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APPEAL PETITION No. P/108/2017
(Present: A.S. Dasappan)
Dated: 28th February 2018

Appellant : Sri. Abraham Mathew
M/s Terumo Penpol (Pvt) Ltd.,
Andoor Buildings, TC No.27/373/5,
General Hospital Road, Vanchiyoor,
Thiruvananthapuram

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

ORDER

Background of the case:

The appellant is having a three phase electric connection with Cons. No. 5983 of Electrical Section, Cantonment, Thiruvananthapuram under LT 7A commercial tariff. The appellant's company, M/s. Terumo Penpol (Pvt) Ltd is a company engaged in manufacturing of health care equipments. While so on 12-01-2017, the APTS of KSEBL conducted an inspection in the premises and found that the energy used in one phase (out of 3 phases) was not recording in the meter. Accordingly, the party was served with a short assessment bill for 12 months, when the meter was found recording less than the actual, so as to recover the unrecorded portion of energy, for Rs. 805101/-. The consumer filed objection before the Assessing officer, the Asst. Engineer, against the said assessment. Being not received an order from the Assistant Engineer, the consumer approached the CGRF, South, Kottarakkara, with Petition No. 409/2017 and the Forum dismissed the petition due to lack of merits, vide order dated 19-08-2017. Aggrieved by the decision, the appellant has submitted the Appeal petition before this Authority.

Arguments of the appellant:

The details of the complaint put forward by the appellant are furnished below.

M/s. Terumo Penpol (Pvt) Ltd is a company engaged in manufacturing of health care equipments with brand name Terumo Penpol, which are widely used in health care institutions. Manufacturing process also involves production of some equipment by assembling customized parts manufactured and supplied by others based on the design requirement of the Company. One of its manufacturing unit and allied facilities are at the premises with the address above. This company is in occupation of the premises under right of lease and enjoys electricity from consumer No. 5983, which is registered on behalf of the owner of the building. The energy meter provided at the premises is an external CT operated one.

A Sub Engineer of Electrical Section Cantonment used to inspect, check the meter and regular metering was done. Accordingly, bills were issued and this consumer remitted the bill amounts without fail. No amount is in arrear towards electricity charges. The status of the meter in the bill for the month of 01/2017 and for the preceding periods was recorded OK/ AA which means the meter was defect free while metering was done for the month of 01/2017 on 03-01-2017 and months before. The appellant never knew or informed of any test on the meter at any time before, during the inspection or thereafter as required under CEA (Installation and Operation of Meters) Regulation, 2006 and in accordance with the regulations under Supply Code, 2014 and a test report was never handed over for this appellant if required for disputing and to request for a repeat test another test facility having NABL accreditation as privileged under Supply Code, 2014. The bills for the preceding periods and the meter reading register are in testimony to that, the meter was defect free by all means. Then after an inspection dated 12-01-2017 the external CT to the meter was reported not functional and hence the meter defective and this occurred just after the regular inspection dated 03-01-2017 during which the meter was found defect free and status of the meter recorded in the bill as good. Then the action to be taken is, as required under Clause 125 of Supply Code 2014 only. In this instant case in appeal, assessment was issued for 12 months and that too adopting the method proposed for arriving at security deposit for fresh connection. But it is not at all specified from which date to which date short assessment is made. Also no regulation entitles the licensee to assess a consumer whose meter was reported defective to issue short assessment bill for 12 months without specifying the period of short assessment, indefinite preceding period or some preceding period, since the Licensee is required under statutes to supply electricity always through a correct meter and to keep the meter always good. Therefore, demand under challenge in this appeal is issued on the false and unproven allegation of meter

defect due to defect in external CT and totally illegal and this appeal is submitted seeking remedies and reliefs prayed in.

1. Mr. Jayakumar. A, Sub Engineer Electrical Section, KSEBL, Cantonment, Thiruvananthapuram inspected the gadgets and machines at the premise, and checked the energy meter in the presence of the APT Squad officials of KSEBL on 12-01-2017 and prepared a mahasar under his name and signature. During the inspection Mr. Jayakumar. A ,Sub Engineer conducted some crude test with the meter, which is not at all authorized under Central Electricity Authority(Installation and Operation of Meters) Regulations, 2006 or as per the regulations under Supply Code, 2014. Then he recorded in the mahasar that, "even though electricity from all the three Phases is being used, the energy consumed through one phase is not recorded in the meter due to secondary current from Y Phase CT not reaching the meter". If the secondary current in one CT was not reaching the meter, it should definitely been in displayed in the meter, but nothing is there in the mahasar about that. If such a missing existed earlier, definitely it should have been noted and recorded in the bill and in the meter reading register and meter defect recording register for the month of 01/2017 or at earlier date. However, no such observation is there in the bill for 01/2017 or in earlier bills or in the meter reading register. At the same time the status of meter in the bills were recorded good. Therefore, it is very clear that, if the CT became defective, it occurred only after a date after the consumer was metered dated 03-01-2017. Therefore, there is no reason to suggest that, the meter was defective before 03-01-2017. There is an observation in the mahasar that, the total connected load observed in the inspection is 116263 W, (117 kW) where the contracted load is 52 kW and hence an allegation that, there is 65 kW unauthorized additional load. However, it is submitted that, this 65 kW additional load alleged is not at all connected load. This load is actually the load of equipments which were stacked which were produced and which were under the process of production. Connected load is defined under Clause 2 (24) of Supply Code, 2014 and extracted here under for ready reference,

