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Appeal Petition No: P/336/2013 & P/337/2013.
(Present T P Vivekanandan)

(1). Appeal Petition No: P/336/2013.

APPELLANT : 1). Mr. James Jose,
Managing Director, Chemmennur Gold Refinery (P) Ltd,
M.G.Road, Ernakulam.

(2). Appeal Petition No: P/336/2013.

APPELLANT : 2). Mr. James Jose,
Managing Director, Cochin Assay Co. Pvt. Ltd.,
Alapatt Road Extension, Ravipuram, Kochi 682015.

RESPONDENT (both Cases): The Assistant Executive Engineer
Electrical Sub division, KSEB, College,
Ernakulam.

ORDER.

BACKGROUND OF THE CASE: -

The appellants are consumers of electricity under industrial tariff and have two connections with Consumer Nos.12482 and 9247 at M.G. Road, Kochi and at Ravipuram, Kochi, under Electrical Section, College, Ernakulam. The consumer is engaged in various gold processing activities in these units. The appellant with Cons. No.12482 was issued a short assessment bill for an amount of Rs.12,22,884/-, being the difference to be paid on changing his tariff from LT IV to LT VI C category w.e.f. 16.03.2010 i.e. the date of connection and with Cons. No. 9277, he was issued with a short assessment bill for a sum of Rs. 18,99,602/- w.e.f. 15.4.2005, the date of change of tariff from commercial to industrial. The reason for changing the tariff category from LT IV to LT VI C and for issuing the impugned short assessment bills is that the appellants had availed the electricity connection under LT IV category on the basis of the SSI certificate produced by the appellants. Thereafter on 18/9/2012, when APTS team in its inspection detected that only quality testing and certification (hall marking) process was carried out in the units and there was no production of bullion products carried out in the premises. Being aggrieved by the impugned short assessment bills and change of tariff, the appellants have filed petition before the CGRF and the same was disposed of with the findings as;

(i). Consumer No. 12482 –Order No.CGRF-CR/Comp.82/2012-13 dated 10/12/12

The disputed assessment to be revised under LT VII A tariff and issued to the petitioner within 2 weeks from the date of receipt of this order. Detailed calculation statement shall be issued to the petitioner. The reassessed amount shall be permitted to be remitted in ten equal installments with the applicable interest as that of CD if the petitioner requests for the same.

(ii). Consumer No.9277 – Order No. CGRF-CR/Comp.83/2012-13 dated 10/12/12

Petitioner's tariff to be reassigned as LT VII A tariff. The disputed assessment to be revised accordingly within two weeks of receipt of this order. Detailed calculation statement shall also be issued along with the revised bill. The reassessed amount shall be permitted to be remitted in 15 installments with applicable interest as that of CD if the petitioner request for the same.

Aggrieved by the orders, the appellant had submitted this Appeal Petitions before this Authority.

Arguments of the Appellant: -

The appellant has adduced the following arguments in his appeal petition.

- (1). The reason stated by the respondent that there was no production of bullion products at the premises and therefore no manufacturing activity was carried out is incorrect and baseless.
- (2). The appellant's units were involved in the process of manufacturing bullion products like gold bars, gold coins and gold pendants and the case put forward by KSEB that the appellant's units are mere testing units is absolutely incorrect and without any basis. The appellant's units are involved in the process of melting old gold ornaments and gold dust using furnace into liquid gold and manufacturing gold bars/biscuits, gold coins and pendants of various shapes. In fact the unit is a composite manufacturing unit, where he melts the solid gold (ornaments and gold dust) and converts them into refined bars/ biscuits of various weights and gold coins and pendants.
- (3). The hall marking and quality testing process is a part of the whole manufacturing process carried out in the units and it cannot be singled out to allege that it is a hall marking unit.
- (4). The appellant is registered with Govt. of India as a bullion manufacturer and also registered with the central excise department and as per its rules, any production/composite manufacturing activity undertaken by a central excise registered unit is not coming under service tax rules and hence not treated as a service unit, but as a manufacturing unit.
- (5). The premises of the units are taken on lease and the main machines installed there, such as laser machine, x ray machine, testing lab, furnace etc and the units are undertaking testing and laser making of gold and silver products, which is part of our bullion manufacturing activity. For refining old gold, it is first melted and tested to detect its gold content. After that the pure bullion also is tested and purity stamped on the bullion bars; Sl. No. of the bars, engrave coin minting dies, marking of company logo etc are done by the laser machines.
- (6). The central excise registration obtained by the appellant's units will clearly prove that it is a manufacturing unit. Therefore the respondent cannot allege that appellant's unit will be treated as a service unit and not a manufacturing unit. The appellant has produced various documents to prove that there is manufacturing process.
- (7). It was the respondent after fully satisfying themselves that the units are manufacturing units that they classified the units tariff as LT IV category at the time of obtaining connection, as per Regulation 20 of KSEB T & C of Supply, 2005. No LT connection is given until the consumer's installation has been inspected and tested by the Engineer and found satisfactory. Thereafter the stand of the KSEB that it is a case of misclassification of tariff is absolutely without any basis.
- (8). The CGRF after hearing the appellant and respondent, did not accept the appellant's prayer to be permitted to continue under LT IV category. But the CGRF observed that the KSEB went wrong in re-fixing the appellants tariff to LT VI C category as it is applicable to various offices of state/central Govt., financial institutions etc. and cancelled the respondent's reclassification of his tariff and re-fixed the tariff to LT VII A category. The LT VII A category is for commercial consumers like hotels, restaurants, private hostels/lodges/guest/rest houses, show rooms, cold

