

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamangalam-Anchumana Temple Road
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484-2346488, Mob: +91 9567414885
Email:ombudsman.electricity@gmail.com

REPRESENTATION NO: P/159/2010.

(Present: T.P. VIVEKANANDAN)

Appellant : Sri.Paul Francis,
Chairman, KLF Agro Extracts,
Irinjalakuda, Thrissur, Pin: 680121.
Respondent : The Assistant Executive Engineer.
Electrical Subdivision, KSEBoard,
Kodakara, Thrissur.

ORDER.

Back ground of the case:-

The petitioner is running an Industrial unit named KLF Nirmal Industries Ltd, at Irinjalakuda, for the purpose of crushing copra and extracting oil. He has also started a second unit named KLF Agro Extracts (P) Ltd at Pulparakkunnu, Kodakara, where the filtration and packing of the said extracted oil is being arranged. Since the Kodakara unit is seen engaged for oil filtering and packing activities only, the Licensee, KSEB changed the tariff of its electric connection from LTIV- industrial to LTVII A commercial. The dispute is regarding the claim of the petitioner that, as the filtration and packing is a part of Production activity, it should attract the industrial tariff while the respondent alleges that the activities being done at Kodakara unit, does not conform to a Production or Manufacturing process and hence will not attract the Industrial tariff classification but is a commercial activity and hence fall under LT VII A category only. The question to decide is whether the activities of 'filtration of oil and its packing alone, done at a different location other than its own manufacturing premises' will constitute an 'industrial tariff or a commercial tariff' categorization as per the existing rules.

Argument of the Appellant :-

(1).The Consumer, M/S KLF Nirmal Industries is engaged in the processing and manufacturing of coconut oil from copra and the product is named 'KLF Nirmal Coconut Oil'. The whole industrial unit is based in two buildings in different locations. The first stage of copra sorting, crushing and extracting is done in the parent unit at KLF Nirmal Industries, Irinjalakuda. Then the raw coconut oil is transferred as such to the second unit situated at Kodakara, named as KLF Agro Extracts Private Ltd, with Consumer No.15621 (New No.) The KSEB (Kodakara Office) was collecting the electricity charges from us on the basis of industrial tariff for this second unit. Even though both units situated on different locations and have different names, the second unit is only a branch of the first unit and is doing the final stage of processing of the oil produced in the first unit. The entire processes at both units are the various stages of manufacturing and constitute a continuous process.

(2). The KSEBoard changed the Tariff of consumer No. 2376 (New No.15621) from LT IV (Industrial) to LT VII A (Commercial), without giving notice. It is stated that the Tariff was changed on the basis of an

inspection conducted on the premises and on the preparation of a Mahazar on it's the findings. The demand of Rs.70, 056/-, issued by the respondent based on it, is illegal and unjustifiable.

(3). The APTS (KSEB), Aluva is said to have conducted an inspection in our Kodakara Unit on 09.05.06. No notice was given and no staff was present during inspection. The said unit is a part of the main production unit and here the filtration and packing is done with the aid of machines. We have sent representations to officers of Board to settle the issue. But no concrete steps were seen taken. As per the Tariff order 2002, the applicable tariff for oil industry is LT IV (industrial) only.

(4). The Board has fixed different tariff for various consumers and are categorized according to their load requirements, benefits, nature of load etc. The category LTIV is general industrial purpose and oil industry is included in this. The LT VIIA is meant for Commercial Consumers. We are an Industrial one. The complainant is not conducting any commercial activity in the Building where filtration and packing are done which is a continuous process of manufacturing of oil through stocks transfer from one production unit to another production unit.

(5). It is true that Oil packing is included under LT VII A category by the 2010, January order of KSEB. It was made applicable only from January 2010. But the current issue started from 2006 onwards when KSEB issued bills under LTVIIA and we were remitting the bills under protest. We are not bound to pay under LT VII A tariff as no commercial activity is being done at our industrial units. The unilateral decision to change the Tariff is illegal and irregular.

(6). There is only an extraction of raw oil from copra is being carried out at Irinjalakuda unit. Its premises contains full of dust and other waste articles and requires frequent cleaning. Hence we are conducting the final stages of filtration, grading and packing in another unit at Kodakara, which is also possessed by the appellant on lease terms. For this purpose, transfer of oil is done and then returned back to the 1st unit. It may be noted that "Manufacturing Process is a systematic activity in which a product is changed to a new one after various production procedures. If final product needs purity and quality it has to be properly processed and packed in a clean and hygiene area.

(7). Our intention was only to supply higher quality oil as we have a good reputation in market. The stock of raw oil is transferred and is derived as a final product. The manufacturing process is complete only when the oil is purified and returned to parent unit.

(8). As per the definition of a Manufacturing process given in the 'Factories Act' includes the activity of furnishing, packing and cleaning. Hence it will fall under production process and the Board's action to classify it under commercial category is illegal.

(9). The filtering and packing are part and parcel of a manufacturing industry. We are not doing packing alone. The mahazar and the Inspection report were prepared in an arbitrary manner. Hence the change of tariff is not legally binding. The findings of CGRF are without any merit and liable to be set aside. The CGRF has not considered the legal position in Kailas Cashew Industrial Case. In that case, a roasted cashew packing unit was held as a production unit and the action of changing the tariff from LT IV to LT VII A was quashed by the Electricity Appellate Tribunal.

Relief Sought:-

(1). May set aside the action of KSEBoard in changing the complainant's tariff LT IV to LT VIII A with retrospective effect

(2). May direct the KSEBoard to treat the KLF Agro Extracts (P) Ltd as an industrial production unit and assign LT IV Tariff to it.