Clause 2(24) "connected load" expressed in kW or kVA means aggregate of the rated capacities of all energy consuming devices or apparatus which can be simultaneously used, excluding stand-by load if any, in the premises of the consumer, which are connected to the service line of the distribution licensee;

As per the definition above, the aggregate of the rated capacities of all energy consuming devices or apparatus which can be simultaneously "used" only become connected load or additional connected load. The health care equipments produced at the premises have no purpose there and it can never be used there, but in the process of production, electricity is used and it is the purpose of use of electricity at the premises. Thereby, under the eye of law the equipments which are under production and which were stocked are not in use at any production unit and never fall under the definition of connected load. As

submitted above, this 65 kW load alleged are products stocked or products under the process of production and which is not at all used at the premises or intended to be used. There by those equipments which are not simultaneously and used never include in the classification of connected load. The issue of alleged additional load is not at all an issue in this appeal. However, an assessment under Section 126 of Electricity Act, 2003 has been issued and it is now under challenge in the Hon: High Court of Kerala vide petition WP C) No. 3230/2017.

2. The Assistant Engineer issued a letter dated 17-01-2017 accompanied with a bill for Rs.6,55,776.00 and a calculation statement, but the amount arrived at in it was Rs.8,05,101.00. Thereby there was incongruence in between the bill and the calculation. A statutory dispute dated 23-01-2017 under Clause 130 of Supply Code, 2014 was filed. Up on receiving the dispute the Assistant Engineer communicated a letter dated 23-01-2017 on a later date, correcting the incongruence in amount and corrected short assessment to Rs. 8,05,101/-. It was accompanied with a bill and calculation statement for the same amount. The Assistant Engineer heard this appellants dated 04-02-2017, however no order was issued.

3. The CT reported defective in mahasar was replaced on 28-01-2017. Thereafter, bill dated 04-02-2017 was issued for the month of 02/2017 for Rs. 1,29,007/-. Thereafter, another bill was issued for the same month of 02/2017 for Rs.1,86,860/- dated 01-02-2017 with a covering letter dated 04-02-2017 stating among other things that, the CT was detected faulty and hence the meter was detected defective on 12-01-2017 and it was rectified on 28-01-2017. After quoting Clause 125 of Supply Code, 2014, it was stated that, since actual date of defect in meter could not be ascertained, in this case the above clause is not applicable for electricity charge for the month of 02/2017 and hence the bill amount is arrived at basing the principle for arriving at the security deposit under annexure III of Supply Code, 2014. When it was objected, the Assistant Engineer collected the amount of Rs. 1,29,007/-. and that dispute was resolved. In this matter it also submitted that, there was no reason for the Assistant Engineer to issue revised bill since the meter was detected defective dated 12-01-2017 and he should have issued the bill for the period from 03-01-2017 to 28-01-2017 under Clause 125 of Supply Code, 2014 and any deviation from it is illegal.

4. In this assessment for Rs.8,05,101/- pleading the meter defective and the actual date of occurrence of defect is unknown; the short assessment is done for 12 months. However the period during with this short assessment is made is not disclosed. The Regulatory Commission has never authorized the licensee to collect electricity charges basing this principle in any way and it is authorized only to use for arriving at the initial security deposit which is to be revised basing the actual consumption of the consumer. Thereby the assessment is unauthorized and illegal.

The meter was never reported defective due to fault in CT or in any other way. No test report of CT or test report of meter or down loaded data of meter was ever issued to this petitioner establishing the claim of the licensee that, the meter was defective due to defect in CT and the date of occurrence of defect. By not giving such reports, the licensee denied this appellant to challenge the report and to ask for a second report after test in an NABL accredited laboratory as per the regulations under Supply Code, 2014. Thereby the fact in evidence proves beyond doubt that the meter was not defective at any time before until it was detected on 12-01-2017 and the meter was reported defect free in the last metering date of 03-01-2017 also. Also the licensee has no proven case that the meter was defective from some particular date or any date other than the inspection date of 12-01-2017. Therefore, the presumption that the meter was defective is not at all a valid reason to issue short assessment bill. An amount demanded under presumption or assumption is not at all an amount due. Electricity is goods like any other goods which can be measured transported and stored. The price of all goods has tariff rates and it is sold or supplied in measures which are measured using appropriate measuring instruments or measurers. Always duty is cast upon the seller to keep his measuring instrument or measure standard, good and correct. A seller of goods cannot and shall not issue bills or invoices to buyers pleading that, he has detected his measuring instrument defective on a particular date and the actual date of such defect occurred could not be identified by him and hence he devised a principle basing a regulation applicable to some other measure to realize the suspected loss which he suspect to have sustained on the goods he sold to a buyer and asking the buyer to pay the bill. If a seller of goods do so, it is nothing but absurd. It is respectfully submitted that, the demand under challenge in this instant appeal have parallels and similarity with the above narration and hence the demand Bill is also absurd. Even if the licensee is having a proven case of defect in meter in any way, the licensee cannot issue short assessment bill for the preceding period for want of enabling provisions under statutes. The licensee is only entitled to realize charges for electricity on detecting a meter defective for the subsequent periods of consumption limited to two billing periods basing average of the previous three billing periods as decided and mandated under Clause 125 of Supply Code, 2014. Thereby the short assessment is illegal

