

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895
Mamangalam-Anchumana Road, Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/107/2017
(Present: A.S. Dasappan)
Dated: 29th January 2018

Appellant : Rev. Father Shiji Sam
Navajeevan Kendram,
Thazhom P.O.,
Pathanamthitta 689666

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Pathanamthitta,
Pathanamthitta

ORDER

Background of the case:

The service connection with consumer No.11188 was effected in favour of Navajeevan Kendram, Malayalpuzha under Electrical Section, Kumbazha and the tariff was LT VI B. The connected load of the premises is 4500 watts. The Regional Audit Officer, Pathanamthitta has detected that the billing of LT service connection is under LT VI B instead of LT VI F. Based on the above finding, a short assessment bill was issued for an amount of Rs. 43575/-. Aggrieved against this the appellant approached with a petition before CGRF (South), Kottarakkara. The petition was disposed of by the CGRF vide order in OP No. 410/2017 dated 19-08-2017 dismissed the petition due to lack of merit. Not satisfied with the above order, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant has adduced the following arguments in his appeal petition. The appellant is a charitable institution coming under the Ranni Nilakkal Diocese. of the Malankara Marthoma Syrian Church and is engaged in carrying on a treatment and rehabilitation centre for alcoholic and drug-addicts. The Malankara Marthoma Syrian Church,

which includes its parishes and all other institutions under it, is granted exemption u/s 10(23C)(v) of the Income Tax Act, 1961 wherein any income received by it does not form part of the total income as provided under Chapter 111 of the Act. Accordingly the appellant an institution coming under Malankara Marthoma Syrian Church is entitled to complete Income Tax exemption.

2. The appellant is having service connections bearing Consumer No. 11188, 272 and 3306 coming under Tariff LT VIB. The said connections were in the names of Rev Fr. George Abraham, Rev. Fr. Mathews Mar Athanasium and Sri Thomas P. George respectively who were the then General Secretaries of the Institution at the time of Grant of the respective connections to the institution. An application has been made to the department to delete the name and substitute it with the narration "The General Secretary". The respondent based on an audit report of the Regional Audit Officer, Pathanamthitta issued a communication to the appellant stating that to enjoy the benefit of the tariff as per LT VIB, exemption certificates from the Income Tax Department for every financial year has to be produced before the office of the respondent. According to the respondent since no exemption certificate was produced a short assessment bill for Rs. 43,575/- was issued to the appellant. It was further stated that if the income tax exemption certificate is not furnished within 30 days the appellant's service connection will be changed to the tariff coming under LT-VI F.

3. The appellant under cover of letter dated 22.1.2016 filed the Notification issued by the Government of India granting total exemption from Income Tax. u/s 10(23C) (v) of the Act, Renewal order and the Circulars issued by the Central Board of Direct Taxes. The respondent also issued a communication. dated 15.7.2016 stating that the appellant is requested to submit proceedings of income tax exemption U/s 80G(5)(vi) of the Income Tax Act within 15 days of receipt of the communication in order to regularise and continue the tariff as per LT6B. It was further stated that if the said exemption u/s 80G (5)(vi) of the income Tax Act is not submitted within the stipulated time the tariff of the appellant's service connection will be changed to LT6F with retrospective effect and the appellant will be liable to pay the short assessment bill of Rs. 43,575/-. A specimen copy of the Income Tax Exemption proceedings u/s 80G under the Income Tax Act was also enclosed with the communication. The respondent by communication dated 20.9.2016, informed the appellant that since the exemption u/s 80G(5)(vi) of the Act was not furnished, the appellant was directed to remit the short assessment bill within 15 days failing which the service connection will be disconnected .

4. The appellant again by letter dated 22.11.2016 informed the respondent that the appellant being an institution coming under the Malankara Marthoma Church is enjoying complete exemption U/s 10(23C) of the Income Tax Act. Copy of the tax exemption order was again filed before the respondent. The respondent by communication dated 9.12.2016 informed the appellant that since the approval certificate submitted 'by the appellant is u/s 10(23C)(v) of the Income Tax Act, there is misclassification of tariff and the appellant's applicable tariff comes under LT6F and hence the short-assessment bill of Rs. 43575/- is to be paid by the appellant. It was further stated that if the said amount is not paid within 15 days the service connection to the premises will be disconnected without further notice. The appellant filed letter dated 30.12.2016 stating that the applicable tariff order does not specify that the Institution should be approved u/s 80G(5)(vi). It only mandates that the Institution should be exempted from payment of income tax which in this case is satisfied. It was further submitted that an approval u/s 80G(5)(vi) recognizes such Charitable Institution to issue a certificate to a donor who makes a donation who in turn gets a deduction in the computation of his income. This approval has no connection with the eligibility for exemption from Income Tax of the institution as such. Therefore, it was submitted that the certificate u/s 80G is beneficial only to the donor in respect of donations made by him and does not state that the institution is exempt from income tax though the said institution though exempt u/s 12A of the Income Tax Act. It was further requested that the submissions made may be verified and the findings be communicated before proposing any action for disconnection.