storages, insurance companies, call centres, service station etc. and it can be clearly seen that all these units under LT VII A category are service industries and not manufacturing units. The fixing of the petitioners tariff at LT VI C and later re-fixing it at LT VII A category itself will show that the reclassification is done without application of mind. The CGRF has erred in re-fixing the appellants' tariff as LT VII A instead of LT IV.

(9). It is submitted that the demand of arrears due to reclassification of tariff is arbitrary. Since the classification of LT IV tariff was given after being satisfied about the eligibility for the same after inspection by the Board, the action in demanding arrears is illegal. The appellant pointed out the decision taken by this Forum in a similar case disposed vide Appeal petition No. P/214/2011 in which it was held that the Board can demand only arrears for the last 3 months period prior to APTS inspection.

(10). Finding of the CGRF in the inspection conducted at the appellants' premises is incorrect. The furnace used is not only for testing the sample but also for melting old gold ornaments in the process of manufacture of gold bars/ biscuits, gold coins and pendants of various shapes. All these aspects were not considered by the CGRF in a proper manner.

During the Hearing, the appellant summarized his arguments as follows;

(A). Cons. No. 12482.

This is a manufacturing unit with Central Excise Dept registration. We produce Gold Coins, Medallions etc. The CGRF chairperson has inspected and recorded this fact. Hall marking can be done only by Govt. authorized Firms whereas Laser marking can be done by anyone. Our Firm, M/s Chemmannur, does not do any Hall marking activity. The mahazar was signed by an inexperienced person. Hence we may be restored LT-IV industrial tariff and the disputed bill may be cancelled.

(B). Cons. No. 9277.

The tariff may be retained under LT VII A commercial, till a decision is taken by the Hon Commission on the Petition filed before for LT IV tariff.

Nature of reliefs sought for: -

- (i). To set aside the orders of the CGRF dated 10/12/12 to the extent it revised the tariff for appellants units to LT VII A category instead of LT IV category and directing to pay the arrears.
- (ii). To set aside the bills issued by KSEB (ii) on the basis of the orders of CGRF dated 10.12.2012.

Arguments of the Respondent:-

The Respondent has filed the counter against the complaints contained in the Appeal Petition, (1). Consumer No.12482 was under LT-IV tariff with effect from 16.3.2010 and Consumer No. 9277 was under LT VII A tariff with effect from 28/6/2012. Pursuant to an application submitted by the appellant the tariff of the said premises was changed from LT VII A to LT IV, with effect from 15/04/2005. LT-IV tariff was made applicable to the appellant on the pretext that the said premises were used solely for industrial propose and such a conclusion was arrived based in the SSI certificate submitted by the appellant. In the interregnum, pursuant to an inspection carried out by the Anti Power Theft Squad (hereinafter referred as APTS, for short) on 18.09.2012, it was revealed that the entire load connected to the premises of the appellant were totally used for quality testing and hall mark certification before trading and that no production of bullion were carried out in the premises. Moreover it was also revealed that the premises were continuously and exclusively used, from the date of connection for testing and hallmarking bullion products.

