

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P / 325 / 2012.

(Present T.P. Vivekanandan)

Appellant : M/S. Abad Fisheries,
Abad Buildings, Jew Town Road, Kochangadi,
Kochi-682 002.

Respondent :1). The Special Officer (Revenue),
Vydyuthibhavanam, KSEBoard,
Pattom, Thiruvananthapuram.

:2). The Deputy Chief Engineer,
Electrical Circle, KSEBoard, Power House Buildings,
Kombara, Ernakulum.- 682018

ORDER.

Background of the Case: -

M/S Abad Fisheries is a HT consumer with code No. LCN-2/1996, under Electrical Section, Vypeen. The appellant is conducting a seafood processing unit for the last few years and his electric connection is classified under HT IV-commercial tariff by the respondent. While being so, the Hon Kerala State Electricity Regulatory Commission (KSERC), has reclassified the Sea food processing Units under HT-I industrial tariff. But the respondent has retained the consumer under HT-IV commercial tariff itself, even after the said notification of Hon KSERC, alleging that no industrial activity is being done at the consumer premises. The respondent's version is that, only freezing, packing and storing activity is being done in the consumer premises and hence the party is not eligible for Industrial tariff.

The appellant being aggrieved by the non-implementation of new 2012 Tariff Revision order of the KSERC, he approached the respondent to get his tariff changed to HT industrial and to revise the bills from 7/2012 accordingly. The respondent rejected the request to re-categorize consumer in HT I (industrial) tariff from HT IV (commercial) category, after conducting an inspection in the appellant's premises. The consumer filed a complaint before the CGRF, Central Region, Ernakulum which was dismissed, holding that the petition is found to be without merits vide order No. CGRF-

CR/Comp. 89/12-13 dated 03.12.2012. Aggrieved by this order of the CGRF, the Appellant has submitted this appeal before this Forum.

Arguments of the Appellant: -

(1). The respondent failed to re-categorize the petitioner in HT I (industrial) tariff from HT IV (commercial) category, despite the fact that by the new tariff order which came into effect from 01.07.2012, all sea food processing units are included in HT I (industrial) tariff. The petitioner is conducting a sea food processing unit and is a High Tension consumer of electricity under the respondent. The petitioner is approved by the MPEDEA (Marine Products Export Development Authority), Export Inspection Council, Ministry of Commerce & Industry, Govt: of India and is also having valid license issued by the Local Grama Panchayath. As per the earlier tariff orders, sea food processing units were included under HT IV (Commercial) Tariff. The Seafood Exporters Association of India & Others including the petitioner filed Petition, No. DP 78/2010 and approached the Hon KSERC requesting for re categorization of Sea Food processing units under HT into Industrial Tariff (HT-1) from HT IV Commercial category.

(2). The said petitions were under the consideration of the KSERC and in the mean while proposal for tariff revision came up for consideration as OP No: 23 of 2012 and the KSERC considered the request for the seafood exporters pending as DP 78 of 2010 along the tariff revision and this Hon KSERC as per its order dated 25.07.2012 decided that;

“At present HT Sea Food processing units are billed under HT IV commercial tariff, whereas the LT consumers are under Industrial category. It is not reasonable to have consumers distinguished based on voltage level for the same purpose. Hence, having considered the details in the matter, the Commission is of the view that Sea food processing units under HT commercial shall be now on be categorized under HT I Industrial. Accordingly all the 55 pending petitions in this regard are also disposed of. Accordingly, necessary changes are made in the schedule of tariff, which will be applicable from the date of effect of this order.”

(3). Accordingly in the new tariff order published, the sea food processing units in HT category is included under HT 1 Industrial category. The KSERC has also ordered that the tariff revision dated 25.07.2012 will be applicable from 01.07.2012. The rates applicable to HT I Industrial category is Rs.300/- KVA per month as demanding charges and energy charge of 410 paisa per unit. However, while perusing the monthly bill issued to the petitioner on 06.08.2012, the petitioner noticed that, even though the respondent implemented new rates as per the new tariff order, the change of category given effect by the very same order was not seen implemented. In other words, in the new bill, the rates applied were those applicable to HT IV commercial, whereas the rate actually applicable to the petitioner was that of HT 1 (Industrial). This is against the spirit of the order and therefore it requires modification. The copy of the bill dated 06.08.2012 is marked as Exhibit P1.

