

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P16/08,P22/08 &P24/08

P16/08: *Appellant:*

M/s Muskara Agro Foods
Industrial Estate Aroor

Respondent:

Kerala State Electricity Board
Represented by
The Assistant executive Engineer
Electrical SubDivision KSE Board
POOCHAKKAL Alappuzha District

P22/08 : *Appellant:*

M/s Kochi Kitchen Exports
Palluruthy Cochin

Respondent:

Kerala State Electricity Board
Represented by
The Assistant Executive Engineer
Electrical SubDivision KSE Board
Thoppumpady Ernakulam District

P24/08 : *Appellant:*

M/sFavour Ita International
Kannamaly Kochi

Respondent:

Kerala State Electricity Board
Represented by
The Assistant executive Engineer
Electrical SubDivision KSE Board
Palluruthy Ernakulam District

ORDER

M/s Muskara Agro Foods ,Industrial Estate, Aroor in their representation dated July 1,2008 has pleaded to

1. Set aside the order No CGRF-CR/Comp1/08-09 dated 16.6.2008 of CGRF Ernakulam
2. Direct that the complainant may be continued to charge under LT IV Industrial category.

M/s Kochi Kitchen Exports Palluruthy in their representation dated August 6, 2008 has pleaded to

1. Set aside the order No CGRF-CR/Comp7/08-09 dated 23.6.2008 of CGRF Ernakulam
2. Direct that the complainant may be charged under LT IV Industrial category.

M/s Favour Ita international Kannamaly in their representation dated August 25, 2008 has pleaded to

3. Set aside the order No CGRF-CR/Comp16/08-09 dated 13.8.2008 of CGRF Ernakulam
4. Direct that the complainant may be charged under LT IV Industrial category.

The counter statements of the Respondents were obtained which were forwarded to the Appellants and sittings of the Three cases were held separately on 3.9.2008 ,15.10.2008 and 5.11.2008 respectively to hear both the parties. Both the parties were allowed to submit argument notes .

It was seen that the issues involved in the cases were common and the circumstances under which the cases came up are also same. Hence the three cases are examined simultaneously.

The cases are related to the application of LT VII A Commercial Tariff for their units. The Appellants plead for including them under LT IV Industrial Tariff.

The Appellants are LT Consumers. They are manufacturing ready to eat foods/snacks like samoosa, paripuvada, cutlet etc using electrical machinery as well as manual labour. After these items are manufactured the same is frozen to -30 degree for the purpose of exporting it . They use freezers and cold storage for the freezing and storage purpose before exporting.

The Respondents classified these units under LT VII A Tariff with effect from 01.12.2007 onwards consequent to the Revision of Tariff from that date as per Tariff Revision order TP23 of 2006 and TP 30 of 2007 dated 26.11.2007 of KSERC.

I . The Appellants have put up the following issues/arguments/points in support of their pleadings:

1. The freezing and cold storage activities in the Manufacturing plant form part of their manufacturing bakery products and exporting it. They do not freeze or store the raw materials or other goods on any commercial basis or rental basis . Manufactured items or other goods are not brought in from outside for storing purposes .
2. Merely on the reason that the main consumption is for freezing and cold storage activities the industry cannot be classified as commercial .It is not correct to term the bakery manufacturing unit as Freezing plant or Cold storage merely because of the presence of one freezing equipment. The freezing plant and cold storage are integral parts of the industrial activity .
3. The respondents have misunderstood the Note(e) under the LTIV Tariff in the Tariff order cited. This note is applicable to diary farms and milk chilling plants alone .It is not applicable to other types of consumers.
4. As per the above Tariff Revision order they can only be treated as bakery manufacturing unit under LT IV Industrial category.
5. The action of the respondents is incorrect in view of the clarifications given by the KSERC in the order dated 29.8.2008 on the DP no 39/08 etc.
6. The categorization of the Appellants bakery manufacturing unit under LT VIIA Commercial is highly illegal , arbitrary, irrational, unreasonable and violative of natural justice .

II . The Respondents have submitted the following facts/arguments/points in support of their positions:

A. MUSKARA AGRO FOODS:

The Tariff of Cons No 17031 Muskara Agro Foods was changed to LT VII since the major part of the load is used for freezing the goods for exporting even if manufacturing bakery items. Major part of the Power consumed is used for freezing activities. Out of the actual load of around 56.127 KW , 28.348KW is used for freezing. The Tariff change was effected as per the direction of the Deputy Chief Engineer Alappuzha. The major consumption of the consumer is used for freezing and cold storage activities and the load used for cold storage activities exceed 20% of the connected load Hence the tariff of LT VII assigned as per Tariff Revision order TP23 of 2006 and TP 30 of 2007 dated 26.11.2007 of KSERC.

B. KOCHI KITCHEN EXPORTS:

The Consumer no : 16270 with Connected Load 72.09KW had the name Koyas Refrigeration in the name of Sri Hassan .P.V.and had power used for freezing plant and cold storage . Hence the service connection was put under LT VII category. On 5.4.2008 the Appellant who is the present owner submitted application for regularizing certain alterations made in the electrical installations and to change the ownership. Out of the total load of 72.06KW as per the new installation completion report 50.7KW is used for

freezing/cold storage activities. They have made some minor alterations in the installations and using auxiliary equipments for processing food products. The changes were approved and consumer remitted additional Cash deposit on 10.7.2008 and ownership changed wef 5.8.2008.