(2). Manufacturing Process means, the act of making something (a product) from raw materials.

In the ibid case, the appellant is carrying out the quality testing and certification of an already manufactured product, which as matter of fact will not fall under the purview of “manufacturing process”. Hence the tariff applicable to the premises owned by the appellant cannot be included in LT IV tariff. Since the tariff applicable to the appellant was misclassified as LT IV, the KSEB is legally entitled to rectify the same and to recover the amount for the energy misused by him.

(3). By virtue of tariff notification dated 26.11.2007 issued by the Hon Regulatory Commission vide order Nos.TP 23/2006 and TP 30/2007, there is no specific tariff assigned for quality testing and therefore the tariff of appellant was re-fixed in the category of LT VI C. Accordingly; a short assessment bills from the date of connection were also issued to the appellant. Challenging the same, the appellant approached the Hon CGRF, Ernakulum and the Forum had inspected the said premises of the appellant, since there was dispute of facts. The Hon CGRF, after proper appreciation of facts, evidence and law, found that the said premises are used for quality testing and for hall marking and thereby accepted the contention of the respondent and found that LT IV tariff is not applicable to the appellant and the most applicable tariff in the instant case is LT VII A and not LT VI C and thereby directed respondent to reassess the short assessment bills under LT VII A tariff. It was also directed that the revised bill be permitted to be remitted in 10 and 15 equal monthly installments respectively with the interest as that of CD, if the appellant requests.

(4). In compliance of the said directions a revised bill along with a detailed calculation statement was issued to the appellant on 27.12.2012 for a sum of Rs.1129862/- for Cons. No. 12482 and a revised bill for Rs. 16,84,819/- , for Cons. No. 9277.

(5). Further the averments of the appellant that as per Central Excise Rules, testing and hall marking are part of composite manufacturing activities is highly misconceived, baseless and untenable and therefore denied. The activities being carried out in two premises cannot be brought together so as to consider the same as one composite manufacturing activity. Each and every consumer premises has to be dealt separately and individually and hence the averment contra is highly misplaced, misconceived and are made with ulterior motives to circumvent the ends of justice and hence is liable to be dismissed.

(6). Moreover, it is trite law that there is a mistake in categorization or if there is under billing, it is always open to the respondent to rectify the said anomaly/mistake and to demand proper charges due from the appellant. Thus, it is submitted that the revised bills dated 27.12.2012 are legal and proper and the respondents have not done anything which amounts to deficiency in service as alleged.

The main points stated during the Hearings:- The site mahazar clearly depicts the Hall marking works undertaken by the consumer at both sites. The consumer has accepted the same in the statement filed before the CGRF. Hence the eligible tariff is LT VIIA commercial.

Analysis and Findings: -

The Appeal Petitions numbered, P/336/2013 &P/337/2013, are filed by the same appellant being the Managing Director of two companies (engaged in bullion related works), against the change of tariff and the reassessment bills issued on two of his electric connections, Cons. Nos. 12482 & 9247. The Case deals almost similar issues of complaint and cause of action and hence decided to hear together. As such, the hearings of the Petitions were conducted in my chamber at Edappally, on 03.5.2013 and 16.05.2013. Sri. James Jose, the appellant and his learned Counsel,

Sri. Albert V. John, appeared for the appellant's side and Sri. Ramesh Babu, the Asst. Exe. Engineer, College, Ernakulam, for the respondent and argued the case on the lines stated above.

On perusing the Appeal Petition, the statement of facts filed by the Respondent, the arguments of both sides 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 thereof.