5. The short assessment bill is issued under Clause 152 (1), (2) and (3) of Supply Code, 2014. This regulation is not an enabling regulation for the licensee to issue the bill for Rs. 8,05,101/- for a period of 12 months on the plea the meter was found defective due to fault in CT on 12-01-2017, where the meter was checked and metered on 03-01-2017 and found and reported good in the bill for 01/2017. The intent of Clause 152 of Supply Code, 2014 is well stated under sub clause (I) of it and nowhere in that it is stated, this regulation is applicable for issuing short assessment bills for the preceding periods where

the meter is found defective or damaged during an inspection and were the meter was never found defective at earlier inspections and metering.

Under the Regulation above, which is the reason for issuing the short assessment bill for the preceding periods is not explained. Therefore inaccuracies in metering have been translated to defect or damage in meter and hence the assessment issued. However, defect in any parts of meter which includes meter, is not at all included in the above regulation to enable the Licensee to issue short assessment bills for the preceding periods pleading the meter found defective on a day after the meter was checked, metered, bill issued and meter reported good. "Inaccuracies in metering" included under Sub clause (1) of Clause 152 of Supply Code, 2014 is the provocation for the Licensee to issue the bill, it is not acceptable under law. The dictionary meaning of inaccuracy is erroneousness, fallaciousness, mistakenness etc, whereas the meaning defective is fault, flaw, imperfection etc. Metering usually means "measuring or keeping track of some quantity either continuously or periodically". Therefore, in the context Clause 152 (1) of Supply Code," 2014, "Inaccuracies" has to be given the same dictionary meaning since "Inaccuracies" is not defined under any of the statutes under Electricity Act, 2003. Metering is also not defined in the statutes under Electricity Act, 2003, Thereby dictionary meaning has to be relied upon to understand the term metering also in the context of law in relation with Section 55 of Electricity Act, 2003. Inaccuracies in metering due to defect in metering equipments are also incorrectness of meter. To address such a situation of inaccurate metering, due to defect or damage to meter, separate regulation has been brought in by the State Regulatory Commission under Regulation 125 of Supply Code, 2014. Also separate Regulation is brought in by the State Regulatory Commission under regulation 152 of Supply Code, 2014 for inaccurate metering, which is erroneousness or mistaken measuring or keeping track of the metered quantity/ quantities in the meter either continuously or periodically by the licensee/personal of the licensee. Thereby, inaccuracies in metering referred under Regulation 152 of Supply Code, 2014 has to be understood in the light of law under Section 55, shall be errors crept in while reading or recording the read data and hence wrong data has been based for billing the consumer but shall never be taken as inaccuracies in metering due defect or damage in meter. Inaccuracies metering in this context only means mistakenness occurred in metering or erroneousness measuring or keeping track of electrical energy either continuously or periodically". Here in this case, none of the reasons under Clause 152(1) are stated as the reasons for the short assessment but, defect in meter due to defect in external CT is stated as the reason for assessment, which is illegal. It is respectfully submitted that, from the above averments it is very clear that, Regulation 152 of Supply Code, 2014 is not an enabling regulation for the licensee to make short assessment bills and issue to consumers seeking payment, on the plea that meter was defective for some periods while, for those periods bills were issued as per periodical metering.

There is a universal obligation to the licensee to supply electricity, only through a correct meter as required under Section 55 of Electricity and under Clause 104 (1) of Supply Code; 2014. Also the licensee is required to keep the meter in good condition at all times under Clause 109(20) of Supply Code, 2014. If at any time the meter becomes defective or damaged, the remedy available is only under Clause 125 of Supply Code, 2014. Accordingly, the time limit within which the meter shall be replaced is fixed and only for that period bill could be issued basing the average consumption for the preceding period of three billing cycles. Thereby, Clause 125 of Supply Code is an enabling regulation for the licensee to bill a consumer after detecting the meter defect or damage in meter. A combined reading of Section 55 of Electricity Act, 2003, Clause 104(1) 109 (20) and Clause 125 of supply Code, 2014, very well establishes that 152 (1), (2) & (3) of Supply Code, 2014 is not an enabling regulation in cases, where the meter is detected defective or damaged as in this case.