(4). The petitioner brought it to the notice of the respondent and they informed that the anomaly will be rectified soon on getting the necessary orders from the higher ups. Accordingly, petitioner remitted the entire payment under protest hoping the next bill onwards, tariff would be changed and the excess amount remitted by them would be refunded. However, again in the next bill i.e.

for the month of September, 2012 was also issued by applying HT IV commercial tariff. True copy of the bill dated 05.09.2012 is produced herewith and marked as exhibit-P2. Then again in the bill for the month of October, 2012 was also issued by applying HT IV tariff. True copy of the bill dated 08.10.2012 is produced herewith and marked as Exhibit-P3.

(5). The issue of bill under HT IV tariff is illegal and arbitrary. As per the provisions of the Electricity Act, the Licensee can issue bill based on the tariff fixed by the Regulatory Commission. In this case, the Regulatory Commission specifically ordered that, the tariff applicable to HT seafood processing units shall be HT I- industrial, but the respondent is refusing to issue bills under the said tariff.

(6). The inaction on the part of the respondent in implementing the tariff order is illegal and arbitrary. They are bound by the tariff order and have no other option than to apply rates what is contemplated in it. The petitioner is also entitled to get the amounts collected in excess of the approved tariff refunded or adjusted in the coming bills with interest at double the bank rate as contemplated under Regulation 24 of the Supply Code.

(7). The CGRF on admitting the complaint granted an interim order directing the respondent shall not disconnect the electricity connection of the petitioner on account of the subject of dispute pending disposal at the Forum on condition that the petitioner shall remit Rs.39873/- i.e. 80% of the disputed bill amount of demand notice dated 08.10.2012 and subsequent bills shall be issued in HT 1 (industrial) Tariff and remitted by the petitioner within the prescribed date of remittance until a final order is issued by the forum on the petition. But the respondents did not respect the said order and bills again issued under HT IV Commercial category only, pending the petition.

(8). In the letter of the Deputy Chief Engineer, Ernakulum, it was stated that only manufacturing of tube ice with purified water, washing of fishes, freezing, packing and storing at cold storages are done there. An objection was filed by the petitioner to the said letter. Also copy of the inspection report or the letter of the Executive Engineer on which the Deputy Chief Engineer has relied on was also not served on the petitioner.

(9). Another statement of facts was filed by the respondent that the petitioner availed the service connection as seafood freezing factory and contending that as per the Tariff Revision Order dated 25.07.2012 by the KSERC, all seafood processing units are to be classified under HT 1-Industrial category. Based on the above order, the Board had instructed all Deputy Chief Engineers, who are the agreement authorities to inspect such premises and to ascertain their nature of activity for the purpose of fixing tariff. Accordingly, on inspection it was found that even though all machines required for seafood processing are available at petitioner's premises, the process is not seen done there and hence the petitioner is classified under HT-commercial. Further, manufacturing of tubes ice with purified water, washing of fishes, freezing, packing and storing at cold storage are done there. Hence the petitioner is found to be not eligible for the HT-Industrial tariff.

(10). The petitioner submitted a detailed list of machineries installed at the above factory of the petitioner as Exhibit-P-7. From the letter of the Deputy Chief Engineer, the fact is clear that the petitioner is a seafood processing unit with all required machineries. Petitioner is so far classified as seafood processing unit as per the HT agreement executed by the petitioner and the KSEBoard

for the purpose of tariff and billing. The KSEBoard cannot unilaterally decide that the petitioner's unit is not a seafood processing unit. The petitioner is having all activity right from procurement of the raw material, preprocessing, processing hall with attached lab and all other equipments, freezing plant as well as cold storage under one roof. No proceeding is so far initiated to change the tariff of the petitioner so far. More over it is not permissible to change the category of the consumer unilaterally without hearing the petitioner and executing a supplementary agreement.