5. However, the respondent without application of mind and also without advertent to the contentions raised issued a communication dated 13.1.2017 by way of an order stating that the existing tariff rule is: in accordance with the Tariff order dated 4. 10.2014 in par with the extraordinary gazette dated 27.9.2014; not with the Tariff order 2002 dated 24.10.2002. As per the existing tariff order dated 04-10-2014 the eligible tariff is LT V1F and hence there is misclassification of tariff. So the appellant was requested to remit the short assessment bill of Rs. 43,575/-, which was served on the appellant earlier, within the stipulated time itself; otherwise the service connection to the premises bearing consumer number 11188 will be disconnected without further communications.

6. The CGRF without hearing the appellant and also without furnishing any version filed by the 1st Respondent passed an ex-parte order

dismissing the complaint holding that the bill issued by the 1st respondent is genuine and sustainable and the petitioner is liable to pay the disputed amount. Moreover, the 1st respondent was directed to change the tariff to LT. VIG. as per the revised tariff order of the Kerala Slate Electricity Regulatory Commission. It is submitted that even though it is stated in the order that the case was posted for hearing on 27.5.2017 and 6.6.2017~ no notices posting the same were communicated to the appellant before the date of hearing.

The notice posting the case on 27 -5.2017 was received by._ ordinary post only on 28.5.2017 which is the next day after the date of hearing. Moreover, no notice posting the case on 6.6.2017 was received by the appellant. Hence order is passed in gross violation of the principles of natural justice, and is null and void. The CGRF has come to an illegal and arbitrary finding that the documents submitted by the appellant as per the gazette notification is not satisfied for fixing the tariff to LT VIB as it is a private institution. Moreover, it is stated that if the appellant. desires to avail the benefit of the tariff LT V1A they should produce the orders from the Income Tax authority for fulfilling the conditions mentioned in the tariff order for LT V1A (low tension) and the certificate from Charitable Society's Registration Act 1955. Accordingly it has been held that the bill issued by the 1st respondent is genuine and sustainable as per the notification and hence the appellant is liable to pay the amount. A direction has also been given to change the tariff to LT VI G as per the revised tariff of the KSERC.

The CGRF has also relied on Tariff Order No. OP 02 of 2013 and Order No. OP 09 of 2014 for coming to its finding.

The Order of the. CGRF dated 19.8.2017 in OP No. 410/2017 which is impugned herein is unsustainable and liable to be set aside.

RELIEFS

- i) Set aside the order of the CGRF dated 19.8.2017 in OP No. 410/2017 which is impugned herein and also the short assessment bill issued by the 1st respondent.
- ii) Declare that the appellant is not liable to pay the tariff as determined in the short assessment bill of Rs. 43,575/-.
- iii) Declare that the appellant is entitled to the tariff as per LT VfA or LT VIB determined as per KSERC Tariff Order date. 14.8.2014.
- iv) Grant such other reliefs that this Ombudsman may deem fit and proper in the interest of justice.

Arguments of the respondent:

The service connection bearing Consumer No 11188, effected from Electrical Section, Kumbazha, having a contracted connected load to the tune of 4500 watts, belongs to the Appellant. This Service Connection had continued under wrong classification of tariff LT VIB, for the period from 10/2013 to 08/2015.

This discrepancy in assessments caused by wrong application of L T VI B Tariff made against the Consumer over the period from 08/2013 to 08/2015, wherein the assessment continued on the basis of the wrong classification, was brought to light during the routine inspection of Books of Accounts by the Regional Audit Officer, Pathanamthitta. Thereon having inferred that there was tangible loss sustained to the Kerala State Electricity Board Ltd in this connection it was decided to invoke 134(1) of the Kerala Electricity Supply Code-2014 towards recovery of the amount so undercharged from the consumer by mode of issuing a bill.