6. The licensee cannot and shall not issue bills on consumers at its whims and fancies without having enabling regulations authorizing it and the licensee is bound to act as required under Supply Code. However, this appellant is not convinced of the defect since it was never tested at site or tested after taking it to a test facility with due intimation to this appellant and supplying with the test report enabling this appellant to object to such test report. Also the licensee have no case that it has tested the meter on a particular date before 12.012017 and the meter was defect free and the defect in meter could not be detected during metering at regular intervals for issuing bills before until checking on 12-01-2017. Thereby demand containing an amount of short assessment for meter defect is issued only based on assumption.

7. The Hon: CGRF (south) disallowed the pray of this appellant to set aside the short assessment bill on the ground that, from the consumption pattern for the period from 03/2015 to 04/2017 it is clear that the consumer has been under charged. However in the order, it is not at all explained how the Forum has arrived at a conclusion. Consumption pattern of a consumer on metering after detecting meter defect never is a reason for legalizing the assessment. There is no provision under statutes enabling the licensee to re assess a consumer basing the consumption after meter change on the reason of meter defect and higher rate of consumption is observed on metering after mater change. Likewise observing higher consumption on metering after meter change does not legitimize a bill issued for short assessment which was issued on the presumption that the meter was defective before meter change since there are other factors deciding increase in consumption. If this principle is adopted universally, on the event of reduction in consumption is recorded after meter change, the consumers also can make a claim that, after meter change the consumption has reduced considerably there by the meter at the premises was defective and thus excess consumption than actual was recorded and the licensee metered such excess consumption billed and collected excess amounts

and it shall be refunded. If the licensee can take a course action without having enabling regulation authorizing it to do so the consumers also can make such a claim. The licensee has no special privilege than available to consumers in the matter. Therefore, the consumption after meter change never legitimizes the short assessment bill issued. Thereby denying this appellants' legitimate claim is denial of natural justice.

8. Having stated as above, it is submitted that a statutory Forum shall not take varied stand in similar cases. This same Forum in a similar case has found reasons to set aside a short assessment bill with the following words in petition OP.No.394/2017. "It is not at all admissible, that issuing additional bills on the basis of verifying consumption pattern alone. The consumer can consume energy as per need and availability of work. For the low consumption can not be illustrated as meter fault by the licensee. It is the duty of the licensee to inspect the meter periodically and issue bills on the basis of the meter reading. Reg. 109(20) of the Supply Code 2014, says that it shall be the responsibility of the licensee to maintain the meter and keep it in good condition at all times. Reg. 115 (9) of Supply Code, 2014 says that, 'In case the meter is found to be faulty, revision of bill on the basis of the test report shall be done for the maximum period of six months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in the two subsequent bills"

9. Rule 7 (3) of "The Electricity Rules, 2005" is extracted here under for ready reference.

The Ombudsman shall consider the representations of the consumers consistent with the provisions of the Act, the Rules and Regulations made hereunder or general orders or directions given by the Appropriate Government or the Appropriate Commission in this regard before settling their grievances.

Naturally this Rule is not only applicable to Electricity Ombudsman, but to Consumer Grievance Redressal Forum also, since CGRF is the subordinate Forum to Electricity Ombudsman. Here the Hon: CGRF have shown differential approach in similar disputes and failed in delivering justice to this appellant. There is no liability on the consumer under law to prove that his consumption has increased due to some reasons, when challenging an illegal bill issued by the licensee. It is the duty of the licensee to prove that it has issued bills/short assessment bills on genuine grounds as authorized under law and statutes since it is bound under statutes to do so. The licensee have no case that it has issued the bill based on enabling regulations and regulations 152 under which it has issued is not at all an enabling regulation at all, as averred above. The Hon: CGRF in its order categorically never stated, under which regulation the Bill has sustainability. Thereby the decision of upholding the bill by the Hon: CGRF is arbitrary.

10. The meter reading register in which meter reading is posted after metering at regular intervals for the period from 09-2014 to 02-2017 reveals that there is lowest consumption of 5020 units recorded during 05/2015 and highest consumption 14980 units during 04/2016 and consumption pattern is not at all uniform such that of uniform increase or decrease. The short assessment was never made basing the previous consumption or consumption pattern but adopting the formula for arriving at the security deposit for fresh electric connection which have to be reassessed as per the subsequent consumption of a consumer. However the reduction in recorded consumption in the meter is not found out and recorded in the mahasar. Whenever, the external CT to an energy meter is not producing secondary current, a proportionate reduction in the recorded consumption may occur, but need not be there in such meters which are manufactured to record the full consumption even if one phase current of EMF is missing. In such cases if assessment is entitled under statutes, shall be done as entitled under Clause 125 of Supply Code, 2014.

11. It has to arrived at a firm conclusion that, the licensee have kept the meter in good condition as required under Clause 109 (20) of Supply Code, 2014. If the licensee pleads that it has failed in its universal obligation under Clause 109 (20) of Supply Code, 2014 and the meter was defective this appellant is not at all responsible for that and the fruits of it shall be borne by it or shall be realized from the employees of the licensee failed in detecting the meter fault in time if pleading the meter was faulty. On the grounds averred above, the bill amounting to Rs. 8,05,101/- is illegal and not sustained.

