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REPRESENTATION No: P 60/09

Appellant : M/s Peoples Dairy Development Project-
Central Society KALADY 683574
(Represented by Sri Mahan Secretary)

Respondent: Kerala State Electricity Board
Represented by
The Assistant Executive Engineer
Electrical Sub Division
KODAKARA Thrissur Dt

ORDER

M/s Peoples Dairy Development Project-Central Society, Kalady submitted a representation on 4.3.2009 seeking the following relief :

To declare that the Appellant dairy plant having consumer number 4163 under Kodakara Major Section is liable to be charged only under LT IV category of tariff
To set aside the short assessment invoice no: 24237 dated 18.11.2008 for the period December 2007 to September 2008
To set aside the invoice no 39922 dated 15/22-12-2008 and 64214 dated 20.2.2009 issued under LT VII tariff
To set aside the communication dated 26.2.2009 consequent to the order of CGRF
To direct repayment of all excess amounts collected from the Appellant with interest
To issue an interim stay directing the Assistant Engineer Kodakara to accept payment from the Appellant at LT IV tariff pending consideration of the complaint

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 15.07.2009 .

The Appellant is a charitable society formed in 1983 with 220 societies and 40000 farmers are connected to it. The dairy plant of the Central Society at Perambra is an LT consumer with Consumer number 4163 and connected load 72.4KW engaged in the process of collecting , pasteurizing/processing, homogenization ,standardization, packing, storing and distribution of milk.

Formerly the consumer was under LT IV tariff .During an inspection by the KSEB officials on 3.11.2008 the connected load of the chilling/freezing/cold storage was found to be 25.359 KW which is more than 20% of the total sanctioned load of 81KW. Hence the consumer was put under LT VII A tariff as per the revised tariff regulations dated 27.11.2007 and revised assessment under LT VII A tariff wef 1.12.2007 was made by KSEB .The short assessment was to the extent of Rs13,93,795/-.The Consumer aggrieved by this short assessment and change of tariff approached the Hon:High Court with WP(C) 35707/08 and there after the CGRF as per directives of the Hon: High Court They also paid the part amount directed by the Hon:High Court. The CGRF upheld the actions of KSEB. Mean while the Respondent continued to issue regular monthly invoices also under LT VII tariff
The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation and during the hearing are summarized below:

The activity in the Perambra unit of the Society is a manufacturing activity and hence should be included under LT IV tariff.
The Petitioner is not running any dairy farm. The milk is collected from individual farmers and societies for processing and distribution to consumers.
There is no independent milk chilling plant or chilling plant run on isolation as contemplated in the Note (e) under LT IV tariff .The mere fact that chilling is under taken in the process do not alter the character of the plant as a dairy plant.
The functions of dairy farm, milk chilling plant and milk processing plant are different. The function in the dairy farm is rearing of cattle and production of milk. The function in the chilling plant is collection of milk from farmers grading, chilling and storing at low temperature till transportation to the processing dairy. Hence the provision in the note (e) under LT IV tariff in the notification dated 27.11.2007 can not be applied to the dairy plant of the Appellant. There fore the Appellant unit can not be classified under LT VIIA tariff.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

The issue revolves round only on connected load and allied details, the process carried out in the unit is not relevant. The relevant fact is that the connected load of the chilling/freezing/cold storage activities exceeds 20% of the total connected load.
The Appellant do not contend the fact that the whole manufacturing process involves chilling at the stage of pasteurization.
The only fact to be taken into consideration is the total connected load and the percentage of chilling/freezing/cold storage load in the total load. This is the essence of the tariff order of 2007.
The Tariff prevalent prior to December 2007 provides for LT IV Tariff for ‘milk chilling plant, freezing plant and cold storage’ .The Appellant had enjoyed the LT IV tariff at that time without arguing that their plant is neither milk chilling plant nor freezing plant. If

the words 'milk chilling plant, freezing plant or cold storage' is accepted as applicable to them in 2002, obviously the present contentions become irrelevant.

Discussion and Findings:

The Milk Chilling plants, Freezing plants , Cold storage etc were under LT IV Industrial tariff as per the Tariff notification dated 24.10.2002. Tariff notification dated 27.11.2007 took these activities out of LT IV listing and put them under LT VII A listing and put the following note below the LT IV as Note (e) :

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.

The main contention of the Appellant is that their unit is neither a dairy farm nor a milk chilling plant. Hence the Appellant claims that this unit is not covered under the Note (e) under LT IV of the Tariff notification dated 27.11.2007.

But other types of milk processing activities were not covered in the listings of LT IV tariff in the notification dated 24.10.2002 either. Still the unit had enjoyed the benefits of LT IV tariff up to 12/07 since 'milk chilling plants, freezing plants , cold storage' etc were under LT IV then.

By the same reason and logic, the note under LT IV tariff has to be made applicable to such units also. If the LT IV Tariff were applicable to milk processing plants prior to 12/2007, *in accordance with the listing provided therein*, then the Note (e) under the LT IV tariff in the notification dated 27.11.2007 should also be applicable to such units.

More over the tariff listings can only be illustrative - not conclusive or exhaustive. It is a well accepted principle that no Electricity Tariff notification can cover all the activities of the economic domain. Activities of similar character are classified under any particular group applying the idiom of 'nearness' or 'approximation' also. As such the contention of the Appellant that the Note(e) is not applicable to them can not be accepted.

The activities in the milk processing plant can generally be listed as given below:

Milk processing involves

- Receiving Milk
- Pre-heating
- Filtration/Clarification
- *Cooling and Storage(5 degree C or below)*
- Standardization
- Pasteurization (63 degree C etc)
- Homogenization
- Bottling& Packing
- *Storage (5 degree C or below)*

The term 'processing' is generally used in a wide sense in dairying and includes pasteurization, homogenization, evaporation, drying etc. After pasteurization 'the milk is

immediately cooled to 5 degree C or below'. Chilling to 5 degree C or below is an integral part of these activities. 'The temperature of the milk storage rooms should be below 5 degree C or below so as to check bacterial growth'.

The statements of the Appellant itself proves beyond doubt that milk chilling to 5 degree C or below and storage at very low temperature is an essential activity in the Milk processing units also.

The tariff notification dated 27.11.2007 recognizes this fact but specifies that the load for chilling freezing etc shall be limited to 20 % of the total load, for a unit to be eligible to be under LT IV tariff. Hence classification of the Appellant unit under LT VIIA can not be challenged. As pointed out earlier, the argument of the Appellant that the Note (e) under LT IV is applicable only to 'stand-alone' or 'isolated' chilling plants is not reasonable.

The tariff change from the date on which the new tariff comes into effect ie, wef 1.12.2007 is correct.

Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The arguments/claims/points raised by the Appellant in support of the reliefs sought for are devoid of merit and hence the reliefs are not allowed and the representation is dismissed*
2. *No order on costs.*

Dated this the 16th day of July 2009 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 60/09 / 290 / dated 17.7.2009

Forwarded to: 1. M/s Peoples Dairy Development Project-
Central Society KALADY 683574

2. The Assistant Executive Engineer
Electrical Sub Division
KODAKARA Thrissur Dt

Copy to :

1. The Secretary,
Kerala State Electricity Regulatory Commission
KPFC Bhavanam, Vellayambalam,
Thiruvananthapuram 695010
2. The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,
VaidyuthiBhavanam Power House ERNAKULAM