Accordingly, an invoice amounting to Rs.43575/- (Rupees Forty Three Thousand Five Hundred and Seventy Five Only), accompanied with a detailed calculation statement depicting the calculation and mode of arrival of the amount due, was served on the Consumer from Electrical Section, Kumbazga on 29-12-2015, towards recovery of the undercharged amount from the Consumer.

It is apparent enough that any instance of undercharging could be established by the licensee only through a review of the state of affairs and such a review could be possible only through monitoring history of events and records. Regulation 134 of the Kerala Electricity Supply Code 2014 on undercharged bills and overcharged bills stipulates that (1) 'If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill'. Herein this case, as the Kerala State Electricity Board Limited is having a mechanism of routine inspection and review by the Regional Audit Office wing, and during such an Inspection from the Regional Audit Office, Pathanamthitta at Electrical Section, Kumbazha, it was evidenced and established that this Consumer had been undercharged during the period from 10/2013 to 08/2015, evidently due to the wrong classification of Service Connection under LT VIB.

As per the tariff order prevailed during the period viz., Order No: OP 02 (2013 dated 30-04-2013 and Order No: OP 09 of 2014 dated 14-0B-2014 respectively, the Institutions Registered under Cultural Scientific and

Charitable Societies Act, the donations to which are exempted from the payment of Income Tax alone are privileged to have LT VI A Tariff (during the currency of both the orders). As this consumer was not having the requisite Income Tax registration under Section 80(G)(5)(vi) of the Income Tax Act, 1961, duly obtained from the Income Tax Department, wherein the respective Service Connection bearing Consumer No: 11188 is in use. As per the Section 80G of the Income Tax Act 1961, donations paid or given to any institution for a charitable purpose is eligible for deduction in the hands of the donor, if the institution is approved U/s 80G by the Commissioner of Income Tax. Therefore be, as per the Tariff Rules prevailed then this Consumer is actually required to be assessed under LT VIII during the currency of the tariff Order No: OP 02 of 2013 dated 30-04-2013 and thereafter under LT VIF during the currency of Order No: OP 09 of 2014 dated 14-08-2014

It is amply clear from the tariff rule prevailed then that the registration specifically under the Section 80G for the venture/propriety from the Income Tax Authority is mandatory for allowing the above mentioned preferential tariff to any Consumer, as the registration under Section 80G in the Income Tax Act 1961 alone provides for exemption to the donors from the payment of Income Tax. As this appellant had ever failed to produce the requisite registration certificate under Section 80G from the Income Tax Authorities concerned covering the period in question, there is no ground for his claim or arguments put forward in his appeal. The strange claim put forward by him in his appeal that he was having registration under the Section 10(23C) have no relevance or applicability to this given context. It is suspected that such strange claims are made in this context with an ulterior aim to perplex this Honourable Authority and to fetch any unfair gains thereof.

Furthermore, revealed to be this institution run by this Appellant with name and style 'Navajeeva Kendram' (wherein the Service Connection in question is in use) is a Joint Venture of Rany Nilackal Diocese of Malankara Marthoma Syrian Church & M.T.E.A, Malayalappuzha, Registered under Krupa Samithy. P-761/98 (as described in their letter head of the Institution), the Tax Exemption Certificate under Section 80G (in proof that the donations to a specific legal entity are exempted from the payment of Income Tax) issued exclusively for this legal entity/propriety covering the period in question is required for the purpose of allowing the preferential tariff to the respective Service Connection. This appellant had ever failed to produce the requisite registration certificate u/s 80G of the Income Tax Act 1961 and whatsoever other documents put forward by the Petitioner in this connection were found to be of a different entity named M/s Marthoma Syrian Church of Malabar. Thus this institution is in no way eligible for assessment under the preferential tariff of LT VIB Tariff.

It is relevant that the Licensee (KSEBL) has invoiced the amount actually undercharged alone. No penalty or interest was included in the estimation of amount. Thus he is legitimately and ethically liable to make good the actual loss sustained to the respondent in this connection.

It is highly pertinent to quote in this context that, in a similar instance the, Honourable Consumer Grievance Redressal Forum, Northern Region, Kozhikode in OP 75/2015-16, has unambiguously held that exemption under 80G of Income Tax Act 1961 from the Income Tax Authority, covering the period is essential for the classification of a consumer under the respective preferential tariff.

