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APPEAL PETITION NO. P/002/2016

(Present: V.V. Sathyarajan)

Dated: 09<sup>th</sup> May 2016

Appellant : Sri. C.V. Rangarajan  
Sapthagiri Refineries,  
Neelamkatchi,  
Vannamada,  
Kozhijampara,  
Palakkad

Respondent : The Assistant Executive Engineer,  
KSE Board Ltd.,  
Electrical Sub Division,  
Chittur,  
Palakkad

## **ORDER**

### **Background of the case:**

The appellant runs a company named 'Sapthagiri Refineries' under Electrical Section, Kozhijampara, having an LT Three Phase connection with Consumer No. 12380 under LT IV A tariff. Consequent to an inspection conducted by the APTS team in the premises of the appellant on 10-09-2015 found that the appellant's unit is carrying out filtering and packing and associated activities using extracted oil brought from outside. As per the tariff order the units carrying out filtering and packing and other associated activities using extracted oil brought from outside are classified under LT VII A tariff.

Based on the above findings tariff of the appellant was changed from LT IV A to LT VII A and issued a short assessment bill for an amount of Rs.7,27,836.00. Aggrieved against this, the appellant approached the Consumer Grievance Redressal Forum (Northern Region), Kozhikode by filing a complaint No. 77/2015-16 which was dismissed vide order dated 07-12-2015. Not satisfied with the above decisions of CGRF the appellant approached this Authority with this appeal petition.

### **Arguments of the appellant:**

Essentially and in brief, the order of the Assistant Engineer, Electrical Section, Kozhijampara alleging that the unit is carrying out filtering and packing and other associated activities using extracted oil brought from outside and thus under tariff order issued by Kerala State Electricity Regulatory Commission

published in Kerala Gazette on 27-9-2014, the unit of the appellant is to be reclassified under the tariff LT VII A from LT IV A. In passing the said order, the appellant submitted a petition before the Consumer Grievance Redressal Forum (Northern Region), Kozhikode, contenting that the production process in the unit is refining of crude vegetable non-edible oil through neutralization, bleaching, deodorization and filtering, making it edible for distribution and hence the unit of the appellant is classified as manufacturer, re-packer by the certificate of license issued under Food Safety and Standards Act, 2006, and as manufacturer by the Department of Industries under SSI Registration besides being classified as such under the Central Board of Excise and Customs, as well as by the Eruthenpathy Grama Panchayath while issuing D & O License under the Kerala Panchayath Raj Act. Besides the short assessment bill calculated by period of two years is also bad in law being against Regulation 97 (5) of the Supply Code, 2014.

The unit of the appellant has been rightly classified in LT IV A as much as the unit of the appellant refines crude vegetable non edible oil and subjects it through neutralization, bleaching where first filter occurs and is stored as semi finished oil in storage tank and thereafter through the process of deodorizer, cooler and final filter, finished oil is manufactured and stored and brought to the final storage tank, making it edible for distribution. A process flow chart as well as the processing details, the above processes makes it clear that extracted coconut oil is brought from outside and thereafter virtually there is no manufacturing process, in short alleged, and therefore attracting LT VII A under Gazette Notification by the KSERC, is bad in law. The CGRF also failed to comprehend the above aspects and upheld the short assessment order made by the Assistant Engineer, Kozhinjampara, who alleged by raising of short assessment bill based on APTS inspection. The short assessment for two years claimed i.e. from 09/2013 to 08/2015 is again bad in law in as much as without admitting, by the wrong classification the period ought to have been limited to 12 months.

#### Nature of relief sought from the Ombudsman

- a) it is humbly prayed to set aside the order dated 7-12-2015 in O.P. No. 77/2015-16 of CGRF, Kozhikode by consequently holding the classification of the petitioner's unit under LT IVA is correct.
- b) stay the operation of the order dated 7- 12-2015 of CGRF, Kozhikode in O.P. No. 77/2015-16 and the disconnection notice No. DB/KPA/APTS/15-16/50/15-1-2016 issued by the Assistant Engineer, Electrical Section, Kozhinjampara, pending the final disposal of the above case.

#### **Arguments of the respondent:**

On 10-9-2015, the Anti Power Theft Squad, Palakkad along with the officials of Electrical Section, Kozhinjampara conducted an inspection in the premises of the Appellant Company and found that extracted oil brought from outside was refined by various processes of neutralisation, bleaching, deodorization and filtering. The appellant was previously billed under LT IV Industrial Tariff. As per the Tariff Order issued by the KSERC published in Kerala Gazetted dated 27-09-

2014, units carrying out filtering and packing and other associated activities using extracted oil brought from outside are classified under LT VII A. The relevant portion of the Tariff Order is reproduced below.