(12). The activity in the above industrial unit or of a seafood processing unit is procuring raw materials (seafood), washing the same, icing, beheading, peeling, divining, grading, filth washing, stuffing, filling in trays, freezing, glazing according the nature of the raw material and the order that they have and packing and storing in cold storage for the purpose of exporting. In the said manufacturing process, several machineries operated by electricity is used and the freezing plant and cold storage are intrinsic and integral part of the industry of seafood processing, which cannot be segregated . All this processes put together is seafood processing. All such units are assigned HT I Industrial category in the state and the above unit alone is discriminated. There was category of "Freezing plant and Cold Storage" and it was later KSERC introduced the "seafood processing".

(13). The activity of washing the same, icing, beheading, peeling, grading fifth washing are all actually preprocessing. The IQF, Tunnel Freezers, and Plate freezers are all different types of freezers with different technology. The pre-processed material is treated with the following ingredients as per the treatment specification Salt, NP1 (Non phosphate –critic acid, sodium chloride, sodium bicarbonate), STPP (Sodium tri poly phosphate). Treatment time, chemical ration and the combination vary from buyer to buyer. For the said activities a separate lab is also working in the unit. The Deputy Chief Engineer in his letter has clearly stated that washing of fish, freezing, packing and storing at cold storage are being done in the premises which is clearly a processing activity for a seafood processing unit. Therefore the finding that processing of marine products is not seen there is baseless and illegal. The Deputy Chief Engineer has not stated what all is required for processing or meant by processing. The IQF is just one method or process for a particular type of fish or raw material. The use of machineries will depend upon on the nature of the raw material that is the fish and the type of order.

(14). Further, Hon KSERC after elaborate consideration of the case of LT sea food processing units, in its order in DP-39/2008 dated 29.8.2008 held that seafood processing means the composite and chain of activity starting from procuring raw material to storing it in cold storage after undergoing various process and held that all units having all this combined activity should be billed under LT IV Industrial category. Thereafter, in the order in clarification petition No.1/2008 in DP No.39/ 2008 dated 23.04.2009, the Hon Commission has given the benefit of LT IV Industrial tariff to all units having integrated activity of both freezing and cold storage with single LT connection.

(15). The CGRF also conducted an inspection at the premises and it is taken note of the fact that the raw materials are brought there every day and the tunnel freezer has operation on all days. The CGRF even went ahead to the extent of determining that whether this washing, tunnel freezing, packing and cold storing of the fishes can treat as an industrial activity or a commercial

activity as per the guideline of tariff order which came into effect from 01.07.2012. It is the duty and within the powers of Hon KSERC to determine what activity comes under which category. The CGRF is only a forum for settlement of disputes and has no business to do so and has exceeded its jurisdiction. The KSERC has already held that the seafood processing comes under HT 1 Industrial. The CGRF on a wrong appreciation of the facts and evidence and on a wrong interpretation of the KSERC order held that Forum can not accept the activity in petitioners' premises as seafood processing activity as envisaged in the tariff order dated 25.07.2012.

(16). The findings and reasoning of CGRF is highly perverse and absurd. In the seafood processing unit, the electric power is used for the purpose of processing the raw materials. To manufacture frozen seafood's to be exported involves a manufacturing process, which gives the raw materials a better value and the freezing and storing part of it, is a process in the manufacturing process from the point of manufacture using the raw materials, till it reaches the ultimate user. The petitioner does not freeze or store the raw materials in any commercial basis or rental basis so as to attract the tariff commercial category. The CGRF has misunderstood even the "seafood processing plant" and has refereed it as a "freezer ". In seafood processing unit the major consumption (nearly 95%) of power is for freezing plat and the cold storage.

Relief Sought: -

(1). The Hon Ombudsman may set aside the order of CGRF, Ernakulum, in No. CGRF-CR/comp.89/2012 -13/dated 03.12.2012.

(2). Direct the respondents to place the petitioner under HT-1 Industrial for seafood processing plants and to revise the bills under HT I (Industrial) tariff and also to issue all the future bills to the petitioner under HT I (Industrial) tariff by implementing the new tariff order issued in pursuance to the directions in the order dated 25.07.2012 in OP.23/2012 of the Hon KSERC w.e.f 01.07.2012 and to refund the excess amount collected from the petitioner with interest at double that bank rate as contemplated under Regulation 24 of the Supply Code.