12. The meter was detected defective due to defect in CT dated 12-01-2017 and it was replaced dated 28-01-2017. Thereby the bill for the month of 02/2017 has to be reassessed as per the average consumption for the past three billing cycles preceding to 11-01-2017 for the period from 12-01-2017 to 28-01-2017 as desired under Clause 125 (1) of Supply Code, 2014.

Arguments of the respondent:

The respondent has furnished the following details in the statement of facts submitted by him.

The APTS inspected the premises of Consumer No: 5983 (registered consumer being Smt.Biji Abraham Joseph) of ES Cantonment on 12-01-2017. During the inspection, one of the 150/5A CT was found faulty and unauthorized additional load of 65 kW was also detected. The Assistant Engineer issued a short assessment bill for Rs.6,55,776/- for 12 months with calculated monthly consumption of 17550 units as per regulation 152(1,2&3) of Supply Code 2014.The calculated amount was Rs.8,05,101/-. But due to oversight, the amount was wrongly entered in the bill. Hence the bill amount was corrected as Rs.8,05,101/- and the consumer was informed accordingly through a corrigendum on 23.01.2017. On 23-01-2017, the consumer approached the Assistant Engineer to cancel the bill. The consumer was heard on 04-02-2017

and was informed vide letter dated 1.3.2017 that the final decision will be arrived after considering the consumption for three months after changing faulty CT.

Since reliable readings were not available during the previous period due to CT fault, the monthly consumption was arrived as follows.

Consumption/month = Connected Load x Load factor x no of working hours x no of working days = $117 \times 6 \times 25 \times 10 = 17550$ units/month

The consumption during three billing cycles prior to the date of inspection are:

12/2016-10580 units, 11/2016-14420units, 10/2016- 12520units

The average is only 12507 units/month.

Now the consumption of three billing cycles after replacing faulty CT has been obtained

2/2017- 21220 units, 3 /2017 - 16280 units, 4/2017- 17920 units

The new average is 18473 units.

Hence the bill has to be revised for the new average of 18473 units based on the consumption for three months after changing the faulty CT.

It is evident from the consumption pattern that the consumption has been increased considerably after changing the faulty CT. Hence it is proved that one third of the consumption was not recording due to CT fault in one phase. Since the meter was not down loadable type, the exact date of CT fault can not be determined. But the consumption pattern shows that the low consumption exists for more than one year. Hence period was taken as one year.

The total connected load detected at the premises is 116263Watts. The details of energy consuming devices and apparatus connected are clearly shown in the site mahasar. Thus there is an additional load of 65KW. Earlier the consumer had simultaneously filed a petition before the Hon'ble Kerala State Electricity Appellate Authority, challenging the assessment made under section 126. The Hon'ble Kerala State Electricity Appellate Authority, vide its order on appeal no 60/2017 dated 2-6-2017 has allowed the licensee to assess 65KW unauthorised additional load. There also the method of assessing the consumption due to unauthorised use is to compute from the connected load by assuming load factor and working hours. And the forum remarked that the method of assessing the consumption is justifiable.

The meter was not faulty. One of the metering CT was faulty. Hence one third of the consumption was not recording. This can be considered as inaccuracy in metering and hence Section 152 of Supply Code 2014 are applicable. Also as per clause 134 of Supply Code 2014, licensee can recover the amount

undercharged. From the consumption pattern it is very clear that the consumer has been undercharged for previous months. It was not possible to ascertain the exact date from which the petitioner was undercharged, since the meter was not downloadable type. So the period was limited to 12 months. The anomaly could not be detected due to human error. But the provisions in Supply Code 2014 enable the licensee to recover the amount undercharged.

In WA No 114 of 2013, the Hon'ble High Court of Kerala has opined as follows:

In a situation where the licensee is prevented from realising the price for the energy supplied and consumed by the consumer on account of an inaccurate recording of the meter, in the absence of any statutory provision restraining the licensee from realising its dues or placing any restriction on such right, ordinarily, the licensee is entitled to recover its charges subject of course to law of limitation, if any, applicable.

This is all the more because by the above process what the licensee recovers is not any penalty but is only recouping the loss suffered by it.

If in a given situation the licensee is in a position to estimate the period, it should be entitled to realise its dues. However, question will certainly arise as to what is the maximum period for which the licensee can realise such charges, if it is unable to estimate the period. As the respondent have already referred there is no express provision either in the Act or in the Regulation dealing with such a situation. However similar situations have been taken care of in Section 126 (5) and Regulation 50 (5) of the Terms & Conditions of Supply where a consumer is found to have unauthorisedly used the electrical energy and in these provisions, it is provided that where such period cannot be ascertained, the same shall be limited to a period of 12 months immediately preceding the inspection. Therefore, in the absence of any statutory provision, no reason why the licensee shall not follow the same principle in so far as the cases where energy charges are not accurately recorded and charged.

