
MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL

Subject: Petition regulation 46 of MPERC (Conduct of Business) Regulations, 2004 seeking appropriate directions for grant of rebate of incremental consumption as per tariff orders and to grant refund of excess amount recovered in violation of tariff orders.

ORDER

(Date of Order: 27th March' 2024)

M/s. Kesar Ispat limited - **Petitioner**

V/s

MP Paschim Kshetra Vidyut Vitran Co. Ltd. - **Respondent**

- i. Shri D.S. Panwar, Advocate appeared on behalf of the petitioner.
- ii. Shri Shailendra Jain, Deputy Director, appeared on behalf of the Respondent.

1. The subject Petition is filed by M/s Kesar Ispat limited (hereinafter referred as the 'Petitioner') under regulation 46 of MPERC (Conduct of Business) Regulations, 2004 seeking appropriate directions for grant of rebate of incremental consumption as per tariff orders and to grant refund of excess amount recovered in violation of tariff orders.

2. In the subject petition, the petitioner has made following prayer :

- a. *That, the present petition may kindly be allowed and the impugned Forum order dated 09/01/2020 be set aside.*
- b. *That, respondents' action of recovering Energy charges at higher Rate be set aside and respondent be directed to grant benefit of Rebate as per Clause HV-3 (d) of Special Terms and Conditions of Tariff orders for the month of April-2017, May-2017, April-2018, May-2018, May-2019 and corresponding month of subsequent years.*
- c. *That, respondent be directed to refund the excess amount recovered at Higher Rate of Energy Charges along with interest at Bank Rate as per Section 62 (6) of Electricity Act,*

2003.

d. That, the respondent be directed to keep the excess amount recovered from petitioner in separate Bank Account or interest bearing Fixed Deposit receipt till decision of present petition.

3. Petitioner in the petition has broadly made following submissions: -

- i. Petitioner obtained Industrial HT Connection on 33 KV supply voltage having Contract Demand of 3700 KVA (at present 7100 KVA) on 18/05/2015 for running its unit established for manufacturing of M.S. Ingots.
- ii. The respondent is required to grant Rebate of energy charge on account of incremental consumption as per Tariff Order dated 10/04/2017 of Financial Year 2017-18 and for subsequent years i.e. 2018-19, 2019-20, 2020-21 and 2021-22.
- iii. The respondent has not allowed the Rebate for full month of April-2017, May-2017, April-2018, May-2018, May-2019 and corresponding month of subsequent years.
- iv. The petitioner filed application before Electricity Forum in Case No. WO446019 raising claim of Rebate in monthly electricity bills.
- v. The Forum by order dated 09/01/2020 disallowed petitioner's application on the ground that it has no jurisdiction to decide the Petitioner's application.
- vi. The Petitioner filed writ petition no. 9855/2022 before Hon'ble High Court which has been disposed by order dated 20/11/2023 with liberty to the petitioner to approach the MPERC.
- vii. As such present petition is filed being aggrieved by non-grant of Rebate of Incremental consumption in view of Forum order dated 09/01/2020 and the order dated 20/11/2023 of Hon'ble High Court of M.P. Bench Indore.
- viii. That the MPERC in the Tariff order dated 10/04/2017 for Financial Year 2017-18 made provision for grant of Rebate in Energy Charges at the rate of 0.06 paisa per unit on incremental consumption for those consumers who were existing or obtained connection during the year 2015-16. The said provision of Clause 3 (d) reads as under :-

“Clause 3. (d) :- Rebate for existing HT connections: A rebate of 10% in energy charges is applicable for incremental monthly consumption w.r.t. consumption of FY 2015-16 same month.”