Arguments of the Respondents: -

(1). M/S. Abad Fisheries is a HT consumer of KSEB having a Contract Demand of 300 KVA. The Firm has availed electric connection for freezing purpose and was classified under HT-IV Commercial Tariff at the time of agreement. As per Electricity Act, 2003, the power to determine the tariff for generation, supply, transmission and wheeling of Electricity, wholesale, retail or bulk etc. with in the state is vested upon State Electricity Regulatory Commission. Prior to this KSEB was the sole authority to determine the tariff with the approval of State Government.

(2). KSERC has issued tariff revision order dated 25.07.2012, giving with effect from 01.07.2012. Considering the purpose of the connection and the nature of business carried out by consumer, the petitioner was assigned HT-IV Commercial Tariff and is being billed. The consumer has argued that all seafood processing units are included in HT (industrial) tariff with effect from 01.07.2012 and claimed that they are also eligible for HT (industrial) tariff. Based on the above tariff order, the Board has given due instruction to all Deputy Chief Engineers (DCE), the Agreement Authority, to inspect the premises where such seafood processing units, which are billed under Commercial HT-

IV Tariff erstwhile. As such, the DCE, Electrical Circle, Ernakulum, the agreement authority has inspected the premise of the petitioner and reported that processing of marine products are not seen carried out in the premises of the petitioner and the consumer may be classified under HT-IV Commercial Tariff (copy of the inspection report of the agreement authority, Deputy Chief Engineer, Electrical Circle, Ernakulum is produced and marked as Exhibit.R1.)

(3). The petitioner states that the firm is a seafood processing unit, approved by marine Product Export Authority and Government of India. The tariff of the consumer is given in accordance with the report received from the agreement authority i.e. the DCE and as such the monthly invoices are prepared under Commercial Tariff and invoices issued are in order (copy of the invoice dated 06.08.2012 is marked as Exhibit. R2)

(4). The petitioner again argued that the seafood processing unit of their firm also falls under HT-I Industrial category. The DCE, Electrical Circle, Ernakulum again inspected and reported that even though all machines required for seafood processing like individual Quick Frozen for processing prawns are available at the premises, the process is not seen done there. It is further reported that only manufacturing of tube ice with purified water, washing of fishes, freezing, packing and storing at cold storage are being done there. It is also informed that the processing of marine products is not done there and the consumer is eligible for HT-IV commercial tariff only. As such the invoices for the month 8/2012, 9/2012 and 10/2012 were issued under HT IV commercial Tariff and the consumer remitted the amount (copy of the invoices for 8/12,9/12 and 10/12 are produced and marked as Exhibit-R2, R3&R4.)

(5). The KSEB is bound to comply with the orders of the Hon KSERC and the consumer is charged as per the approved tariff order. Hence the refund or adjustments as claimed by the consumer is not in order. The claim of argument of the petitioner regarding interest at double bank rate under Regulation 24 of Supply Code is not applicable in this case.

(6). The activity which could be noticed during the inspection of the DCE, the agreement authority, was freezing and cold storage. As per the Tariff Revision Order dated 25.7.2012 this activity comes under HT-IV commercial and has classified the sea food processing as Industrial but the activity which consists of only cold storage and freezers was retained under HT-IV commercial. It is found during the inspection that the activities of petitioner's premises are freezing of washed raw and untreated fishes, compact packing and storing in the cold storage.

(7). In the Judgment of CGRF, it is mentioned that the usage of freezer and cold storage alone has to be treated as a commercial activity and the consumer can't be assigned with HT-I Industrial tariff unless and until he re-orient his activity into sea food processing activity as envisaged in the tariff order and hence dismissed the petitioner. (copy of CGRF order is marked as Exhibit.R5).