There are no baking activities in the firm. They are freezing vegetables, roots and food items and storing in cold storages for exporting. Industrial ovens or similar equipments are not being used. It is still freezing and cold storage and not bakery manufacturing unit. The plea of the company to treat them as bakery manufacturing unit and to categorize under LT IV can not be admitted.

C. M/s FAVOUR ITA INTERNATIONAL:

It was found that more than 20% of the connected load is used for freezing and cold storage, hence tariff changed to LT VII as per directions of APTS. As per the definition of Bakery in Tariff notification manufacturing and selling has to be done in the same premises. Normal manufacturing units do not need large freezing plant and cold storage. Hence changed to LT VII.

III . Discussion and Findings:

The single point to be decided here is whether the reclassification of the Appellants under LT VII A Commercial tariff based upon the Tariff Revision order TP23 of 2006 and TP 30 of 2007 dated 26.11.2007 of KSERC is correct or not.

In the tariff revision order dated 26.11.2007

- Ø LT Freezing plants and cold Storages are classified under LT VII
- Ø Bakeries (without manufacturing process) are classified under LT VII
- Ø Bakeries (where manufacturing process and sales are carried out in the same premises) are classified under LT IV

The fact that the appellants are using the freezing plant and cold storage as an integral part of their manufacturing and export activities is undisputed. These equipments are not used for storing others' materials on rental/ware housing or other commercial basis is also agreed upon. The main contention of the respondents was that since more than 20% of the connected load is used for freezing and cold storage , tariff applicable was LT VII .On a perusal of the said Tariff order it can be seen that nowhere the KSEB have been *mandated* to apply such a norm in classification. The respondents had tried to rely upon the Note (e) of LT IV Tariff to claim that all units which have more than 20 % of their connected load for freezing and cold storage activities will come under LT VII .

But the said note reproduced below is very clear and specific:

Note (e) on LT IV Tariff :

The dairy farms/milk chilling plant with or without chilling/freezing/cold storage activity shall be charged under industrial category provided the chilling/freezing/cold storage load is limited to 20% of the total connected load. If it exceeds 20%, LT VII (A) tariff shall be applicable.

By no stretch of imagination can one make this clause applicable to consumers other than dairy farms and milk chilling plants .

The Kerala State Electricity Regulatory Commission in the order dated 29.8.2008 on DP39/08 to 68/08 related to Sea Food Processing Units have made the following clarifications inter-alia :

- Ø LT consumers which are engaged in the freezing and cold storage alone shall be billed under LT VII A Commercial as provided in the tariff Order 2007 (Para37)
- Ø The limit of 20% of freezing load is applicable only to dairy farms and chilling plants and need not be made applicable universally to consumers other than milk chilling and dairy farms(Para36)
- Ø The Commission has also clarified that there was no intention to bill all consumers who have more than 20% of connected load for freezing and cold storage under LT VII A Tariff while providing the Note(e) under LT IV Tariff (Para35).

The contention of the respondents that a unit manufacturing Bakery items should have sales also in the same premises for getting classified under LT IV category can not be taken as a serious argument. Plain reading of the two classifications of bakery in the Tariff order , cited earlier, makes it clear that manufacturing is the key activity in deciding the Tariff for Bakery units, not sales.

Hence it is clear that classifying the Appellants and other similar units under LTVII A Tariff is not correct and call s for correction.

IV . Under the above circumstances after carefully perusing all the relevant documents and arguments put forward by the connected parties , the under signed have come to the conclusion that the appellants are eligible for the relieves prayed for and issue the following orders on the matter:

1. *The order No CGRF-CR/Comp1/08-09 dated 16.6.2008 of CGRF Ernakulam ,the order No CGRF-CR/Comp7/08-09 dated 23.6.2008 of CGRF Ernakulam and the order No CGRF-CR/Comp16/08-09 dated 13.8.2008 of CGRF Ernakulam related to the Appellants are set aside.*
2. *The Appellants shall be continued to be billed under LT IV category from 1.12.2007 onwards, except M/s Kochi Kitchen Exports who will*

- come under LT IV only from 10.7.2008 , the date of payments of the Additional CD for regularization of the changes in installation.
3. The excess amounts already collected if any shall be adjusted in Six installments in future bills with effect from January 2009 onwards.
 4. No order on costs

Dated this the 12th day of November 2008,

P.Parameswaran
Electricity Ombudsman

No P 16/22/24/08 / / dated 12.11.2008

Forwarded to:

1. M/s Muskara Agro Foods ,AP11/857A,Industrial Estate,
ARoor ,Alleppy 34
2. M/s Kochi Kitchen Exports ,23/1777,Binny Road,
Palluruthy,Ernakulam,682006
3. Sri Althaf Ismail,Favou-Ita-
International,XI/408,Cheriyakadavu,KANNAMALY(Po) ,Kochi
682008
4. The Assistant Executive Engineer
Electrical sub Division KSE Board
POOCHAKKAL Alleppy
5. The Assistant Executive Engineer
Electrical sub Division KSE Board
THOPPUMPADY Ernakulam
6. The Assistant Executive Engineer
Electrical sub Division KSE Board
PALLURUTHY Ernakulam

Copy to :

- i. The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004

- ii. The Chairman
Consumer Grievance Redressal Forum
KSE Board, VaidyuthiBhavanam
Gandhi Road Kozhikode

- iii. The Chairman
Consumer Grievance Redressal Forum
KSE Board, Vaidyuthi Bhavanam
KOTTARAKKARA

- iv. The Chairman
Consumer Grievance Redressal Forum
KSE Board, Power House buildings
Power House Road ERNAKULAM