

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 152/10

Appellant : M/s Customer Line Private Ltd
2A Link Heights
Panampilly Nagar, Kochi 682016

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

ORDER

M/s Customer Line Private Ltd, Panampilly Nagar, Kochi submitted a representation on 19.7.2010 seeking the following relief :

1. *Set aside the Order dated 21.6.2010 of the CGRF Ernakulam on Comp.27/2010-11*
2. *Set aside the Bills dated 3.5.2010 and subsequent Bills issued under Tariff LT VII A*
3. *To declare that the Appellant consumer is not to be treated as a call centre and thereby not liable to pay current charges under LT VII A*

Counter statements of the Respondent was obtained and hearing conducted on 14.10.2010 and 10.11.2010. Both parties presented argument notes and other documents . The Appellant firm established in 2002 in rented premises was engaged in IT enabled services. The service connection was classified under LT IV tariff by KSEB. The APTS inspected the premises on 20.4.2010 and found that the Appellant premises were being used as a call centre. The KSEB changed the tariff to LT VII A with retrospective effect from 12/2007 since the call centres were classified under LT 7A as per the tariff order dated 26.11.2007. The Respondent also issued a short assessment bill for the period from Dec 2007 to April 2010 amounting to Rs 4,72,326/- and the subsequent bills under LT 7A tariff. The Appellant moved the CGRF who upheld the tariff change as well as the short assessment.

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:

The expression call centre is not defined anywhere in tariff orders or orders of the KSEB or other statutes. Going by the literature available in the internet, call centre is a place where large volumes of customer and other telephone calls are handled by an organization usually with some amount of computer automation. None of the features mentioned in the definition of call centre are present in the unit of the Appellant since the main activity of the Appellant unit is not call centre. Hence the Appellant establishment can not be classified as a call centre. It is a computer consultancy unit with SSI registration engaged in software services and different data processing activities. It is true that the Appellant unit provides IT enabled services to all its customers which include SBT and Malayogam. But the principal activity is not call centre but data processing services. The main activities of the Appellant unit are software development, data entry, data mining, data processing etc.

Computer consultancy services are much wider than call centre services. In view of the fact that there is a specific entry in LT VII A as 'call centre' the expression computer consultancy centre included in LT IV should be understood by excluding call centres. Computer consultancy centres which have predominant activity other than call centres should be treated as industrial units. Only those units which have predominant activity as call centres would be coming under LT 7A. By this reasoning the Appellant unit comes under the LT IV tariff since the predominant activity is software development and data processing.

Even if the APTS or other agencies of the Respondent found that call centre activity is going on in the premises at the time of inspection, they can not conclude or claim that only this function was going on there from 12/2007 onwards. At the time of inspection, when world wide recession was at its peak, they could find out only a few activities of the firm where as the main and predominant activity is not call centre but software development and data processing.

The present proceedings are initiated under Regulation 24(5) of the Supply Code. Hence the Respondent is bound to 'establish' the undercharging. The burden to prove that call centre activity was the predominant function in the unit from 12/2007 onwards has to be born by the Respondent. Mere satisfaction of the inspection team is not sufficient to issue short assessment bill for more than 2 years. The Respondent has not established that call centre activity was the main and predominant activity in the premises from 12/2007 onwards.

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

On inspection the APTS found that customer care call centres of SBT and Malayogam are functioning in the Appellant premises. The Appellant has agreed that only 2 computers out of 31 are being used for his own activities. 29 numbers were being used for call centre activities. Hence major portion of the electrical load and consumption of electricity was being used for call centres. So the argument that call centre is not the main and predominant function can not be accepted.

The Appellant claims that the main activity is computer consultancy services, ie, providing various kinds of IT enabled services and main activity is data processing and data mining and software development. These activities are present in all IT enabled

services companies. But only software development which is productive in nature come under LT IV tariff. The tariff order of 11/2007 do not include IT enabled services under LT IV . Hence the tariff of the Appellant was changed to LT VII with effect from 12/2007.