- ix. *That as per above provision the Rebate is to be granted taking the month of connection as base month. The rebate is to be granted on incremental consumption with respect to the corresponding month of the previous year.*
- x. *That the respondents have not granted the Rebate against incremental consumption for full month of May'2017 and the Rebate has only being given for 7 days consumption of May'2017 in-violation of Tariff order. Thus respondent have withheld the Rebate for month of May'2017 and in fact recovered Energy Charges Higher Tariff Rate than prescribed.*
- xi. *That in the subsequent year Tariff orders the provision existed for grant of Rebate in Energy Charges for the Financial Year 2018-19, 2019-20, 2020-21, 2021-22.*
- xii. *That the respondent has apart from the year 2017 have also not granted the Rebate of Energy charges for April 2018 and May 2018 and for May 2019, May 2020, May 2021. The respondent have deprived petitioner from the benefit of Rebate on misreading of the above provision made for grant of rebate.*
- xiii. *That the petitioner claimed grant of Rebate in compliance of Tariff order vide letter dated 15/06/2019 annexed. The respondent did not apply the concessional Tariff Rate by deducting the Rebate portion and have recovered the Higher Energy Charges at Higher Rate than what is determined by MPERC. The respondents are required to act strictly as per provisions of Electricity Act 2003 and Tariff order issued by MPERC from time to time.*
- xiv. *That by recovering the Higher Energy Charges at Tariff / Rate, the respondents have acted in-violation Section 62 (6) of Electricity Act, 2003 and the respondent is liable to refund the excess amount to the petitioner along with interest. Section 62 (6) reads as under:-*
“Section 62 (6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.
- xv. *That the respondent have also violated the Tariff Clause HV.3 (e) of the Tariff Orders which provides to levy Energy Charge after applying the rebate of 0.06 paisa per unit.*
- xvi. *That thus the respondents by violating the above provision have rendered liable for punishment under Section 142 of the Electricity Act 2003.*
- xvii. *That, respondent is liable to refund amount of Rs.75,54,155/- recovered in excess without granting the rebate as per applicable Tariff Orders, along with Interest as petitioner has not*

been able to utilize its own amount and respondent is unduly unreached by utilizing petitioner's above amount.

- xviii. That, in the above circumstance petitioner filed W.P. No. 9855/2022 seeking benefit of Rebate of Incremental Consumption by challenging Forum order dated 09/01/2020. The writ petition has been disposed by order dated 20/11/2023) with liberty to the petitioner to approach MPERC. The relevant operative Para 4 and 5 of High Court order read as under:-

“ Para 4 The Tariff Order was issued by the MPERC, therefore, if any interpretation of any of the clause of Tariff Order is required to be done, the Commission would be the competent Forum to interpret the same. Billing has been done by the respondents giving interpretation to the Tariff Order issued by the MPERC, therefore, it cannot be said that it is a billing dispute alone, for which the Redressal Forum is the competent Forum to adjudicate the dispute. If the correct interpretation of the Tariff Order is given, then the bills shall be prepared accordingly. Therefore, I do not find any error in the impugned order. Let the MPERC examine the relevant clause of Tariff Order and passed the order and accordingly, the respondent / Company shall prepare the bills.”

“Para 5 In view of the above, Writ Petition stands dismissed. However, the petitioner shall be at liberty to approach the MPERC.”

- xix. That, in the light of order of Forum and Hon'ble High Court the present petition is being filed on following grounds:
- a. Because, the respondents have acted illegally and arbitrarily in recovering Higher Rate of Energy Charges without allowing concessional rate by not granting the Rebate as per Clause HV-3 (d) of Energy Tariff orders of MPERC for 2017-18 and sub-sequent Tariff Orders.
 - b. Because, the respondents recovered Higher Rate of Energy Charges without jurisdiction and as such liable to refund the same.
 - c. Because the respondents have acted in-violation of Section 62 and liable to refund excess amount recovered over and above the actual applicable Tariff Rate along with interest as per Section 62(6) as per Electricity Act 2003.
 - d. Because the respondent's action is un-constitutional provision, illegal, without authority of law, without jurisdiction, high handed and contrary to principles of natural justice.

e. Because, the Forum and Hon'ble High Court has held that the question of interpretation of Tariff is involved.