Analysis and findings:

The hearing of the case was conducted on 19-12-2017, in the office of the State Electricity Ombudsman, Edappally, Kochi 24. Sri Ramesh Cheriyan John, Advocate represented the appellant's side and the Assistant Executive Engineer, Electrical Sub Division, Pathanamthitta represented the respondent's side. On examining the petition, the argument note filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

The only question to be decided in this case is as to whether the appellant's institution is a charitable one registered under the Charitable Societies Act and is exempted from payment of Income Tax thereby entitled for concessional tariff under LT VI A and the short assessment bill issued to him is in order.

The main averments of the respondent in changing the tariff to LT VI F and for issuing the short assessment bill are based on the following reasons.

1. The appellant is not having the requisite registration from the Income Tax Authorities under Section 80G and the consumer number 11188 provided to the institution 'Navajeevan Kendram' is not a registered charitable organization under Cultural Scientific and Charitable Societies Act. A certificate No. P761/98 dated 02-12-1998 issued by the Registrar of Societies has been produced by the appellant in which it is stated that "Kripa Samithy Mandiram" is a registered charitable organization and the respondent has not accepted this.
2. The appellant's institution is an institution engaged in carrying treatment and failed to substantiate its claim for exemption from Income Tax liability by producing certificate to this effect from the IT Department.

Refuting the above contentions the appellant has stated that the said 'Navajeevan Kendra is an institution coming under the 'Kripa Samithi, a charitable organization registered under the provisions of Travancore Cochin Literary Scientific and Charitable Societies Act and the functioning and management of the Ranni Nilakkal Diocese of the Malankara Marthoma Syrian Church and all its units come under the purview of this registration.

This Authority has found that the Society is registered in the name of "Kripa Samithy Mandiram" under the provisions of Travancore Cochin, Literary, Scientific and Charitable Societies Registration Act 1955 as per certificate No. P761/98 dated 02-12-1998.

According to the appellant, the various units of the organization are functioning under the ambit of a single umbrella organization, under Ranni Nilakkal Diocese of the Malankara Marthoma Syrian Church. Further it is argued by the appellant that since the institution is a unit functioning under Kripa Samithi, separate registration under the provisions of Travancore Cochin, Literary, Scientific and Charitable Societies Registration Act, 1955 is not required, as alleged by the respondent.

The Section 62 of the Electricity Act, 2003, enabling the provision for determination of tariff and is read as follows: The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act. As per tariff notification issued by the Hon'ble KSERC vide order dated 14-08-2016 in OP No. 9 of 2014, the eligibility for concessional tariff under LT VI A is applicable to private hospitals and charitable institutions registered under Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955 and the donations to which are exempted from payment of Income Tax.

As per the tariff order prevailed during the period viz., Order No: OP 02 of 2013 dated 30-04-2013 and Order No: OP 09 of 2014 dated 14-08-2014 respectively, of the Institutions Registered under Cultural Scientific and Charitable Societies Act, the donations to which are exempted from the payment of Income Tax alone are privileged to have LT VI B Tariff (during the currency of both the orders).

It is essential to look into the Schedule of Tariff and Terms & Conditions for Retail Supply of Electricity published by Hon'ble Regulatory Commission vide order dated 14-08-2016 in OP No. 9 of 2014 which is extracted below:

Low Tension – VI General (A) {(LT-VI(A)} Tariff applicable to Government or aided education institutions, libraries and reading rooms of government or aided educational institutions; Government hospitals; X-Ray units, laboratories, blood bank, mortuaries and such other units attached to the government hospitals, blood banks of IMA or of local self

government institutions; private hospitals and charitable institutions registered under Travancore – Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the donations to which are exempted from payment of Income Tax; premises of religious worship; institutions imparting religious education and convents, poly clinic and Ex-servicemen Contributory Health Scheme (ECHS).

So, the criteria for considering this consumer under VI A or LT VI B tariff as per the above tariff orders are:

1. Registration certificate under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955.
2. The certificate to show that whether the donations to the institutions under Section 80G of Income Tax Act, 1961 are exempted from the payment of Income Tax.

On receiving the short assessment bill the appellant filed an appeal before the CGRF, Kottarakkara. But the Forum observed that if the petitioner can avail the benefits of VI A tariff only on production of document that they are registered under Charitable Societies Act and the order from the Income Tax Authority under Section 80 G of Income Tax Act. On going through the certificate dated 02-12-1998 issued by the Registrar of Societies produced by the appellant, it is admitted that the registration under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act is in the name Kripa Samithy Mandiram and not in the name of Navajeeva Kendram.

