

STATE ELECTRICITY OMBUDSMAN

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REPRESENTATION No: P 62/09 & 63/09

Appellants : 1. Sri Varghese.V.Chcrian
Karumathottathil House
Thammanam Ernakulam

2. Smt Anitha.T.Thachankary
32/2855 Thammanam Ernakulam

Respondent: Kerala State Electricity Board
Represented by
The Assistant Executive Engineer
Electrical Sub Division VYTTILA Ernakulam

ORDER

Sri Varghese.V.Chcrian and Smt Anitha.T.thachankary Thammanam submitted a representation on 11.3.2009 seeking the following relief :

To set aside the Order No CGRF-CR/Comp 48/08-09/656/ dated 4.2.2009 and Order No CGRF-CR/Comp 47/08-09/656/ dated 4.2.2009 respectively

Counter statement of the Respondent was obtained and hearing of both the parties conducted on 16.7.2009 .

The petitioners are LT 3 Phase consumers under Electrical Section Vyttila .They were under LT IV tariff earlier but put under LT VII A consequent to the changes in the Tariff order of November 2007 since 'Audio/video cassette recording/duplication units and CD recording units' were transferred to LT VII with effect from 1.12.2007 . The Appellant approached CGRF against this but the CGRF upheld the actions of the Respondent.

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 carried out in the premises of the Appellant is not mere audio/video recording .Traditional audio/video cassette recording or CD recording is not being done in the unit. Nor is it a video editing studio where the conventional tapes filled with visuals that are brought to the studio are edited in recorders mixers and players where by a final product is made.

The Appellant units are engaged in software services. The audio and video data are compressed into yellow book format and brought in the data samples to the units. The data are processed into different software products like music software for internet services or for conversion into CD/DVD encryption or broad cast encoding for transmission through wire less technology. The final products are soft ware programs. The Appellant is engaged in software services and hence should come under LT IV category.

The Appellant is engaged in software development where in programs are made which can be heard or viewed only with the help of computers.

The activity in the unit is software services and allied activities It is a manufacturing process where creativity is involved. The end product is software which is different from the input.

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

The 'audio/video cassette recording/duplication units and CD recording units' were under LT IV tariff earlier but put under LT VII A consequent to the changes in the Tariff order of November 2007 .

The activities in the Appellant units are basically audio/video recording itself. The input data in digital formats are processed, edited mixed, recorded and given out as out put. Whether it is traditional recording or by using software can not be considered while assigning tariff. Now a days software with digital technology is utilized in a number of establishments like education, medicine etc. But the tariff is assigned as per the nature of the business.

Discussion and Findings:

It is clear that the Appellant units are not conducting traditional audio/video cassette recording or CD recording .The traditional audio/video cassette itself has become obsolete now. It is also true the wordings/listings in the tariff regulations have failed to

catch up with the fast-changing technology in the field. But the wordings and listings in the tariff regulations are expected to provide only broad contours of the multitude of activities in the economic domain.

The units of the Appellant use the latest digital technology for their activities. The audio and video data in digital format are the input in the process and the same are input through media like CDs Pen drives etc. These data are processed, edited, enriched and compiled to multi media audio/video programs , again in digital format, and put out of the unit in the form of CDs Pen drives etc.. True, they may be using the state-of-the-art multimedia software and latest versions of the hard ware. But in simple words they are producing multi media programs either as per the requirements of the customers or for replicating in their own CD manufacturing unit. This activity can not be called software development or soft ware service in the generally accepted sense of these words. Hence the contention of the Appellant that the activities in their units are software development or software services is not reasonable.

The claim of the Appellants that creativity is an integral part of the activity is undisputable. So also the fact that the end product is different from the input data components is also undisputed. But these qualifications can not lead the unit to the entitlement of classification as general purpose industrial load and for LT IV tariff. As stated earlier the tariff regulations have failed to match with the fast-changing technology and business environment in the society. But 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. The activities in the Appellant units are basically nearer to the old-time audio/video recording.

As such I do not find any thing irrational in classifying the Appellant units under LT VII tariff.

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 Appellants in support of the reliefs sought for are devoid of merit and hence the reliefs are not allowed and the representations are dismissed*
2. No order on costs.

Dated this the 17th day of July 2009 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 62-63/09 / 291 / dated 17.7.2009

- Forwarded to:
1. Sri Varghese.V.Chcrian
Karumathottathil House
Thammanam Ernakulam
 2. Smt Anitha.T.Thachankary
32/2855 Thammanam Ernakulam
 3. The Assistant Executive Engineer
Electrical Sub Division VYTTILA Ernakulam

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 ,
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