OP No.394/2017, referred in the petition has no similarity with this case. OP 394 was filed against a bill issued to the consumer on 17-6-2014 for meter faulty period prior to 4/2011 based on RAO audit.

The consumer has not challenged the bill for 2/2017 in the petition filed before CGRF.

From the consumption pattern before and after changing the CT, it is clear that the consumer has been undercharged. The consumer was judiciously charged for 12 months based on the calculated consumption, since previous average was not reliable and new average was not available. Now the new average has been obtained. The bill was issued with calculated monthly consumption of 17550 units. But the new average is 18473 units. The bill has to be revised with the new average consumption.

The licensee is trying to realise only a portion of the total loss sustained to it, in a judicious manner.

Analysis and Findings: -

The Hearing of the case was conducted on 19.01.2018 in the Court Hall of CGRF, Kottakkara. Sri. Anandakuttan Nair and Sri. Krishnadas S, Manager of Terumo Penpol represented the appellant's side and Sri. T.V. Asa, Assistant Executive Engineer, Electrical Sub Division, Puthenchanda and Smt. Binumol V.J., Senior Supdt., Electrical Section, Cantonment represented the respondent's side.

On perusing the Appeal Petition, the counter of the Respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The APTS has inspected the consumer's premises on 12-01-2017 and found that one phase of the Current Transformer (CT is a device for measuring high values of electric Current on a proportionate reduced scale), was not feeding the 'current inputs' to the Meter, thus resulting in the recording of a lower consumption than what is actually consumed. Hence, the appellant was issued a short assessment bill to recover the energy escaped from billing due to CT's fault in one phase. The CGRF has observed that the short assessment bill issued by the respondent is genuine and sustainable and hence the consumer is liable to pay the amount.

Normally, the respondent is bound to rectify the defect of the CT's to the Meter or renew the CTs or the CT meter itself, if it is found defective/faulty, after informing the consumer. The consumer was assessed for Rs. 805101/-, for non-recording of energy due to defects of the Y phase CT, for 12 months. On perusing the Mahazar, this Authority feels that the contention regarding the one number CT defect noticed during inspection by KSEB was correct, since the mahazar was duly witnessed and the appellant has not disputed the mahazar. Also, a rise in energy consumption obtained after the replacement of the defective metering equipment, corroborates the same findings. Thus it is convinced that the energy recorded in the Meter during the disputed period was not correct.

The appellant has contended that if the failure of the CT connection was from previous period as assumed by the licensee, it could be easily found out by the Sub Engineer who had taken the monthly readings regularly. Since it was not reported by the Sub Engineer during the meter reading, the period of failure cannot be established. According to him, "Inaccuracies in metering"

means only accurate meter reading is not taken or the meter reading is erroneous and hence billing is erroneous or billing is erroneous in some other way. "Inaccuracies in metering" cannot and shall not be translated to defect in meter. If "inaccuracies in metering" also meant defect in meter, or improper recording of consumption due to some imperfection, fault in any of the components of the meter, there was no need for the KSERC to bring in Clause 125 of Supply Code, 2014, exclusively for the case of "defective or damaged" meter in which, the method of billing for defective period etc are well explained.

Further the appellant also contended that Regulation 134 (1) of Supply Code, 2014 is not at all applicable in this case of meter defective case. According to the appellant, this provision applies in only a case where the KSEBL has undercharged the consumer which means that the meter has recorded the actual consumption, but the licensee has not realised its charges accurately. It is stated that this provision not deals with a situation where the meter is inaccurately recording the energy consumed on account of a wrong connection given to the meter.

The appellant's further contention is that no test report of CT or test report of meter or down loaded data of meter was ever issued to this appellant establishing the claim of the licensee that, the meter was defective due to defect in CT and the date of occurrence of defect. By not giving such reports, the licensee denied this appellant to challenge the report and to ask for a second report after test in an NABL accredited laboratory as per the regulations under Supply Code, 2014. Hence according to the appellant, the fact in evidence proves beyond doubt that the meter was not defective at any time before until it was detected on 12-01-2017 and the meter was reported defect free in the last metering date of 03-01-2017 also. The appellant also put forward another argument that there is no provision under statutes enabling the licensee to re assess a consumer basing the consumption after meter change on the reason of meter defect and higher rate of consumption is observed on metering after meter change. Likewise observing higher consumption on metering after meter change does not legitimize a bill issued for short assessment which was issued on the presumption that the meter was defective before meter change since there are other factors deciding increase in consumption.

Refuting the above contentions, the respondent has averred that the total period of phase failure was not obtained by downloading from the meter as meter lacks such facility. The respondent relied upon the consumption pattern for establishing the period of phase failure and missing of current in one phase. According to him, the dip in consumption from 03/2015 onwards is the result of the CT failure. It is submitted by the respondent that the meter installed in the premise is not reported as defective or damaged. The CT current in one phase was found missing (somehow) and Regulation 125 of Supply Code 2014 is not applicable in this case. Undercharging of prior bill is established due to

an anomaly detected at the premises for which Kerala Electricity Supply Code, 2014 Regulation 134(1) is applicable.