Discussion and Findings:

Mainly two issues are to be decided in this case:

1. Is the change of tariff from LT 4 to LT 7A of the Appellant establishment justified based upon the findings of the inspection by APTS on 20.4.2010?
2. If yes, is the change of tariff with effect from 12/2007 justified?

The Appellant has furnished a large number of documents to support the claim that call centre is only one of the activities there. The firm has specialized knowledge in developing customer relation ship management (CRM) software, data mining techniques etc. The specialized domain skills of the firm are narrated in their website also.

But the facts narrated in the scene mahazar prepared during inspection by the APTS in the presence of the representative of the firm can not be ignored. The mahazar points out that the call centre was functioning in 2 floors with 31 computers. During hearing it was noted that around 11 employees were working for call centre at the time of inspection. Only 2 or 3 people and computer systems were engaged in the technical support team. Hence it is clear that the main and predominant activity at the time of inspection was the customer care call centre. So the Respondent action of changing the tariff of the service to LT 7A consequent to the inspection on 20.4.2010 is justified.

But as pointed out by the Appellant the burden of *establishing* that the same situation was prevailing there right from 12/2007 lies with the Respondent. Section 24(5) of the Supply Code is very clear on this aspect.

During hearing the Appellant narrated the various activities he had under taken in the unit from 2002 onwards. They had full fledged customer support and data processing team for telecom companies for a few years. They had under taken data mining activities for foreign clients for some time. They had taken up software development for customer back up for some Indian firms recently. The number of skilled man power engaged by the firm had varied widely from 150 to 15 on various occasions depending upon the business environment and the business models adopted from time to time .When the details furnished by the Appellant on the functions under taken by the unit from time to time is analyzed it is clear that the Appellant had under taken varying activities in the various domains in the IT related business .One can conclude that the functioning of the unit had not confined to call centre earlier.

It is to be noted that the Respondents themselves had allowed LT 4 tariff earlier to the firm on apparently satisfied conditions. The Respondent had not submitted any supporting documents or inspection reports to substantiate that only call centre activity was going on in the premises or to confirm that all along the main activity of the consumer had been the call centre.

The Respondent had been advised to produce the electricity consumption statement of the consumer. Accordingly readings from January 2005 had been produced by him. The consumption pattern does not provide any appreciable change in December 2007. The consumption had been around 3500 units to 5000 units during 2005 and 2006. This has come down to 1500 to 2000 units from March 2008 apparently reflecting the recessionary

trends in the IT sector. The consumption pattern does not substantiate any major deviations in the functions of the unit.

The Respondent could not produce any evidence to establish that their action of allowing LT 4 tariff was wrong and the tariff had to be LT 7A from 12/2007. The Respondent could not establish that the main and predominant activity in the premises had been call centre from 12/2007 onwards.

In short the Respondent has failed to *establish* that call centre had been the main and predominant activity in the Appellant unit from 12/2007 onwards and they are entitled to charge LT 7 A tariff for the back periods. Under the above circumstances I conclude and decide that the Respondent Licensee is not entitled to assess and demand current charges at LT 7 A tariff from 12/2007 onwards but the Respondent can assess the consumer at LT 7 A tariff from the date of inspection.

Orders:

Under the circumstances 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 action of the Respondent changing the tariff of the Appellant establishment with consumer number 1162 to LT VII A based on and with effect from the inspection dated 20.4.2010 is justified and hence upheld.*
2. *The Respondent shall not be entitled to realize charges under LT VII A tariff with back effect, that is , the change of tariff shall be effective from the date of inspection only. The demand raised as short assessment for the periods prior to 20.4.2010 shall be withdrawn and excess payments if any shall be refunded.*
3. *No order on costs.*

Dated this the 22nd day of November 2010 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 152 /2010/ 711 / dated 24.11.2010

Forwarded to: 1. M/s Customer Line Private Ltd
2A Link Heights
Panampilly Nagar, Kochi 682016

2. The Assistant Executive Engineer
Electrical Sub Division, KSEB, COLLEGE , Ernakulam

Copy to :

1. The Secretary,
Kerala State Electricity Regulatory Commission
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram 695010
2. The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board , Power House, ERNAKULAM

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