4. At the motion hearing held on 23/01/2024, the subject petition was heard and the matter was reserved for order on admissibility. In view of the judgement dated 20.11.2023 of the Hon'ble High Court in Writ Petition No. 9855/2022 this petition filed before the Commission was admitted. Petitioner was directed to serve copy of the petition to the Respondent within 7 days. The Respondent was directed to submit response within 15 days thereafter and serve copy thereof to the Petitioner simultaneously.
5. Vide affidavit dated 16.02.2024, the Respondent in its reply has made the following broad submissions :-
 - i. *That, from perusal of averment made in the petition along with relief claimed, it is apparent that the primary grievance raised by the petitioner vide instant petition is with respect to the non-granting of incremental rebate as per the Tariff Order. The date of connection of the petitioner consumer is 18.05.2015. The essence of the petitioner's submission is that the petitioner is entitled for the incremental rebate considering the period when it was not even the consumer of the Discom.*
 - ii. *At the outset, the respondent denies and disputes each and every allegation, averment and contention made in the petition, which is contrary to or inconsistent with what is stated herein, as if the same has been traversed in seriatim, save and except what has been specifically and expressly admitted hereinafter in writing. Any omission on the part of the answering respondent to deal with any specific contention or averment of the petitioner should not be construed as an admission of the same by the answering respondent. Further, all the submission made herein are without prejudice to one another and are to be treated in alternate to one another in case of conflict or contradiction.*
 - iii. *That, as per the clause no. 19 of the Agreement (ref page no. 32 to 41 of the petition) executed between the petitioner and respondent dtd. 19/09/2014, the petitioner falls under Tariff category **HV-3.4"Power Intensive Industries"** and the electricity connection was served on dated 18.05.2015.*
 - iv. *The electricity connection was served on dtd. 18.05.2015, therefore the tariff order of FY 2015-16 was prevailing at that time. There was no concept of incremental consumption rebate in the tariff order FY 2015-16. As petitioner's electricity connection was served on dated 18.05.2015, the first energy bill for the month of May-2015 has been issued to the*

petitioner considering consumption of 6 days only (i.e. 18.05.2015 to 23.05.2015) as prevailing billing cycle is from 24.04.2015 to 23.05.2015.

- v. Subsequently, the tariff order **FY 2016-17 (effective from 13.04.2016)** introduced the provision of the incremental rebate. The relevant provision is reproduced as under:

Tariff Schedule-HV-3

INDUSTRIAL, NON-INDUSTRIAL AND SHOPPING MALLS

Specific Terms and Conditions:

*(e) Rebate for existing HT connections: A rebate of 10% in energy charges **is applicable for HV 3.1 tariff** category for incremental monthly consumption w.r.t consumption of previous years same month.*

- vi. It may be seen that as per the Tariff order FY 2016-17 rebate under consideration is available only to the consumer of HV 3.1 tariff category. Since, petitioner connection belongs to the Tariff Category HV-3.4 "Power Intensive Industries", the petitioner was not eligible for the incremental rebate during FY 2016-17 as per the Tariff Order FY 2016-17.

- vii. Thereafter, Hon'ble Commission has issued the Tariff Order FY 2017-18 (effective from 10.04.2017). The relevant clause dealing with the rebate for incremental consumption is reproduced as under:

(d) Rebate for existing HT connections: A rebate of 10% in energy charges is applicable for incremental monthly consumption w.r.t consumption of FY 2015-16 same month.

Note: In the event of enhancement of contract demand the incremental consumption shall be worked-out proportionately.

- viii. It may be seen that a rebate of 10% in energy charges is applicable for incremental monthly consumption w.r.t consumption of FY 2015-16 same month. Since, in the month of connection (May-2015) petitioner become consumer only w.e.f 18.05.2015 (and accordingly bill has issued considering consumption only for 6 days), incremental rebate for the month of May-2017 has been given to the petitioner by prorating the consumption to make the consumption of the current month and base month as comparable. The petitioner consumption was 1412160 units in the month of May 17 (current month). Similarly, Petitioner consumption was 1920 units for 6 days in the Month of May-2015. Therefore, the incremental consumption has considered as 2,71,401.29 units (i.e 1412160/31x6-1920). Accordingly, rebate of Rs. 1,35,701/- (2,71,401.29 units x Rs 5 per unit energy charge x 10% applicable rebate) has been allowed. Thus, rebate is given according to the tariff order.