Tariff for commercial consumers such as shops, other commercial establishments for trading, showrooms, display outlets, business houses, hotels and restaurants (having connected load exceeding 1000 W), private lodges, private hostels, private guest houses, private rest houses, private travellers bungalows, freezing plants, cold storages, milk chilling plants, bakeries (without manufacturing process), petrol/diesel/ LPG /CNG bunks, automobile service stations, computerized wheel alignment centres, marble and granite cutting units, LPG bottling plants; house boats, units carrying out filtering and packing and other associated activities using extracted oil brought from outside, share broking firms, stock broking firms, marketing firms.

As per the said Tariff Order, firms carrying out extraction of oil in addition to the filtering and packing activities in the same premises under the same connection are classified under LT IV A Industrial Tariff. The relevant portion of the Tariff Order is reproduced below. Tariff applicable for general purpose industrial loads (single or three phase) which include manufacturing units, grinding mills, flour mills, oil mills, rice mills, saw mills, ice factories, rubber smoke houses, prawn peeling units, tyre vulcanizing/retreading units, workshops using power mainly for production and/or repair, pumping water for non-agricultural purpose, public waterworks, sewage pumping, power laundries, screen printing of glassware or ceramic, printing presses including presses engaged in printing dailies, bakeries (where manufacturing process and sales are carried out in the same premises) diamond-cutting units, stone crushing units, book binding units with allied activities, garment making units, SSI units engaged in computerized colour photo printing, audio/video cassette/CD manufacturing units, seafood processing units, granite cutting units (where boulders are cut into sheets in the same premises), cardamom drying and curing units, and units carrying out extraction of oil in addition to the filtering and packing activities carrying out in the same premise under the same service connection, manufacturing rubber sheets from latex, telemetry stations of KWA, dairy, processing of milk by pasteurization and its storage and packing, soda manufacturing units, plantations of cash crops, all non-agricultural pumping, drinking water pumping for public by the Kerala Water Authority, Corporations, Municipalities and Panchayaths, electric crematoria, pyrolators installed by local bodies. The Appellant Company is not extracting oil in the premises but brings from outside. Hence the right tariff classification is LT VII A.

As per the Regulation 97 of Kerala Electricity Supply Code, 2014, if a consumer has been wrongly classified in a category and later if it is found otherwise, the licensee may suo moto reclassify the consumer in the right category. Regulation 97 of the Supply Code is reproduced below: *(1) If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may suo motu reclassify the consumer under appropriate category.*

As per the Tariff Order, the appropriate category for the business carried out by the consumer was LT VII A but the KSEB Limited has wrongly classified the consumer under LT IV A. Hence the licensee has every right and privilege as per the Regulation to reclassify the consumer under the appropriate category and tariff i.e. under LT VII A.

Regulation 97 (4) of the Kerala Electricity Supply Code, 2014 specifies that the arrear on account of reclassification can be collected by the licensee. As per Regulation 152 of the Kerala Electricity Supply Code, 2014, anomalies attributable to the licensee including incorrect application of tariff by licensee even while there is no change in the purpose of use of electricity by the consumer can be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted, for a maximum period of twenty four months even if the period during which such anomaly persisted is found to be more than twenty four months. In the present case, the period of anomaly is more than twenty four months i.e. from the date of energisation of the consumer but limited to a period of twenty four months as per this regulation which is reproduced below:

152. Anomalies attributable to the licensee which are detected at the premises of the consumer.- (1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.

(2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realised by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in Sub regulation (8) of Regulation 155 shall be considered:

Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months.

(4) The consumer may be given instalment facility by the licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of instalment.

Aggrieved by the bill and short assessment the consumer has filed petition before the CGRF, Kozhikode. Before the CGRF also the consumer deposed that the Company is processing crude vegetable oil brought from outside, subjecting it to various processes to convert it, into edible oil. The Forum found that since these processes do not include extraction of oil, the reclassification made by the licensee is in order. The Forum also directed the consumer to remit the short assessment bill. In the appeal herein, the appellant has not produced any fresh evidences to show that the right classification is LT VII A. The period of assessment was limited to a period of 24 months as per Regulation 152 of Kerala Electricity Supply Code, 2014.

### **Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally on 22-04-2016. Advocate Rajesh S Kutty and Sri G.V. Rangarajan represented for the appellant's side and Smt. M.V. Divya Prabha, Assistant Executive Engineer, Electrical Sub Division, Chittur, Palakkad, and Sri. Vipin N, Nodal Officer (Litigation) KSEB Limited, Palakkad represented for the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The APTS of KSEB had inspected the consumer's premises on 10-09-2015 and found that the electric connection was not used for manufacturing activities but for filtering and packing and other associated activities using extracted oil brought from outside. As the units carrying out filtering and packing and other associated activities using extracted oil brought from outside are classified under commercial category, the respondent changed the appellant's tariff to LT VII A. Accordingly, the respondent has raised short assessment bills on the appellant for an amount of Rs. 7,27,836.00 being the difference in amount between the industrial and commercial tariffs. Being aggrieved the appellant filed petitions before the CGRF, Kozhikode against the short assessment, which was heard and disposed of by the Forum rejecting the prayers of the consumer.