1.1. The APTS of KSEB had inspected the consumer's premises on 18/09/2012 and found that these two Electric connections were not used for industrial activities and hence the appellant is not eligible for LT IV industrial tariff and prepared a Mahazar on noting the anomalies found there. The respondent accordingly, changed the tariff to LT VI-C and raised short assessment bills for Rs.12, 22, 884/- and Rs. 18,99,602/- respectively, being the difference in tariff rates to be paid on changing his tariff, for the said two connections. The consumer filed Petitions before the CGRF, Ernakulam against the bills, which were heard and disposed of by re-fixing the tariff under LT VII A commercial category. Accordingly the bills were revised to Rs.1129862/- for Cons. No. 12482 and to Rs. 16,84,819/- for Cons No. 9277 and were issued to the consumer. In this case, *the first question to be decided is, 'whether the activities of the appellant in the premises attracts an industrial or other category of tariff?'*

1.2. The main dispute relates to the change of tariff category from LT IV industrial to LT VI C and later LT VII A category. The KSEB is supposed to assign the tariff to the consumer, based on guide lines and notifications issued from time to time, by the Hon State Regulatory Commission (KSERC), which is the statutory empowered body to classify the appropriate tariff of a class of consumers. Accordingly, the tariff of a consumer is fixed based on the purpose or the activity for which the electrical energy was utilized. In this case, the tariff assigned to the party originally was under industrial tariff. Later, pursuant to an inspection carried out in 9/2012, it was found that the premises were used for quality testing and certification process of bullion products and hence changed the tariff. The respondent alleges it as 'misuse of tariff' given for an industrial purpose, utilized for a commercial purpose.

1.3. According to CGRF, the electricity being used will not fall in the list of activities mentioned under LT VI-C (non domestic) category (allotted by KSEB after inspection) and will fall under the LT VII A commercial tariff only. It is noted that the CGRF has inspected the premises and convinced themselves of the activities going on in the consumer premises. The Forum has held that, the activities of testing, hall marking, laser cutting and engraving of bullion products, cannot be termed as an industrial activity. So the CGRF opted for reassigning the appellant's tariff as LT VII A-commercial.

1.4. But the appellant argues that the appellant's unit is involved in the process of manufacturing

gold and silver products like bars, coins and pendants. They argue that the process of melting old gold ornaments using furnace into liquid gold and manufacturing gold bars/ biscuits, gold coins and pendants of various shapes and is clearly a manufacturing process in the gold industry. The hall marking and quality testing process is a part of the whole production process carried out in the units and it cannot be singled out to allege that it is a hall marking unit, they argue.

1.5. The industrial tariff is not issued based on manufacturing process alone. The Hon KSERC notifies the tariff proposals filed by the Distribution Licensees and seeks the opinion of General Public and other interested stake holders and conduct Public hearings at various places of the State and take a final decision. The Hon KSERC is also guided by the National Tariff Policy announced by the Govt. from time to time. Hence the Excise Law of Govt. or the recognition of Central Govt. etc as pointed out by the appellant are not the factors in deciding the tariff of an electricity consumer.

1.6. Moreover, the criteria for assigning industrial tariff to applicants or Firms are not decided by the process of manufacturing alone. For example, the public water works, sewage pumping, electric crematoria, pyrolators of local bodies etc. have been classified under industrial tariff by the Hon Commission, where no such production activity is taking place. Normally, the purpose of electricity use or the activity done using energy, which is close to the activity specifically earmarked by the Commission under the Tariff category List will be assigned, in case the specific item (like the bullion process) is not included in the tariff list.

1.7. In the document produced by the appellant, the Ruling No. AARC / C.Exc/ 03/ 2012) of the 'Authority for Advance Rulings (Central Excise, Customs and Service Tax) dated 01.06.2012, it is seen observed as follows; - *"The applicants are engaged in refining and minting of products of precious metals namely, gold, silver and platinum. The products are minted as per the orders placed by their customers and the work is done, in large majority of cases on the precious metal in bullion form supplied by their customers. The articles of precious metals that are made and supplied by the applicant to their customers include medallions /Coins made according to the specifications and designs agreed with customers and some articles of jewellery like pendants of various shapes and sizes.*

The said observation clearly shows that the Parties like the appellants in this Case, undertakes works as per the design and specifications of the customer, which appears more like running a business establishment of commercial activity rather than an industrial Unit.

1.8. In this case, the APTS has conducted inspection of the premises of the appellant and has recorded the activities or the purpose for which the electricity is being used in a mahazar and the consumer has not disputed the mahazar prepared by the KSEB. The CGRF also visited the site

before delivering its verdict. The Forum has noticed largely commercial related activities being done in the consumer premise like Hall marking, engraving etc. The consumer has stated they are doing the same for their own as well as undertakes other agencies job works also. Hence I am of the view that the activity is largely business oriented in bullion products, like Jewellery business, which attracts a LT VII-A category commercial tariff.