- ix. *The petitioner's claim that consumption of 6 days in May 15 (i.e 1920 units) should be considered as consumption of whole month in the month of May 15 is contrary to the tariff order. In other words petitioner has sought to submit that consumption of the petitioner should be considered as Zero of the period prior to date of connection. As, petitioner was not the consumer of the Discom prior to the 18.05.2015 thus said period cannot be considered for the computation of the rebate. There, is another aspect to look into the matter. The rebate under consideration is being given to encourage the consumer to increase its consumption from Discom. The discount/rebate on the energy charge is being provided for the said incremental consumption. since no energy charges paid to the Discom for the period prior to the 18.05.2015 question of discount in the form of incremental rebate w.r.t. to such period does not arises. It is submitted that, in the instant case there was no connection before 18.05.2015 hence the consumption done during the corresponding current month from 24.04.2017 to 17.05.2017 cannot be termed as incremental consumption as there was not base Consumption. Term "incremental" can only be used when there is a connection and consumer increase its consumption. The essence of the petitioner's submission is that the consumption for the period before it was not even the consumer of Discom should be considered a Zero (0) and total consumption so arrived should be compared with the corresponding current month for computation of incremental rebate. This, submission of the petitioner is devoid of merit and contrary to the prevailing statutory provisions. Energy Charges along with interest at Bank Rate as per Section 62 (6) of Electricity Act, 2003.*
- x. *Later on Hon'ble Commission has amended the relevant condition of incremental rebate vide tariff order FY 2018-19 (effective from 11.05.2018) and FY 2021-22 (effective from 08.07.2021). The modified provisions is reproduced as under:*

Tariff Order 2018-19

*(d) Rebate for existing HT connections: A rebate of 60 paise per unit in energy charge is applicable for incremental monthly consumption w.r.t. corresponding month of FY 2015-16. For any new consumer other than green field connection served during and after FY 2015-16, the base months for calculation of incremental monthly consumption shall be the **first 12 months after availing the connection**. The incremental consumption for any month shall be worked out considering the consumption of the corresponding base month.*

Tariff Order 2021-22

(d) Rebate for existing HT consumptions: A rebate of Rs. 1/Unit in energy charges is

*applicable for incremental monthly consumption w.r.t. corresponding month of FY 2015-16. For any new consumer served during and after FY 2015-16, the base months for calculation of incremental monthly consumption shall be the **first 12 months subsequent to the month of availing the connection**. The incremental consumption for any month shall be worked out considering the consumption of the corresponding base month*

- xi. That, the connected load (Contract Demand) has been enhanced from 3700 KVA to 4600 KVA (recorded maximum demand is 4963 KVA) in the month of Apr-2018, during that period the Tariff Order FY 2017-18 was applicable (From 10-04-2017) and as per prevailing provision in case consumption has to be worked-out proportionally. Due to this there were no consumption has been found eligible for incremental rebate in the month of Apr-2018. Hence no incremental rebate has been allowed.*
- xii. Further, during the month of Apr-2019, the Tariff Order 2018-19 (from 11.05.2018 to 16.06.2019) was applicable and as per the prevailing Tariff Order the rebate of **60 paise per unit in energy charges**) is applicable for incremental monthly consumption w.r.t. corresponding month of FY 2015-16, therefore rebate of **60 paise per unit** has been allowed in the bill month of Apr-219. The said rebate is duly reflecting in the energy bills enclosed by the Petitioner in Annexure P-13 at page no. 70.*
- xiii. That, in view of above claim of the petitioner regarding incremental rebate is not in accordance with the tariff orders prevailing from time to time and accordingly liable to be rejected.*