Hence the next question to be clarified is whether the appellant's institution has been issued with a certificate to show that the donations are exempted from the payment of Income Tax under Section 80G. An approval under Section 80G of the Income Tax Act is mandatory to decide whether the donations to which are exempted from payment of Income Tax. As per the Circular No. 07/2010 issued by the Central Board of Direct Taxes, New Delhi, the Proviso to Section 80G (5)(vi) under which approvals granted by the Commissioner had a maximum validity period of five years has been deleted with effect from 01-10-2009. Accordingly, approval once granted on or after 01-10-2009 is now valid forever unless withdrawn by the Commissioner when he is found that the activities of the institution or fund are not genuine or are not being carried in accordance with its objects.

On a close perusal of the copy of Circular No. 7/2010 [F. No.197/21/2010-ITA-1] dated 27-10-2010 issued by the Central Board of Direct Taxes, New Delhi, it can be seen that "it appears that some doubts still prevail about the period of validity of approval under section 80G subsequent to 1-10-2009, especially in view of the fact that no corresponding change has been made Rule 11A (4). To remove any doubts in this regard, it is reiterated that any approval under Section 80G (5) on or after 01-10-2009 would be a onetime approval which would be valid till it is withdrawn".

Rule 11 AA of Income Tax Act 1961 prescribes that an application for approval under Section 80G shall be made in triplicate in Form No.10 G. It shall be accompanied by copies of following documents: -

- (i) order of registration under Section 12A or notification under Section 10 (23C);
- (ii) note on activities conducted since inception or in last three years, whichever is less; and
- (iii) accounts of the institution since inception or for the last three years, whichever is less.

It is revealed from the certificate issued by the Commissioner of Income Tax vide No. 305/Tech/80G/06/CIT-KTM /11-12 dated 03-10-2011, produced by the appellant, the Kripa Samithi, Thomas Mar Athansaious Mar Thomas Centre, Mandiram P.O., Ranni, Pathanamthitta is eligible to the benefit of deduction under section 80 G of the Income Tax Act, 1961, in the hands of the donors subject to the limits and conditions prescribed therein.

Here some clarification is required in this matter since the registration under Charitable Societies Act is in the name of "Kripa Samithy Mandiram" and the last approval under Section 80G (5)(vi) granted by the Commissioner of Income Tax, Kottayam covers the assessment year 2012-13, there is no need for fresh renewal. But the appellant has not produced any documents to prove that income of their institution Navajeevan Kendram is included in the balance sheet of Kripa Samithy Mandiram during the period in question and exempted under Section 80G of the Income Tax Act, 1961 and both the registration under Section 12 A and exemption under Section 80G are applicable in their case. It is also revealed that the Navajeevan Kendram has no registration under the Charitable Societies Registration Act 1955. The appellant has not produced any statement of accounts of the relevant periods submitted before the Income Tax department, any bye-laws or the memorandum of association if any, registered, as evidence to prove that the Navajeevan Kendram is its subsidiary unit.

It is the bounden duty and the responsibility of the licensee to reclassify the consumer under appropriate category consequent to a revision of Schedule of Tariff and Terms and Conditions of Retail Supply of Electricity. As per Regulation 97(1) of Kerala Electricity Supply Code, 2014, which was in force with effect from 01-04-2014, the licensee has to reclassify the consumer under appropriate category consequent to a revision of tariff. Further, as per Regulation 152(2) and (3) of Supply Code, 2014, the amount of electricity short collected by the licensee, if any, can be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted, without any interest. In the above circumstances, the issuance of short assessment bill due to wrong classification is found in order and the appellant is liable for making the payment. So it is held that the appellant has not satisfied both the criteria envisaged in the tariff orders for considering a consumer to avail LT VI A or LT VI B tariff as per the prevailing rules.

Decision

In view of the above discussions it can be concluded that since the appellant failed to produce documents, the reliefs requested cannot be admitted and hence the appeal is dismissed. The order of CGRF, Kottarakkara in OP No.410/2017 is upheld. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/107/2017/____/Dated:

Delivered to:

1. Rev. Father Shiji Sam, Navajeevan Kendram, Thazhom P.O., Pathanamthitta 689666
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Pathanamthitta, Pathanamthitta District.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSEBLtd, Kottarakkara-691506

