

**Appellate Tribunal for Electricity**

**(Appellate Jurisdiction)**

**Review Petition No.3 of 2012**

**In Appeal No. 144 of 2010**

**Dated 30<sup>th</sup> May, 2012**

**Coram : Hon'ble Mr. Rakesh Nath, Technical Member**

**Hon'ble Mr. Justice P.S. Datta, Judicial Member**

**In the matter of**

1. M/s Joginder Castings Pvt. Ltd., G.T. Road, Sirhind Side, Mandi Gobindgarh, (Pb.), through Mr. Sanjay Gupta, Authorized Signatory-147301.
2. M/s Aman Alloys (P) Ltd., G.T. Road, Sirhind Side, Mandi Gobindgarh, (Pb.), through Mr. Harish Kumar, Authorized Signatory-147301.
3. M/s A.R. Castings Pvt. Ltd., G.T. Road, Sirhind Side, Mandi Gobindgarh, Distt. Fatehgarh Sahib, (Pb.), through Mr. Ashok Kumar, Authorized Signatory-147301.
4. M/s bansal Alloys & Metals Pvt. Ltd., G.T. Road, Sirhind Side, Mandi Gobindgarh, (Pb.), through Mr. Vijay basal, Authorized Signatory-147301.
5. M/s bassi Alloys Pvt. Ltd., Vill. Ambey Majra, Mandi Gobindgarh, (Pb.), through Mr. Gaurav Singla, Authorized Signatory-147301.

6. M/s Bhawani Castings Pvt. Ltd. G.T. Road, Vill. Ambey Majra, Mandi Gobindgarh, (Pb.), through Mr. T.P.Singh, Authorized Signatory-147301.
7. M/s Dutt Multimetals Pvt. Ltd. G.T. Road, Vill. Ambey Majra, Mandi Gobindgarh, (Pb.), through Mr. Naresh Kumar Gupta, Authorized Signatory-147301.
8. M/s Hansco Iron & Steels Pvt. Ltd. , Jalalpur Chowk, Amloh Road, Mandi Gobindgarh, (Pb.), through Mr. Subhash Bansal, Authorized Signatory-147301.
9. M/s Mandi Alloys Pvt. Ltd. G.T. Road, Vill. Ambey Majra, Chattarpura Road, Mandi Gobindgarh, (Pb.), through Mr. Rajesh Garg, Authorized Signatory-147301.
10. M/s Nabha Steel Pvt. Ltd. Opp. Octroi Post (Sirhind Side), G.T. Road, Mandi Gobindgarh, (Pb.), through Mr. Ajay Goyal, Authorized Signatory-147301.
11. M/s Pushpanjali Steel & Alloys Ltd., Nabha Furnace Road, G.T. Road, Mandi Gobindgarh, (Pb.), through Mr. Ajay Goyal, Authorized Signatory-147301.
12. M/s Oasis Enterprises Pvt. Ltd., Vill. Talwara, Talwara Road, Mandi Gobindgarh, (Pb.), through Mr. Sanjay Gupta, Authorized Signatory-147301.
13. M/s Punjab Steels, Vill. Turan, Amloh Road, Mandi Gobindgarh, (Pb.), through Mr. Chander Prakash Mittal (Partner)-147301.
14. M/s Punjab Steel Forgings & Agro Indus,P.O.Box-70, G.T. Road, Khanna Side, Mandi Gobindgarh, (Pb.), through Mr. Sandeep Kumar (Partner)-147301.
15. M/s R.P. Multimetals Pvt. Ltd., Amloh Road, Vill. Salani, Mandi Gobindgarh, (Pb.), through Mr. Ashish Singla, Authorized Signatory-147301.