6. At the hearing held on 27th February, 2024, parties completed their arguments. Case is reserved for order.

Commission's Observations and findings:

7. The issue raised by the Petitioner in the instant petition relates to billing dispute arises due to interpretation of the terms and conditions of HV3 tariff category of prevailing Tariff orders in regard to non-granting of rebate on incremental consumption to the petitioner for Apr 17, May 17, Apr 18, May 18, Apr 19, May19 and corresponding months of subsequent years.
8. The relevant provisions of prevailing Tariff orders for providing rebate to HV3 category consumers are as under:

Tariff Order (Period of operation of Tariff order)	Relevant Provision
FY 2016-17 (13.04.2016 to 09.04.2017)	(e) Rebate for existing HT connections: A rebate of 10% in energy charges is applicable for HV 3.1 tariff category for incremental monthly consumption w.r.t consumption of previous years same month. This rebate was not applicable to the petitioner category HV 3.4.
FY 2017-18 (10.04.2017 to 10.05.2018)	(d) Rebate for existing HT connections: A rebate of 10% in energy charges is applicable for incremental monthly consumption w.r.t consumption of FY 2015-16 same month. <i>Note: In the event of enhancement of contract demand the incremental consumption shall be worked-out proportionately.</i> This rebate was applicable to the petitioner category HV 3.4.
FY 2018-19, 2019-20 & 2020-21 (11.05.2018 to 07.07.2021)	(d) Rebate for existing HT connections: A rebate of 60 paise per unit in energy charges is applicable for incremental monthly consumption w.r.t corresponding month of FY 2015-16. For any new consumer other than green field connection served during and after FY 2015-16, <u>the base months for calculation of incremental monthly consumption shall be the first 12 months after availing the connection.</u> The incremental consumption for any month shall be worked out considering the consumption of the corresponding base month. This rebate was applicable to the petitioner category HV 3.4.
FY 2021-22 & 2022-23 (08.07.2021 to 07.04.2023)	(d) Rebate for existing HT connections: A rebate of Rs. 1/Unit in energy charges is applicable for incremental monthly consumption w.r.t corresponding month of FY 2015-16. For any new consumer served during and after FY 2015-16, <u>the base months for calculation of incremental monthly consumption shall be the first 12 months subsequent to the month of availing the connection.</u> The incremental consumption for any month shall be worked out considering the consumption of the corresponding base month. The consumer availing this rebate shall not be entitled to the rebate of new HT connection/ Green field connection under clause (e) below. This rebate was applicable to the petitioner category HV 3.4.

9. The agreement between Petitioner and West DISCOM was executed on 19.09.2014 for connection under Tariff Category “HV-3.4 Power Intensive Industries”. Electricity connection was served to the Petitioner on 18.05.2015. First Bill was issued to the Petitioner for the month of May, 2015 based on consumption of 6 days only (i.e., 18.05.2015 to 23.05.2015) as per the prevailing billing cycle from

24.04.2015 to 23.05.2015. The applicable Tariff Order was of FY 2015-16.

10. As per the provisions of Tariff orders in vogue, in case any dispute arises regarding interpretation of tariff order and/or applicability of tariff, the decision of the Commission shall be final and binding.
11. In the instant matter, the Commission orders that applicability of the provisions of rebate for the months under dispute, shall be as follows:-