(8). The Hon CGRF has made an inspection on consumer's premises to ascertain the facts and it was found that the individual Quick Freezer used for quick freezing of prawns is not regularly used. On verifying the machine log book, it noticed that this quick freezer had its regular operation only in the months of January and February 2012. Forum had also inspected the tunnel freezer which was found installed near to the IQF. This tunnel freezer is for deep freezing of fishes and has been

in operation on most of the days. It has found during inspection that the activities at petitioner's premises are freezing of washed raw and untreated fishes, compact packing and storing in the cold storage. The Forum was informed that these packets of fishes are exported to China and other destination. The forum has felt that further processing of these unprocessed fishes take place at these destinations. Petitioner's laboratory equipment loads are understood to be mandatory to meet the specified standards for these exports.

Analysis and Findings: -

A hearing of the Case was conducted in my chamber at Edappally, Ernakulam, on 16.05.2013 and 20.08.2013. The learned Advocate, Sri. Blaze K Jose, has represented for the appellant and Smt. Pushpa T, EE, Electrical Circle, Ernakulam and Sri. Viju U, Sr.Suptd. and Sri. Kumar T., SA of o/o the Special Officer(Revenue), KSEB represented on 16.05.13 and Smt. Sreedevi B, DCE, TRAC, HQ, Sri. Kesava das V, DCE and Sri. Suresh M.K, Sr.Suptd. o/o the SOR represented the opposite side on 20.8.13. Both sides have presented their arguments on the lines as stated above.

The brief facts and circumstances of the Case that led to filing of the Petition before this Forum is 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.

It was instructed by this Forum to the Respondent, to conduct a Joint inspection (including an official of the related Govt. Dept.) on 3 or 4 numbers of similar Sea food Processing Units and compare with the appellant's Unit and submit a report, on the nature of activities done there and the Tariff assigned to each. As such a team was constituted comprising two Asst. Exe. Engineers of KSEB, as the representative of the Respondent and the Asst. District Industries officer of the Govt, as an independent member. They have visited the following Factories and filed an Inspection Report dated 3.7.2013.

- (i). M/s Choice Industries, Palluruthy,
- (ii). India Marine , Palluruthy,
- (iii). Matsyafed, Thoppumpady,
- (iv). Abad Fisheries, Vypin.

The Report states that the first 3 units (all Sea Food Processing Units with HT connection) listed above, have been allotted HT Industrial Tariff. In the inspection done at the appellant's Unit, the Team has noted as; 'Cuttle Fish were being processed..'. They also observed that the Tuna Fish and Sardines are kept at the Tunnel Freezer of the factory.

The Inspection Report was concluded as follows;

"We thus conclude our Report regarding the comparison between Abad Fisheries, Vypin, and other established sea food processing plants. As such, we were unable to find any major differences of process being done in the above mentioned Firms, except in M/s Choice Industries, a Firm which produces ready to eat pawns.

From the above Inspection Team's observation, I am of the view that the appellant is eligible for HT Industrial Tariff.

Decision: -

From the analysis done and conclusion arrived at, I decide as follows.

The appellant is eligible for the HT- 1 Industrial Tariff from the date of effect of the revised tariff order i.e. with effect from 01.07.2012 onwards. Hence the Respondent is directed to revise the monthly bills of the appellant's Firm, issued from 7/2012 onwards, under HT-1 industrial tariff and the excess amount collected by billing under HT-IV Tariff, may be refunded with interest at double that bank rate, from the date of collection or shall be adjusted in the future bills of the consumer with in 60 days of this order.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed to the extent ordered.

The order of CGRF, Ernakulum, in Petition No. CGRF-CR/comp.89/ 2012 -13/dated 03.12.2012 is set aside. No order on Costs.

Dated the 17th of October, 2013,

Electricity Ombudsman.

Ref. No. P / 325 / 2012/ 2008 / Dated 17.10.2013.

Forwarded to : (1). M/S. Abad Fisheries.
Abad Buildings, Jew Town Road, Kochangadi,
Kochi-682 002.

: 2). The Special Officer (Revenue),
Vydyuthibhavanam, KSEBoard,
Pattom, Thiruvananthapuram.

: 3). The Deputy Chief Engineer,
Electrical Circle, KSEBoard, Power House Buildings,
Kombara, Ernakulum.- 682018

Copy to: - 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.

2). The Secretary, KSEB,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.

3). The Chairperson, Consumer Grievance Redressal Forum,
KESB, Power House Building, Ernakulam- 682018.