16. M/s Ranjeev Alloys Ltd., Amloh Road, Mandi Gobindgarh, (Pb.), through Mr. Rajeev Bhatia, Authorized Signatory-147301.
17. M/s Ranjeev Steels Pvt. Ltd., Amloh Road, Mandi Gobindgarh, (Pb.), through Mr. Rajeev Bhatia, Authorized Signatory-147301.
18. M/s Raja Alloys & Metals Pvt. Ltd., Backside Focal Point, Vill. Ajnali, Mandi Gobindgarh, (Pb.), through Mr. Amandeep Singla, Authorized Signatory-147301.
19. M/s Sona Castings Pvt. Ltd., G.T. Road, Sirhind Side, Mandi Gobindgarh, (Pb.), through Mr. Pawan Kumar Goyal, Authorized Signatory-147301.
20. M/s Vimal Alloys Pvt. Ltd., Shop No.445, Sector 3-C, G.T. Road, Mandi Gobindgarh, (Pb.), through Mr. Vimal Vinod Bansal, through Authorized Signatory-147301.
21. M/s K.C.Soni Sons Steel Pvt. Ltd., Unit NO.2 behind PSPCL Grid Vill Kumbh, Amloh Road, Mandi Gobindgarh, (Pb.), through Mr. Kunal Soni through Authorized Signatory-147301.

.....Review Petitioner(s)

Vs.

1. The Punjab State Electricity Board, now known as Punjab State Power Corporation Limited through its Chairman-cum-Managing Director, The Mall, Patiala-147001.
2. Punjab State Electricity Regulatory Commission through its Registrar, SCO No.220-21, Sector 34-A, Chandigarh-160034.

.....Respondent(s)

Counsel for the Petitioner(s) : Mr. Puneet Anand  
Mr. Dinkar Kumar, Advocates  
Counsel for the Respondent(s): Mr. Anand K. Ganesan, Advocate  
for Respondent No.1

### **JUDGEMENT**

#### **HON'BLE MR. JUSTICE P.S. DATTA, JUDICIAL MEMBER**

1. The review petitioners are one set of appellants in a batch of 10 appeals being No. 57 of 2008, 155 of 2007, 125 of 2008, 45 of 2010, 40 of 2010, 196 of 2009, 199 of 2009, 163 of 2010, 6 of 2011 and 144 of 2010. It is the last appeal as mentioned above wherein the present review petitioners were the appellants (Appeal No.144of 2010). This batch of 10 appeals was decided by a comprehensive and consolidated judgment on 11.1.2012 by this Tribunal and 22 issues involved therein were decided. Of them, the issue no.11 was “*whether the Commission was justified in disallowing rebate?*”

2. This issue was decided by this Tribunal with the following reasoning which we quote herein below:-

*54. The question of withdrawal or discontinuance of rebate has been agitating the industrial consumers right from the tariff of FY 2007-08. With regard to this issue there has been, however, no positive affirmative indication by this*

*Tribunal in Appeal No. 4 of 2005 for its continuance. In Appeal No. 155 of 2007 and Appeal No. 57 of 2008 it has been alleged that incentive by way of rebate to compensate in respect of the transmission line loss, transformation loss and cost of capital was not given. In Appeal No. 125 of 2008, the same was agitated that the appellant incurred loss of 24 crore and it was required of the Commission to provide for rebate to compensate by way of incentive at 11% at least on account of transmission loss, transformation loss and cost of capital that would be required for creating an operating infrastructure at 66 KV. In Appeal No. 199 of 2009 and 196 of 2009 it has been contended that rebate to HT consumers was disallowed contrary to the principles followed by the Commission in its previous tariff order. The same question has been raised in the subsequent appeal too.*

*54.1 It was in the tariff order for FY 2009-10 that this issue has been very objectively dealt with by the Commission in detail. It is the main contention that in the draft conditions of supply that was issued to public notice by the Commission in November, 2008 and discussed in a meeting of the State Advisory Committee held on 22.01.2009 it was stipulated that all consumers would be supplied with electricity at the voltage commensurate with the load or contract demand as specified in the conditions of supply. The Board was required to release all new connections and additional demand at the voltage specified in the conditions of supply for last 10 years and there was hardly any reasoning in affording relief in the form of grant of rebate when supply is provided against specified voltage for a particular category of consumer. Says the Commission:*