Month	Principle of applicability of tariff rebate as interpreted by the Commission
April 2017	<p>In the Month of April 2017, till 09.04.2017, the Tariff Order for FY 2016-17 and from 10.04.2017 Tariff Order for FY 2017-18 were applicable.</p> <p>As per the Tariff Order for FY 2016-17, rebate was not applicable to the category of petitioner i.e HV3.4 (Power intensive) up to 09.04.17 in April 2017.</p> <p>Further, as per clause (d) under HV-3 category of Tariff Order for FY 2017-18, Rebate was applicable on incremental consumption with respect to same month of FY 2015-16 i.e April 2015 in the instant case. Since petitioner was not a consumer in April 2015, there was no base month consumption. Accordingly, petitioner is not entitled to any rebate throughout the month of April 2017.</p>
May 2017	<p>In May 2017, provisions of Tariff order for FY2017-18 were applicable. As per the tariff order corresponding base month to work out incremental consumption for rebate was May 2015.</p> <p>It is observed that Petitioner has availed the connection on 18/05/2015 and consumed power for partial period in the base month. Rebate was applicable on incremental monthly consumption. While working out monthly consumption, the plea of the petitioner cannot be accepted such that partial period consumption for the month of May 2015 is compared with full month consumption of May 2017. In no case, apples can be compared with oranges. Basic idea is to incentivise consumers, who genuinely draw more power from Distribution Licensees over base years. Allowing comparison of partial monthly consumption with full monthly consumption would result in 'undue enrichment' to the petitioner. As such, the word 'proportionate' is implied to be included in incremental monthly consumption. Accordingly, rebate is applicable only on incremental (proportionate) monthly consumption of same partial period in May 2017 with respect to actual partial period consumption in base month May 2015.</p>
April 2018	<p>In April 2018, Tariff Order for FY 2017-18 was applicable (tariff period from 10.04.2017 to 10.05.2018).</p>

Month	Principle of applicability of tariff rebate as interpreted by the Commission
	As per the tariff order base month to work out incremental consumption for rebate was April 2015. Since petitioner was not a consumer in April 2015 and there was zero load and zero consumption in the month, hence no rebate on account of increase in consumption or enhancement in load is applicable.
May 2018	In the month of May 2018, till 10/05/2018, Tariff Order for FY 2017-18 was applicable under which incremental consumption was to be seen with respect to consumption of May 2015. As Petitioner availed connection on 18.05.2015, no rebate is available to him till this period under Tariff order for FY 2017-18. Petitioner is entitled to tariff rebate for the period 11 th May 2018 onwards on incremental consumption over proportionate consumption in base month of May 2016.
April 2019, April 2020 & April 2021	As per respective Tariff Orders, "the base months for calculation of incremental monthly consumption are "first 12 months after availing the connection". In view of this, corresponding base month to work out incremental rebate would be April 2016.
May 2019, May 2020 & May 2021	As per respective Tariff Orders, " the base months for calculation of incremental monthly consumption are "first 12 months after availing the connection". In view of this, corresponding base month to work out incremental rebate would be May 2016.

12. Hon'ble High Court in WP No. 9855 of 2022 has passed an order on 20.11.2023. Para 4 & 5 of the order are reproduced as under: -

4. *"The Tariff order was issued by the MPERC, therefore, if any interpretation of any of the clause of Tariff Order is required to be done, the Commission would be the competent Forum to interpret the same. Billing has been done by the respondents giving interpretation to the Tariff Order issued by the MPERC, therefore, it cannot be said that it is a billing dispute alone, for which the Redressal Forum is the competent Forum to adjudicate the dispute. If the correct interpretation of the Tariff order is given, then the bills shall be prepared accordingly. Therefore, I do not find any error in the impugned order. Let the MPERC examine the relevant clause of Tariff Order and passed the order and accordingly, the respondent/Company shall prepare the bills.*
5. *In view of the above, Writ Petition stands dismissed. However, the Petitioner shall be at liberty to approach the MPERC."*

13. In view of the aforesaid order of Hon'ble High Court, it would be apposite to mention that the Commission in the instant case has interpreted its own tariff orders and laid down the principles to be followed by the Respondent as discussed hereinabove. Respondent is directed to rework bills of the Petitioner based on aforesaid principles/interpretation and revised bills be served to the Petitioners. In case Petitioner is entitled to any refund the same should be adjusted in maximum 6 equal monthly installments. In case of any recovery, the Petitioner may be given opportunity to be heard before finalizing the bill and the same should be recovered in 6 equal monthly installments. Accordingly, instant petition is dismissed and disposed of.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman