

STATE ELECTRICITY OMBUDSMAN

Thaanath Building Club Junction Pookkattupadi Road Edappally Toll
KOCHI 682024
www.keralaeo.org

Phone 04842575488 +919447226341 Email : info@keralaeo.org

REPRESENTATION No: P 137/10

Appellant : M/s Accel Transmatic Ltd,

17/27 Jagathy ,

Thiruvananthapuram 695014

Respondent: Kerala State Electricity Board

Represented by

The Assistant Executive Engineer

Electrical Sub Division, Kazhakkuttam, Thiruvananthapuram Dt

ORDER

M/s Accel Transmatic Ltd, Thiruvananthapuram submitted a representation on 2.6.2010 seeking the following relief :

To set aside the order dated 13.4.2010 on OP 464/2009 of CGRF Kottarakkara and retain the consumer under LT IV tariff.

Counter statements of the Respondent was obtained and hearing conducted on 8.9.2010. Accel Animation studio at Drishya, Animation SEZ, Kazhakkuttam, Thiruvananthapuram is one of the units of the appellant engaged in computer animation services. The unit had an electric connection with consumer number 19493-5 under LT IV tariff. On 22.6.2009 APTS unit of KSEB inspected the premises and prepared a site mahazar and the respondent changed the tariff of the unit to LT VII A based upon their instructions from the date of connection. The respondent also issued a short assessment bill for Rs 3,98,773/- for the period. The tariff was changed alleging that the activity of the appellant was that of a cinema studio.

The scene mahazar prepared by the APTS states that animation movies are being produced in the plant and 30 cameras are installed in the air conditioned studio for the purpose. It is also stated that 58 computers are working in the unit to edit the animation movies. Total load in the premises were within the sanctioned load of 73KW. The cinema studio come under LT

VII A tariff and hence the tariff was changed to LT VII A. The appellant agitated against this and the various officers of the KSEB as well as CGRF upheld the action 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:

There are two kinds of works done in the Appellant unit: 1.Motion capture 2. Development of animation content .Animation content can be developed in the computer itself using graphics software or by capturing coordinates of the movement of model shapes using motion capture technique. Actually the motion capture work in the Trivandrum unit is a very small activity only. Major quantum of works is computer graphics software works.

The activity in the premises is computer related animation services. The animation services have been recognised by the Government of India as IT/IT Enabled Service industry .It can not be treated at par with Cinema Studio. In cinema studios the movement of actors are recorded with movie cameras. Movie cameras are not utilised in the appellant unit. The appellant unit uses motion capture technique for creating animation of images.

The motion capture technique is different from shooting cinema using movie cameras. Motion capture is a unique process in which sensors capture the movement of the marker fixed on a subject or model shape. The small in built computers in the sensors process the data received from the markers and sends it to the main computer for further processing. This partially processed data is sent to the various computer systems for developing animation content used for animation movies, medical training, virtual training etc. The motion capture sensors do not capture the shapes of bodies as in conventional movie cameras. The signals from markers are captured using specialized software only. All the processes involved in the technique are software controlled and digitally processed. The total power consumption by 32 numbers of sensors, which were mis- understood as cameras by the APTS unit, installed at the 'studio' is only around 1060W.These sensors receive power supply from the main computer system directly. Out of around 20000 sq ft area of the unit only less than 3000 sq ft is used for the so-called studio.

The activity in the premises is animation services. Animation is a rapid display of a sequence of images of 2 dimension or 3 dimension artwork or model positions in order to create an illusion of movement. The same is being created through computer with the aid of various software and the final product is in fact a computer program, ie, another software. Therefore it is basically a software unit. The Hon: Supreme Court of India in the decision reported in 2006(9) SCC 502 after elaborate discussions based on the materials furnished by experts in the field had held that 'motion capture animation files' are softwares. There fore it is evident that the appellant unit producing similar products come under software unit. All the departments of central and state governments have treated animation services as IT Enabled Service. There fore it is just and proper to allow industrial tariff to units making animation software.

Even if the motion capture technique is conceived as similar to recording of motion in cinema studio the other differences in the functioning of the appellant unit and a cinema studio are significant. The power consumption in the cinema studio floor and the 'studio' in the appellant unit are not comparable. The motion capture system in the appellant unit is not a predominant activity at all. Out of around 68 technically qualified employees in the appellant unit only 3 people are engaged in the motion capture floor. The motion capture systems were utilized for around 33 days only since inception of the appellant unit in 2007. This shows that Motion Capture is not a predominant and day to day activity in the unit. The motion capture is only one among several activities in the unit. As explained earlier, motion capture is only one of the data streams utilized for producing animation. The tariff and other classifications are to be based on the assessment of the predominant activity of any unit.

