

## STATE ELECTRICITY OMBUDSMAN

Thaanath Building Club Junction Pookkattupadi Road Edappally Toll

KOCHI 682024

[www.keralaeo.org](http://www.keralaeo.org)

Phone 04842575488 +919447226341 Email : info@keralaeo.org

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### REPRESENTATION No: P 136/10

*Appellant* : M/s I Scribes India Pvt Ltd  
TC 23/805 'Sivaprasad',  
Valiasala Street, Thiruvananthapuram 695036

*Respondent*: Kerala State Electricity Board  
*Represented by*  
The Assistant Executive Engineer  
Electrical Sub Division , Puthenchantha,  
Thiruvananthapuram 695001

### ORDER

M/s I Scribes India Pvt Ltd, Thiruvananthapuram submitted a representation on 27.5.2010 seeking the following relief :

*Set aside the majority order and restore the dissenting minority order of the CGRF Kottarakkara on OP 470/2010 (Restore tariff LT IV Industrial to the Appellant unit)*

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 14.9.2010 .The Appellant submitted an argument note on 14.9.2010 .

M/s I Scribes India Pvt Ltd is an IT and IT Enabled Services (ITES) unit engaged in software development and health care IT services like medical transcription , medical billing& coding etc for hospitals in USA and other foreign countries using computer hardware and software . The services are delivered to the hospitals in USA and other foreign countries using resources of Information Communication Technology (ICT) there by realizing value addition and earning income in foreign currency. There are more than 70 persons employed in the unit. The unit functioning earlier at Coimbatore was shifted to Thiruvananthapuram in 2005 in view of the various incentives provided by Kerala state. The Appellant unit had SSI registration and was provided electric connection in

11/2005 with consumer number 9731 under LT IV Industrial tariff for a connected load of 12KW.

The tariff of the Appellant consumer was changed to LT VII A by the Respondent in accordance with the observations of an audit party in 7/09 and a short assessment bill amounting to Rs 2,30,312/- was issued to the consumer for the period from 6/08 to 7/09 on 20.8.2009. The Appellant agitated against the change in tariff and the short assessment bill before various authorities and finally before the CGRF. The CGRF dismissed the petition of the consumer by majority order, non-official member recording his dissenting views.

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, argument note and during the hearing are summarized below:

KSEB officials had inspected and provided connection to the consumer in 11/2005 under LT IV tariff after convincing that the Appellant is engaged in IT and ITES activities. Even now Respondent do not dispute the fact that the Appellant firm is an ITES unit as can be seen from the various documents.

IT Enabled Services are not included in any category as per the tariff notification. But 'computer consultancy service with SSI registration engaged in soft ware services and data processing activities and desktop publishing, soft ware units' are to come under LT IV. The Appellant is also engaged in soft ware services and data processing which fall under IT and ITES. Thus as per tariff notification the Appellant has to be included in LT IV tariff. On the other hand the description under LT VII A tariff shows that there are no categories under VII A which can be classified as IT and ITES unit.

The IT Industry Incentive policy issued by the IT department of the Government of Kerala on 14.12.2007 defines ITES in page 5 as follows:

- IT unit/company includes IT hardware, IT software development, IT services and IT Enabled Services.
- IT Enabled Services (ITES) is defined as any product or service that is provided or delivered using the resources of ICT (Information Communication Technology).

The IT policy 2007 of the Kerala Government provides for LT IV tariff for IT industry units, Government IT parks, certified IT parks and Akshaya e centres.

The tariff notification for Technopark with effect from 1.3.2008 issued by the KSERC lays down that same tariff will be applicable for IT and ITES units and clearly differentiates commercial units from IT and ITES units.

Medical transcription is not a 'health profession' as indicated by the CGRF. Medical transcription is a general term used in India to refer to the IT ES process where medical reports of patients are prepared using computer, software, and Internet technologies. The process involves converting the doctors dictations from a foreign country, into audio files using software and then transmitting those audio files over the internet to the location where the actual reports are created by the transcriptionist using the computer. Thus

computer, software and the internet are essential features in medical transcription process. That is, medical transcription is done by using ICT and fits well into the ITES defined by the Kerala Government. So this can not by any stretch of imagination be called as 'health profession' as this is not done by health professionals but by IT professionals.

Medical transcription is a term used to refer to a particular activity among the different IT Enabled Services. Medical records creation, medical documentation, electronic medical reports (EMR) etc are some other terms generally used to refer to this kind of activity. Medical transcription is generally not done by Doctors or para-medical professionals nor in Hospitals and Medical Centres.

The Respondent argument that 'production' is an essential pre requisite for categorizing into LT IV tariff is wrong, as services like DTP, Computer consultancy services etc come under LT IV tariff as per the Notifications. The argument of the majority members of CGRF that tariff applicable to any activity intended to make profit is LT VII A is ridiculous since the very purpose of running any industry is making profit but LT IV is allowed to such units.

Hence the Appellant unit of IT Enabled Service is eligible for LT IV tariff. The majority order of the CGRF is to be set aside and LT IV tariff is to be restored to the Appellant.

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

The software units come under LTIV tariff considering its productive nature. But ITES cannot be treated at par with the above since there is no production activity in ITES. The appellant is engaged in medical transcription which is a purely a commercial activity where no productive activity is going on and hence the tariff applicable is commercial LT VII A. Medical transcription is a health profession which encompasses the process of transcription or converting voice recorded reports by the physician or health-care professional to text format and it does not come under industrial activity. It is intended to make profit and hence a purely commercial activity. Medical transcription is not included in the activities listed under LTIV. The applicant had availed connection after producing SSI registration for software development only. Later they started medical transcription. Software development is an activity to be treated as industrial considering its productive nature. The KSERC had included akshaya e centres which is an ITES in Government sector under LT VI B even in the latest tariff order.

Discussion and Findings:

The real issue behind the dispute is the fact that the tariff notifications of KSERC is silent on the classifications for IT industry and IT Enabled Services. Even though IT and ITES are the commonly used terms for a number of activities in the IT sector, which is a fast growing sector in our economy, the tariff notification do not contain any reference to these terms. The tariff notification specifies that '*computer consultancy service units with SSI registration engaged in software services and data processing activities and desk top publishing*' and '*software units*' shall be under LT IV tariff. One can derive from the

above that, units engaged in data processing are to come under LT IV , subject to certain conditions. In addition to the above, the Notification specifies that ‘software units’ are also to come under LT IV.

The definition of IT Enabled Service provided by the Government of Kerala ,namely, *a product or service provided or delivered using the resources of Information & Communication Technology (ICT)*, fits well into the appellant functions. There is no dispute that the appellant unit is an IT Enabled Services unit

The main activity in the appellant unit is reported to be medical transcription. These activities have been explained in detail by the appellant. Dictations and instructions from the Doctor is the primary data here. These are converted to audio files using software in foreign countries, and the audio files are transmitted to the back-end support units in India through internet .Actual reports in text file formats are prepared in these support units using the computers and transmitted back to the parent organizations using internet. Medical Records creation, Medical Documentation, Electronic medical records creation etc refer to the activities of similar nature. These activities can very well be classified as Data Processing .

The natural and logical conclusion would be that the appellant unit shall be included in LT IV category.

When the activities in the unit of a consumer has not been specifically included in any tariff category, the judicious method of classification has to be by the analysis of proximity. There is no mention of any software related or IT related activities in the classifications under LT VII A category. The activities in the appellant unit has no proximity to any groups mentioned in LT VII A .By all standards of evaluation, the activities in the appellant unit are nearer to the LT IV classifications.

Now the arguments put forward by the respondent on the matter shall be examined. The statement that the ITES do not find a place under LT IV category and hence shall be put under LT VII is irrational and outrageous due to reasons mentioned above. When a particular activity is not seen included in LT IV group how can one decide that they should come under LT VII? The officials of the Licensee are not expected to take such arbitrary decisions without justifications.

The respondent had argued that the appellant unit is working on purely commercial nature and hence has to come under LT VII. So also it has been argued that the functions in the unit are meant to create profit and hence has to come under LT VII . Both these arguments are not rational. Almost all the activities included under LT IV Industrial tariff ( from grinding mills through tissue culture units) are functioning on commercial principles and intended to make profit. ‘Functioning on commercial basis’ as well as ‘making profit’ can not be taken as yard sticks to differentiate between LT IV and LT VII tariff. The Tariff notification of KSERC does not mandate the Licensee to make classifications based on such parameters.

The observation of the majority members of CGRF that the appellant function ‘is purely a commercial activity intended to make profit and hence the tariff applicable is LT VII A commercial’ is not fair. No one can assume that ‘computer consultancy service units with SSI registration engaged in software services and data processing activities and desk top publishing’ and ‘software units’ are not commercial activities intended to make profit. Still those units are included in LT IV tariff as per the Tariff regulations. It is obvious that

functioning on commercial basis and making profit would not disqualify one consumer from being classified under LTIV tariff.

Another argument put up by respondent was that Government sponsored Akshaya-e-centres were not allowed to be brought under LT IV by the KSERC. But it is clear that the Commission had deferred the decision on these centers in their Order dated 2.12.2009 since KSEB themselves had pointed out earlier that activities like computer training teaching, e-remittances etc are done in such centers and they are not eligible for LT IV tariff. Respondents have no case that activities like computer training, teaching, e-remittances etc are undertaken by the appellant. As such comparison with Akshaya centres are not relevant here.

It is worthwhile to note that, as pointed out by the Appellant, the KSERC had put IT and ITES units in Technopark under the same group for tariff classification in the tariff order with effect from 1.3.2008. So also the IT policy 2007 of the Kerala Government promises that IT industry units, Government IT parks etc are entitled to power tariff under HT I and LT IV.

Taking all the above facts into consideration I have come to the conclusion that the appellant unit which is an ITES unit is eligible for LTIV Industrial 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 majority order of the CGRF Kottarakkara on OP 470/2010 is set aside and the Respondent shall restore tariff LT IV Industrial to the Appellant unit*
2. *The amounts collected under LT VII A Commercial tariff if any shall be refunded without interest by adjustments in future bills.*
3. *No order on costs.*

Dated this the 6th day of October 2010 ,

P.PARAMESWARAN  
Electricity Ombudsman

No P 136 /10/ 676 / dated 7.10.2010

Forwarded to:1. M/s I Scribes India Pvt Ltd  
TC 23/805 'Sivaprasad',  
Valiasala Street, Thiruvananthapuram 695036

2. The Assistant Executive Engineer  
Electrical Sub Division , Puthenchantha,  
Thiruvananthapuram 695001

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 ,  
Vaidyuthibhavana, Kottarakkara