***“The Commission also observes that there is a need for the existing consumers getting supply at a lower voltage to convert to the specified voltage for benefit of the system and to reduce T & D losses. However, actual conversion of supply voltage of the existing consumers will require some time. There could also be technical constraints in conversion of supply voltage or release of new connection and /or additional load/demand at the prescribed supply voltage which merits consideration”.***

*The Commission further observes:-*

***“There could some consumers who were getting supply at a voltage higher than the specified in the conditions of supply. Thus, their investment in providing the required infrastructure / sub-station and bearing maintenance cost thereof besides transformation losses and carrying cost of investment may need to be considered on separate footing as their action is definitely helping the utility in reducing T & D losses”.***

**54.2 Accordingly, the Commission concludes:-**

*“In the light of the above observations, the Commission decides to discontinue all voltage rebate w.e.f. 1<sup>st</sup> April, 2010.....\* .\* The Commission further decides that as existing consumer getting supply at a higher voltage than specified in the conditions of supply will for the present be entitled to a rebate in the tariff at the prevailing rates specified in the General Conditions of Tariff”.*

54.3. We do not think that the finding of the Commission can in the circumstances be faulted with and are not sufficient to answer the plea of the industrial consumers that the rebate should continue for the existing as well as new consumers. When supply is proposed to be linked to the voltage commensurate with the load/contract demand, there cannot be any upward revision of rate from 3% to 10% to compensate for depreciation or incremental transmission and transformation loss. Moreover, the movement for determining the cost of supply, which it is nobody's case to get a back foot, will necessarily have relevance with the rational and objective determination of tariff having regard to the eye on the cost of supply. The grant of rebate has rightly it has been suggested historical perception and once the Commission is legally obligated upon to determine the tariff in accordance with the National Electricity Policy, the National Tariff Policy and the provision of Section 61 of the Act, the past practice of the Board to grant rebate on the ground that industrial consumers received supply at high voltage direct from the transmission system lost its relevance. This issue is decided accordingly.

3. It is the case of the review petitioners that the above finding made by this Tribunal consisting of two members runs counter to a decision of Full Bench of this Tribunal in Appeal No.14 & 15 of 2010 decided on 31.8.2010, as such it is argued upon pleading that the above finding should be withdrawn in order that the decision in the batch of 10 appeals on this issue becomes consistent with the issue decided by the Full Bench in the aforesaid two appeals on 31.8.2010.

4. We have heard Mr. Puneet Jindal and Mr. Dinkar Kumar, learned advocates for the review petitioners/appellant and Mr. Anand K. Ganesan, learned advocate appearing for the Punjab State Electricity Board, now known as Punjab State Power Corporation Ltd.

5. In order to appreciate the argument of the learned counsel for the review petitioners, we think it proper to reproduce Paragraph 3 to 10 of the said two appeals.

*“3. In these Appeals, several grounds have been raised by the Appellants seeking to set aside the order relating to the withdrawl of the rebate, contending that the rebate had been withdrawn without any proposal being made by the Electricity Board and without issuing public notice on that said issue and, that therefore, the order impugned to that extent is required to be set aside.*

*4. While going through the entire record and the impugned order, we feel that it would suffice to consider the question whether the State Commission could exceed its jurisdiction while deciding to discontinue all the voltage rebates with effect from 01.04.2010 in the tariff order for FY 2009-10. On this question, the Appellants would contend that in the tariff order relating to FY 2009-10, the State Commission cannot decide about the rebate being withdrawn with effect from 01.04.2010 as this could be decided only in the next year’s tariff order for FY 2010-11.*

*5. It is contended by the Appellant that in para 5.5.3 of the said order, the State Commission has specifically dealt with withdrawl of rebate holding that all voltage rebates are to be discontinued with effect from 01.04.2010. Admittedly, this is a single year tariff and not a Multi Year Tariff. Therefore, the State Commission is concerned only with the tariff application for FY 2009-10 to decide about the issue which arises for the period from 01.04.2009 up to 31.03.2010.*