The issue arising for consideration in this appeal is whether the period assessed and the quantum of energy loss computed are in order and the appellant is liable for the payment of short assessment for Rs. 805101/- as per Regulation 134(1) of Supply Code, 2014.

Here in this case, the respondent declared that the current in one of the CTs connected to the meter is detected as missing/abnormal on the basis of the inspection conducted in the premises on 12-01-2017. It is also found that the consumption of the appellant before and after the disputed period and during the disputed period is not in a consistent pattern.

From the site mahazar, it is revealed that the CT connected to one terminal of the meter was failed and thereby consumption by the load connected to that phase in the premises was not recorded by the meter. The meter will record the time and date of tampers, and the same can be downloaded using MRI/Laptop and can be analyzed. Date of occurrence of CT open/bypass/short, voltage missing/low voltage/ unbalance etc can easily be found out using downloaded data. Considering these facts, an assumption of missing of 1/3rd consumption during the disputed period cannot be sustained.

The site mahazar also justifies missing of current in one phase of the appellant's metering equipment in the appellant's premises. In view of the above facts it is clear that the energy meter installed in the appellant's premises was only recording in two phases of actual consumption on the inspection date of 12-01-2017, but not confirmed the missing of one phase consumption at the rate of 1/3rd of the total consumption.

Further this Authority is of the opinion that if the respondent had to inspect the metering system soon after the recorded consumption decreases considerably during the disputed period, it can be easily detected the defect in the metering and to avoid the loss if any occurred to the licensee.

According to Clause 18(2) of Central Electricity Authority (Installation and Operation of Meters), Regulations, 2006, the testing of consumer meters shall be done at site at least once in five years. The licensee may instead of testing the meter at site can remove the meter and replace the same by a meter duly tested in an accredited test laboratory. In addition, meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of previous years or if there is consumers complaint pertaining to a meter. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of the

consumer meters up to 650 Volts. In the instant case, the respondent has not followed the procedures prescribed above before charging the appellant.

The respondent has an argument that, the meter is not defective, to attract Clause 125 of Supply Code, 2014. Meter defined as under Supply Code, 2014 is extracted here under for ready reference,

2. (57) "meter" means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system; and shall include, wherever applicable, other equipment such as current transformer (CT), voltage transformer (VT), or capacitance voltage transformer (CVT) necessary for such purpose;

The meter is not a recording or display unit only but as defined above all the components above including lead wires include a meter. Moreover, this is not a whole current meter but a CT operated meter, where external CT is connected with metering unit using lead wires and phase voltage from all three phases are tapped from the source of supply and then connected with the same metering unit. Thereby wiring is also there for this metering system. This coordinates for computing energy is lead to the processing unit of the meter unit from different components of the meter then various electrical quantities are processed then recorded cumulative or otherwise and displayed in the display unit. Any defect in any part or component of meter is defect in meter. The fact of the matter is, the meter was defective since one CT was defective and hence one phase current was missing in the meter. Under the regulation 113, sub clause (7) of Supply Code 2014 requires the licensee to test the CT, PT and the wiring connections, wherever applicable while testing the meter.

In the judgment in WA. No. 114 of 2013 in WP(C) 5614/2007 dated 13-02-2014, the Hon: High Court of Kerala ordered and held that:-

“5. Insofar as Clause 24(5) of the Supply Code is concerned, that provision states that if the licensee establishes that it has undercharged the consumer either by review of the bill or otherwise, the licensee may recover the amount undercharged from the consumer. It is true as contended by the learned counsel for the appellant this provision does not specify any limitation on the period up to which the recovery is permitted. However this provision also may not have much relevance insofar as this case is concerned because this provision takes in only a case where the licensee has undercharged the consumer which means that the meter has recorded the actual consumption, but the licensee has not realised its charges accurately. Therefore, none of the aforesaid three provisions pointed out by both the sides specifically deal with a situation where the meter is inaccurately recording the energy consumed on account of a wrong connection given to the meter”.

Regulation 134 (1) of supply Code, 2014 is almost a verbatim reproduction of Regulation 24 (5) of Supply Code, 2005. Regulation 24 (5) of Supply Code, 2005 and Regulation 134 (1) of Supply Code, 2014 is extracted here under for ready reference.

Clause 24 (5) of Supply Code, 2005:- If the Licensee establishes that it has undercharged the consumer either by review or otherwise, the Licensee may recover the amount undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill. While issuing the bill, the Licensee shall specify the amount to be recovered as a separate item in the subsequent bill or as a separate bill with an explanation on this account.

Clause 134 (1) of Supply Code, 2014:- 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.

In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Board then in the case of undercharging, the Board shall have a right to demand an additional amount and in the case of over charges, the consumer shall have the right to get refund of the excess amount provided at that time such claims were not barred by limitation under the law then in force.