The tariff order do not differentiate IT units/software units as industrial or non-industrial loads. The activities related to software and data processing, and obviously IT and ITES units, come under LT IV only. There is no mention of any such activity under LT VII tariff. Hence it is evident that the rule makers have not conceived any IT or ITES activity to be classified under LT VII.

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

The APTS unit after inspection had given report that the consumer was engaged in making animation films. For this purpose cameras and computer systems are installed in an air conditioned studio .Hence tariff was changed to LT VII since the activities carried out in the premises were similar to cinema studio. The models of various characters were arranged and the movements of these characters were processed to create animated movie. They have full fledged studio facilities for pre production , production and post production of animation films under single roof. Several cameras arranged inside the motion capture studio are used to capture the movements of the performers. This sis similar to that of a cinema studio and hence the appropriate tariff is LT VII A. It is clear that the predominant activity carried out in the premises is motion capture.

The tariff order does not provide for any separate tariff for computer animation related activities. Personal hearing was allowed to the consumer on filing objections.

Discussion and Findings:

The Hon: Supreme Court of India in the decision reported in 2006(9) SCC 502 had quoted Prof.S.Raman, Associate Professor, department of Computer Science and Engineering, IIT Madras who had responded to the query raised by Central Revenue Tribunal as under:

'The motion capture animation files normally referred to as software in the Industry which could only be manipulated and modified by 3D animation software to apply the motion to computer graphics models in the computer. These manipulations are using interactive tools within the software to control various parameters to make the computer graphics director achieve his imagination seen on the computer screen. These motion files are captured from

live actors of performing , using special suits to transfer their motion information to the computer. These are then processed for compatibility with animation software and the processed files at various stages of capture are sent to us. One is a positional capture file and the other is a rotational capture file and the last is texture file of natural effects like water animated for various camera and wind velocity. These files can be interactively modified and used for various domestic requirements of the advertising broad cast and film industry. We further bring to your kind attention that the motion capture animation files or data are computer software recorded in a machine readable (Exabyte cartridge tapes) form and capable of being manipulated , but, by themselves , the files cannot be used as independent entities’.

The Hon: Supreme Court of India *held that motion capture animation files are computer software recorded in a machine readable form and capable of being manipulated by means of an automatic data processing machine.* The decision of the The Hon: Supreme Court of India was in the context of the customs duty applicable to imported motion capture animation files. How ever the decision unequivocally declares that motion capture animation files are software .Hence the units making such motion capture animation files can only be classified as software units and would qualify for the LT IV tariff.

A flow chart submitted by the appellant shows that after the activities like script making, modelling , texturing, rigging etc are over the input for animation can come from two distinct streams:1. Traditional animation 2. Motion capture .In other words the final output in FTP format can be the result of either traditional animation using computer graphics software or motion capture.

One of the main contentions between the appellant and respondent is about the predominant activity of the appellant unit. The respondent allege that making motion capture animation films is the predominant activity in the appellant unit. Appellant states that motion capture animation files are only one of the data streams utilized by the appellant to make animation outputs. The appellant has furnished a statement showing the actual number of days, with dates, on which the shooting had actually conducted in the ‘studio’ from the date of inception of the unit with the details of the clients, dates etc. The statement shows that the motion capture studio had worked for 5 clients, like UTV, Tata Elxi, Sun Pictures etc on 33 days only from October 2007 onwards. This statement supports the claim of the appellant that motion capture is only one of the data streams used by them to make animation software files and this activity had never been a predominant activity of the appellant. They also point out that the unit employing around 68 technically qualified persons would not have survived for around 3 years if the motion capture had been the predominant activity. .

In short it can be concluded that the activities in the appellant unit is basically that of software nature , the processes as well as the final out put are well within the domain of IT and IT Enabled Services .These processes and output are clearly different from a cinema studio. The Respondent could not establish their claim that the Appellant unit is functioning like a cinema studio . The functioning of cinema studios, the nature of activities going on there , the nature of final product and the level of power consumption for the activities in the

2. The Secretary ,KSE Board,

VaidyuthiBhavanam ,Thiruvananthapuram 695004

3. The Chairman , CGRF,KSE Board , KOTTARAKKARA

Visit the website www.keralaeo.org for forms, procedures and previous orders