*6. In this case, the decision has been taken by the State Commission in the application relating to FY 2009-10 that the rebate will be discontinued with effect from 01.04.2010 thereby*

*the State Commission has exceeded its jurisdiction by deciding the withdrawal of the rebate with effect from 01.04.2010.*

*7. The Learned Counsel for the State Commission has pointed out that in para 5.5.1 and 5.5.2 the State Commission has given valid reasons showing the circumstances to withdraw the rebate. We do not propose to discuss about the validity of the reasonings for withdrawal of the rebate as contained in the para 5.5.1 and 5.5.2. But we are only to point out that the State Commission cannot decide about the issue relating to the FY 2010-11 in the application filed by the Respondent Electricity Board in relation to FY 2009-10.*

*8. So, without going into the merits of the reasons for withdrawal of rebate, we deem it fit to set aside the decision and direction given in para 5.5.3 with regard to withdrawal of rebate which would come into effect with effect from 01.04.2010.*

*9. We further make it clear that we are not giving any opinion in respect of reasons given for withdrawal of the rebate contained in para 5.5.1 and 5.5.2 of the impugned order. It is open to the State Commission to decide about the withdrawal of the rebate from 01.04.2010 in the application filed for the tariff determination in respect of FY 2010-11. The merits of the reasons may be considered by this Tribunal in the Appeals filed by the Appellants challenging the tariff order for the FY 2010-11.*

*10. With these observations, the finding given in para 5.5.3 of the impugned order alone is set aside. Consequently, these Appeals in 14 and 15 of 2010 are allowed.”*

6. The aforesaid judgment which we have extensively quoted clearly makes out the following position:-

- a) The question of withdrawal or retention, or of allowance or disallowance, or of continuance or discontinuance of rebate was not decided on merit by the Tribunal in appeal No. 14 & 15 of 2010.
- b) The question of res judicata is completely misnomer.
- c) What this Tribunal observed was that when the Commission was dealing with tariff for the year relating to 2009-10, it cannot decide in that year on this issue for the year 2010-11.
- d) Therefore, the observation of the Commission on discontinuance of tariff rebate w.e.f. 1.4.2010 in the Tariff Order for the year 2009-10 was uncalled for.
- e) The Tribunal clearly held that the merit of the issue was not gone through by it.
- f) The Tribunal held in clear terms "*that we are not giving any opinion in respect of reasons given for withdrawal of the rebate contained in para 5.5.1 and 5.5.2 of the Impugned Order*".

7. Therefore, the observation of the Tribunal in the aforesaid two appeals does not come to the aid of the review petitioner.

8. It is argued secondly that the Commission in its subsequent order dated 9.5.2011 relating to tariff for the year 2011-12 observed that it interpreted the Tribunal's Order dtd. 31.8.2010 to mean that the

Tribunal in the aforesaid two appeals allowed continuation of rebate from 1.4.2010. If this be the Commission's interpretation of the Tribunal's Order dtd. 31.8.2010 that the Tribunal allowed continuation of rebate beyond 1.4.2010 then we must not comment anything because the subsequent order dtd. 9.5.2011 said to have been passed by the Commission was not the subject matter of challenge in the batch of 10 appeals. In this review petition also, the order dated. 9.5.2011 passed by the Commission does not come up for consideration. Our order in a batch of 10 appeals including appeal no.144 of 2010 is dated 11<sup>th</sup> January, 2012.

9. The principle of Order 47 Rule 1 of the CPC, if applied, the review petition becomes meritless. The ingredients of the provision are absent here.

10. Resultantly, the Review petition is dismissed without cost.

**(P.S. Datta)**  
**Judicial Member**

**(Rakesh Nath)**  
**Technical Member**

Reportable/Not reportable

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