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. Hence revision of the bill on the basis of the test report is not possible in this case. Here in this case, the respondent confirmed the non recording of one phase on the basis of the inspection conducted in the premises and mahazar prepared.

Though the appellant has not given any evidence about the working of industry, the short assessment bill preferred for the period in dispute based on presumption only that one phase was missing in one year back onwards and hence is not sustainable. There is no material like the downloaded data to prove the missing of one phase from an exact date and to show that the respondent has conducted any detailed checking of the appellant's meter in due course when there was dip in consumption. KSEB preferred the short assessment bill for the period in dispute based on an inspection conducted lately only. Hence the charge of missing of energy from one year's back against the consumer is not proved conclusively. In this background, the issuance of short assessment bill on the appellant merely on the basis of presumption and

succeeding consumption pattern cannot be justified before law and liable to be quashed.

The respondent's version that it was not possible to ascertain the exact date from which the petitioner was undercharged, since the meter was not downloadable type, is not believable and hence not admitted. Further this Authority is of the opinion that if the data was downloaded during the inspection of the metering system on 23-01-2017 itself, the period of defect could have been detected and convinced by the appellant. Moreover, if the respondent had to inspect the metering system soon after the recorded consumption decreases considerably during the disputed period, it can be easily detected the defect in the metering and to avoid the loss if any occurred to the licensee. The meter was faulty and it cannot come under the purview of inaccuracy in metering under Regulation 152 of Supply Code, 2014.

The respondent has issued the short assessment bill for a period of 12 months based on connected load of 117 kW, following the inspection conducted on 12-01-2017 and detecting of non-recording of energy in one phase. It is found that the consumption during three billing cycles prior to the date of inspection are 12520 units, 14420 units and 10580 units for 10/2016, 11/2016 and 12/2016 respectively and the average is only 12507 units/month. The consumption of three billing cycles after replacing faulty CT are 2/2017- 21220 units, 3 /2017 - 16280 units, 4/2017- 17920 units. The new average is 18473 units.

From the above it is revealed that there is a drastic reduction in consumption which may be due to the defect of the meter or any other reasons which was not proved conclusively. It is revealed from the mahazar that, the total connected load observed in the inspection is 116263 W, (117 kW) where the contracted load is 52 kW and there is 65 kW unauthorized additional load. So the increase in consumption may be due to the unauthorized additional load in the premises. The consumptions of the appellant prior to 10/2016 were also below 10000 units except for two or three months as shown below:

Month	Units
3-2015	13560
4-2015	5020
5-2015	9840
6-2015	12100
7-2015	10020
8-2015	9480
9-2015	8120

10-2015	7260
11-2015	8220
12-2015	8740
1-2016	8620
2-2016	9860
3-2016	14980
4-2016	8800
5-2016	10540
6-2016	12800
7-2016	9500
8-2016	10940
9-2016	8340
10-2016	12520
11-2016	14420
12-2016	10580
1-2017	12507
2-2017	21220
3-2017	16280
4-2017	17920

Since the respondent failed to furnish the actual date of meter faulty by downloading the data of existing meter, the contention of the appellant that the meter became faulty only during 01/2017. According to the appellant, in so far as there is no allegation of any malpractice or theft of electrical energy by the appellant it is unjust to saddle the appellant if the liability for a period of 12 months.

As per Regulation 115(9) of Supply Code, 2014 which reads as:

“In case the meter is found to be faulty, revision of bill on the basis of test report shall be done for a maximum period of six months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in the two subsequent bills”. On the basis of admitted facts of the case that the energy meter installed in the appellant’s premises records less than the actual consumption, the appellant is liable to pay for the unrecorded portion of the energy used by him. If the officers of the respondent were negligent in the matter of inspection of appellant’s installation to ensure that the energy meter is working properly, it is totally unjust to issue a short assessment for a period of one year. Hence this Authority is of the opinion that it is just and fair to limit the short assessment period to 6 months prior to the date of inspection as per the Regulation cited above.

Decision

Consequently, in view of the above discussions, the instant appeal is hereby allowed as indicated above without any order as to cost. The respondent is directed to issue revised bill for a period of 6 months prior to 01/2017 as per Regulation 115(9) of Supply Code, 2014 by taking average of the consumption for the months of 02/2017, 03/2017 and 04/2017 at any rate within a period of 30 days from the date of communication of this order.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the Consumer is allowed to the extent as ordered and stands disposed of as such. The decision in of CGRF (South) Kottarakkara vide order OP No. 409/2017 dated 19-08-2017 is set aside.

ELECTRICITY OMBUDSMAN

P/108/2017/_____ /Dated:_____

Delivered to:

1. Sri. Abraham Mathew, M/s Terumo Penpol (Pvt) Ltd., Andoor Buildings, TC No.27/373/5, General Hospital Road, Vanchiyoor, Thiruvananthapuram
2. The Assistant Executive Engineer, Electrical Sub Division, Puthenchantha, KSE Board Ltd, Thiruvananthapuram

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, KSEBoard Ltd, Kottarakkara