***The question to be decided in this case is whether the activities of the appellant under dispute come under industrial or commercial tariff?***

According to the respondent, the Hon'ble Commission is the statutory empowered body to classify the appropriate tariff of a particular class of consumers. The tariff of appellant was re-categorized from industrial to commercial as per the guidelines, directions and notifications issued from time to time by the Commission. As per the tariff order issued by the Hon'ble Commission published in the Kerala Gazette dated 27-09-2014, ***units carrying out filtering and packing and other associated activities using extracted oil brought from outside are classified under LT VII A.*** The relevant portion of the tariff order is reproduced below.

Tariff for commercial consumers such as shops, other commercial establishments for trading, showrooms, display outlets, business houses, hotels

and restaurants (having connected load exceeding 1000 W), private lodges, private hostels, private guest houses, private rest houses, private travellers bungalows, freezing plants, cold storages, milk chilling plants, bakeries (without manufacturing process), petrol/diesel/ LPG /CNG bunks, automobile service stations, computerized wheel alignment centres, marble and granite cutting units, LPG bottling plants, house boats, **units carrying out filtering and packing and other associated activities using extracted oil brought from outside**, share broking firms, stock broking firms, marketing firms.

Against this, the appellant's contention is that the inspection team has not looked into the manufacturing processes which are taking place in the appellant's premises and therefore the allegation that there is no extraction of oil in the premises but bringing it from outside is patently illegal. Further, the inspection team has not taken any effort to study the processes which are carried out in the premises and has mistakenly understood the crude vegetable non edible oil which is a raw material brought from outside, involved in the manufacturing process, for the end product as edible vegetable oil for distribution. The appellant also contented their unit is notified as hazardous/dangerous manufacturing process under Schedule Part 1 of the Factories Act, 1948.

Going by the tariff notification issued by the Commission it is pertinent to note that the units carrying out filtering and packing and other associated activities using extracted oil brought from outside are included under commercial category. But, here in this case, crude vegetable non-edible oil which is the raw material brought from outside is refined after various processes of neutralization, bleaching, deodorization, filtering and making it edible for distribution. During the hearing the respondent also admitted the above manufacturing process are taken place in the appellant's premises and for that appellant is using different motors with a connected load of 75 kW. The respondent re-categorized the tariff of the appellant under commercial category for the simple reasons that in the tariff notification it is clearly mentioned that **units carrying out filtering and packing and other associated activities using extracted oil brought from outside are included**.

On going through the major processes employed in the appellant's premises it can be seen that the crude vegetable non-edible oil which is the raw material brought from outside is refined through various processes such as neutralization, bleaching, deodorization and filtering making it edible for distribution. Hence the activities carried out in the appellant's unit cannot be considered as a purely filtering and packing unit as in the case of LPG bottling plants. It is an admitted fact that the appellant is bringing crude vegetable non edible oil to the unit and after undergoing various processes like neutralization, bleaching, deodorization and the oil get refined and made available for packing and distribution. The tariff order says that **"units carrying out filtering and packing and other associated activities using extracted oil brought from outside are included in LT VII A tariff"**. If there is no manufacturing process carried out in a unit and only filtering and packing of refined oil brought from outside is carried out, the commercial tariff will apply to those units.

**Decision**

In view of the above facts there is no justification in reassigning the tariff of the appellant to commercial on the arguments that the tariff says that units carrying out filtering and packing and other associated activities using extracted oil brought from outside are included in commercial tariff. If a portion of manufacturing process is involved in a unit, such units cannot be treated as a commercial one. Hence I am of the opinion that the appellant's unit is eligible for industrial tariff and the respondent is directed to reassign the industrial tariff accordingly. The short assessment bill issued for Rs. 7,27,836.00 cannot be sustained as per above findings and hence the same is hereby quashed.

Having concluded and decided as above it is ordered accordingly. The appeal petition is found having some merits and is admitted. The order of CGRF in OP No. 77/2015-16 is hereby set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/002/2016/ /Dated: \_\_\_\_\_

Delivered to:

1. Sri C.V. Rangarajan, Sapthagiri Refineries, Neelamkatchi, Vannamada, Kozhijampara, Palakkad
2. The Assistant Executive Engineer, KSE Board Ltd., Electrical Sub Division, Chittur, Palakkad

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Gandhi Road, Kozhikode