of amended Regulation 26a(ii) in terms of above provisions in due cognizance to the prospective effect of such amendments, not in isolation.

9. In view of forgoing analysis/findings, the contention of the Complainant is sustained and this authority diverges from the findings of ld. CGRF under para (25) of its said order dt.28.02.2025 in this regard.

This closes the findings on issue -2.

Issue No-3:

1. The Complainant contends that he is entitled to avail refund of electricity duty charged on refunded overcharged amount of rebate and further deliberated through arguments as well that the applicability of the electricity duty is purely based on energy charges net of night concession and the rebates, which is also a pattern adopted by the Commercial Section of the respondents. The view of the commercial section of the respondents is also displayed in Note 6 of the Electricity Bill attached at Annexure C-5 with this Representation. The Foot Note 6 to the bill reads as:

H.P. Electricity Ombudsman Khalini, Shimla-2

"**6.** ***ED, LVSS, LVMS Charges calculate on net energy charge = (Energy Charge after considering NTC and Rebate***)."

2. After going through the CGRF order dt 28.02.25, referring to the documents placed on record, detailed arguments advanced on 07/04/2025, mentioning of relevant tariff orders, Himachal Pradesh Electricity Duty Act 2009 and Electricity Duty Rules 2010, this authority in due cognizance to the austerity of the issue, 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:

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.*

H.P. Electricity Ombudsman Khalini, Shimla-2

Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

(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. —

(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.*

3. Let us examine the contentions of Complainant in line with above relevant extracts of provisions in microscopic manners. This authority conceives that the complainant has misconception on implementation of above provisions and overlooked the spirit of above mandates and is trying to fetch meaning of the relevant Act & Rules of his own benefit only by referring to the provisions in isolation, not in conjunction. In view of this lapse of understanding on the part of Complainant, this authority deduces the following crux from the above directives:

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. It also provides transparent meaning that the energy taken for computation of Electricity Duty is the reading taken starting after the first reading date which is independent of all kinds of rebates announced by any agency, except Govt. Hence, the contention of the Complainant in the absence of any such directives / orders / notification issued by the Government in terms of section "**11. Power to exempt from payment of electricity duty"**, is not tenable in the instant case and construes as remained unpaid towards Govt.& in terms of Section 8(1) of Electricity Duty Act 2009 under "**Recovery of duty**" warrants recovery at concerned ends if allowed without notification of Govt.

b. That in terms of above provisions of Electricity Duty Act 2009 read with relevant extracts of **clause 10 "Refund of excess duty" 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**. Thus, the said contention does not establish its viability in the instant case.

H.P. Electricity Ombudsman Khalini, Shimla-2

c. In this context this authority also agrees with the findings of Ld. CGRF under para-19 of said order dt. 28/02/25 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 or on ED*".

d. This authority feels alarming after referring to the contentions of the Complainant under para-3.1 of the Representation read with above mentioned relevant provisions of Electricity Duty Act 2009 and Electricity Duty Rules 2010 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 contrary to the above provisions without any order/notification issued by the Government in accordance with Section11(1) of Electricity Duty Rules 2010 **"Power to exempt from payment of electricity duty "** warrants recovery in terms of Section 8(1) of Electricity Duty Act 2009 under "**Recovery of duty** as reproduced above.

4. After delving above statutory provisions of both Electricity Duty Act 2009 & Electricity (Duty) Rules 2010, being prerogative of the Government, affirms that the Issue No-3 appears to be dispute between the Complainant& Licensee and qualifies the mandate of clause 14 of Himachal Pradesh Electricity Duty Rules 2010 for raising the dispute , the specific part of the said clause is recapped as "***(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.*"

5. This authority feels it pertinent to mention here that in all of its respective Tariff orders, the Hon'ble Commission has categorically mentioned in

"General Conditions of Tariff and Schedule of Tariff" under para-B which is replicated for the sake of reference as under:

> *"**B.** The rates mentioned in this Schedule of Tariff are exclusive of electricity duty, taxes and other charges already levied or as may be levied by the Government of Himachal Pradesh from time to time."*

6. In view of forgoing findings, this authority draws considered opinion that settlement on this account does not fall in the jurisdiction of this authority and the Complainant can avail alternate remedy of competent court of law in terms of **clause-14. "Settlement of disputes and appeal thereof."** of Himachal Pradesh Electricity Duty Rules 2010 which provides for both **"Adjudicatory Authority"** and **"Appellate Authority"** for settlement of Electricity Duty related disputes. Hence, the contention on this account does not hold good.

This closes the findings on issue -3

L-Order:

1. **In terms of findings under Issue No.2, the order passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti Shimla on dated 28.02.25 in Complaint No. 1454/202406/17 is upheld partially.**
2. **The Respondent Board is directed to overhaul the accounts of the Complainant after authenticating from the record the period and the amount of rebate if any remaining to be refunded.**
3. **The Respondent Board is further directed to pay interest in terms of findings under Issue No.-2 and in terms of prevalent provisions for the amount of rebate till it remained as an excess amount with Respondent considering the period of three years until expires while overhauling the accounts thereof.**

H.P. Electricity Ombudsman Khalini, Shimla-2

4. **The amount of interest to be computed in terms of clause 5.7.3 of Supply Code (2nd Amendment) dt. 31st July, 2018 for the period till applicable read in conjunction with the Regulation 26a(ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) (Second Amendment) notified on 20th January,2022 for the period falling within the scope of amended Regulation 26a(ii) in due cognizance to the prospective effect of such amendments, not in isolation.**
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. **No cost to litigation.**
7. **In terms of above findings, the Complaint filed by "M/s Milestone Gears Pvt. Ltd. Unit IX, Village Katha, P.O Baddi, Distt. Solan- (H.P)-173205" is hereby disposed of.**
8. **The order is also placed at site and conveyed telephonically for the convenience of reference.**

H.P. Electricity Ombudsman Khalini, Shimla

Given under my hand and seal of this office.

Dated: 09/04/2025
Shimla

09/04/2025

Electricity Ombudsman