1.9. Another point of issue raised by the appellant is on the short assessment period taken for calculation. The appellant submits that the respondent cannot reassess for the entire back period, if it was a mistake of misclassification happened from the respondent's side. Appellant's unit had been classified under LT IV category after inspection by the respondent. As per Regulation 20 of KSE Board T & C of Supply 2005, no LT connection shall be given until consumer's installation has been inspected and tested by the Engineer. Hence the appellant argues that even in cases of misclassification, the arrears cannot be demanded.

2.0. As per Regulation 24(5) of Kerala Electricity Supply Code, 2005, if the Licensee (KSEB) was able to establish that it has undercharged the consumer, either by review or otherwise, the Licensee can recover the amount so undercharged from the consumer by issuing a bill. Hence the respondent argued that if there is a mistake in categorization of tariff and a consequent under billing, it is always open to the respondent to rectify the said anomaly/mistake and to demand proper charges due from the appellant.

2.1. Considering both the above contentions, I am of the view that the consumer is bound by the Agreement conditions entered between KSEB and the consumer, to pay the electricity charges, at the appropriate tariff, for the actual energy he has consumed. However as there was long delay in detecting the wrong tariff, I am of the view that the consumer need be reassessed, limiting for the previous two years prior to the date of inspection only i.e. from 10/2010 to 09/2012, as there is lapse on the part of the respondent and have failed to act as per rules in time. The respondent cannot demand arrears of electricity charges for the previous 7 years just for the wrong tariff fixed by the KSEB itself.

DECISION: -

From the analysis done, the findings and conclusions arrived at which is detailed above, I take the Following decision.

The Consumer's activity or the purpose, for which the electrical energy is being used by the appellant, has been found as for commercial or business nature type. Hence the decision of the CGRF to assign LT VII A- commercial tariff to the appellant is found justifiable and is upheld. But the change of tariff of the appellant in both cases, Cons. Nos. 12482 and 9247, from LT IV- industrial to LT VIIA-commercial, shall be given effect from 10/2010 only, i.e. previous two

years prior to the date of inspection and detection of wrong tariff, as there was negligence or lapse on the part of KSEB in fixing the eligible tariff. The respondent is directed to reassess the consumer for the differential tariff rates due to wrong tariff fixation, limiting for the two years i.e. from 10/2010 to 09/2012 as stated above and issue to the consumer with 30 days time given (due date) for paying the bills. The consumer is eligible for up to fifteen installments for each bill, if he applies for, but the installments will carry interest applicable in KSEB, from due date of the revised bill to the date of payment, as per clause 22(8) of Electricity supply Code, 2005. The consumer will remain in the LT VIIA tariff for the said activity, till the Hon KSERC decides on the Petition said to be filed by the Appellant or his Association, on the issue of eligible tariff .

The consumer is liable to pay the revised bill as per this order or the 1st installment before the due date of the revised bill, as he is bound to pay the electricity charges, for the actual energy he has consumed, at the appropriate tariff.

Having decided as above, it is ordered accordingly. As such, the Petition filed by the appellant vide the Appeal Petition No. P/336/2013 and P/337/2013 is disposed of with the said directions ordered. The order of CGRF in CGRF-CR/Comp.82/ 2012-13 dated 10.12. 2012 and Comp.83/ 2012-13 dated 10.12.12 of CGRF Ernakulam, is set aside. No order on costs.

Dated the 30th of October, 2013.

Electricity Ombudsman

Ref. No. P/336/2013 and P/337/2013/2029/ Dated 30.10.2013

- Forwarded to: -
1. Mr. James Jose,
Managing Director, Chemmannur Gold Refinery (P) Ltd,
M.G.Road, Ernakulam
 2. Mr. James Jose,
Managing Director, Cochin Assay Co. Pvt. Ltd.,
Alapatt Road Extension, Ravipuram, Kochi- 682015.
 3. The Assistant Executive Engineer,
Electrical Sub division, KSEB, College, Ernakulam.

- Copy to: -
- 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
 - 2). The Secretary, KSEB, Vydhyuthibhavanam,
Pattom, Thiruvananthapuram-4.
 - 3). The Chairperson, Consumer Grievance Redressal Forum,
KESB, Power House Building, Ernakulam- 682018.