(3). May set aside the order of the CGRF Ernakulum and if at all made liable (without admitting), for charges under LT VII A, the same will be applicable with effect from January 2010 only, in the light of new tariff order. The amount remitted in excess from 2006 onwards may be ordered to refund.

(4). May quash the bills issued by KSEBoard under LT VII A Tariff.

Argument of the Respondent:-

(1). The appellant owned the connection No.2376 and collected electricity charges under LTIV-industrial tariff till the surprise inspection done by APTS on 09.05.2006. During inspection it is found that no industrial activities are being done there and only the activities of filtering and packing of coconut oil was arranged at the premises. An employee of the petitioner, named Sri Suresh Andrews has witnessed the site mahazar prepared on the findings of inspection. Then only the tariff was changed to LT VII A, as the nature of the activity at the premises, was seen not conforming to industrial type as per the tariff order in force and hence a provisional bill of Rs.70056/= was issued to the petitioner. The subsequent monthly electricity bills were also issued under LT VIIA tariff.

(2). As per the Judgment in WP (C) 23733/2006, the Hon: High Court referred the case to the Deputy Chief Engineer, Electrical Circle, Irinjalakuda, for taking decision as per law, being the Appellate authority as per section 127 of Electricity ACT 2003, and Govt: notification dated 03.03.2005. The Deputy CE, Irinjalakuda, accordingly heard the petitioner and up held the decision of the respondent to change the Tariff and the issue of bill, since the machineries at this unit was found to be using only for filtering and packing of coconut oil.

(3). As per the Tariff order notification dated 24.10.2002, the Oil mills are included in LT IV category. But the petitioner's unit at Kodakara is not an Oil Mill and instead only oil filtering and packing was undertaken at that premises. Hence petitioner is not eligible for industrial tariff and therefore changed the tariff to commercial- LT VII A.

(4). To constitute a manufacturing process, there must be some transformation of raw materials to a final 'product'. If the process of filtering and packing is done in the same premises of crushing copra and extracting oil, it is a continuous process and can be considered as manufacturing process. But here the oil extraction is done at one place and filtering and packing at another place. The averments of the Appellant like, the space constraint, quality of oil and health conditions etc experiencing at Irinjalakuda unit and hence resorted to transportation of oil to another site, are not valid reasons for industrial tariff claim. The Allocation of Electricity Tariff is not governed by the Factory's Act 1948. This Law has no connection in the matter of determination of the Tariff of a consumer.

(5). In the Inspection done on 9.5.2006, by the APTS, it is also detected that the consumer has availed unauthorized additional load of 24 kw which was not disputed by the consumer.

(6) The term manufacturing process has no connection in this case as tariff is not linked to process of manufacturing alone. It has been upheld by the Hon: Court that the finished goods and packing thereof cannot be treated as manufacturing process at all, in the case of F Hare Vs State -AIR 1955- 2719

(7)The case of Kailas Cashew, referred by the Petitioner in his petition has no relevance in this case. A relevant Board order dated 3.11.2009, issued as per Hon: High Court's direction, dealing with a similar case of M/s Mithun Agro Oil (P) Ltd is attached as document for reference. In this case the consumer was engaged in the activity of storing and packing of oil and KSERC decided the applicable Tariff for the same activity as LT VIIA –Commercial and not as industrial.

(8) A copy of the Board order dated 20.08.2009, issued specifying the tariff for "Tea Blending and Packing" as LT VIIA commercial, is produced here with. The Hon: Commission (KSERC) has heard the Petition filed by KSEB (as per Hon: High Court direction) in the issue of applicable tariff in the above case filed by M/s PLL Industries, Mattanchery, and ordered that it is commercial only and not LTIV Industrial. The case under dispute is similar in nature and hence the tariff is LT VIIA.

Hence the prayers of the appellant may be rejected.

Analysis and Findings:-

The case was heard on 16.3.2011 and 29.6.2011 in my chamber at Edappally and both parties were present and argued their cases in the lines stated above. On an examination of the Petition filed by the Appellant, the counter statements submitted by the Respondent and after noting the facts and

circumstances of the case and analyzing the same with the documents attached with the petition and the counter, I come to the following Findings and conclusions.

The Appellant is running an Industrial unit named KLF Nirmal Industries Ltd, at Irinjalakuda, (parent unit) for crushing copra and extracting oil. The same party has set up a separate unit named, KLF Agro Extracts Pvt Ltd, on a leased land at Pulparakkunnu, Kodakara which is located away from the parent unit. It is argued by the appellant that this second unit performs the activities of cleaning and packing of the extracted oil brought from the parent unit. The reasons cited for bringing oil to a different unit located at a different place is attributed to be, for giving Oil the required purity and quality, in a clean and hygiene area. The Respondent argues that, if all the activities starting from Sorting of copra to packing of oil (sorting, crushing, extraction of oil, filtering and packing), that is to say, the transformation from the raw materials to a final product are done at the same unit, then the whole activities constitute a production or manufacturing process and hence eligible for an industrial tariff. But in the case under dispute, the filtering and packing of Oil alone are done at another unit. This unit is situated in a different location, with name and style also different from the parent unit. The main point to be decided is whether the "activities of filtration of oil and its packing alone, done at a different location other than its own manufacturing premises" will attract an industrial or commercial tariff, as per the existing rules.

It is noted that there was a surprise inspection by APTS (Anti Power Theft Squad) of KSEB on the consumer's premises on 9.5.2006 and they have detected some unauthorized additional load connected to the system and also alleged misuse of tariff. The Mahazar prepared is seen witnessed by an employee Sri Suresh Andrews, of Kodakara unit. The KSEB subsequently changed the tariff of the Unit and also issued a bill which was challenged before the Hon: High Court. As per the Hon: Courts direction the case was heard by the Deputy Chief Engineer, Irinjalakuda and disposed the case upholding the decision of KSEB. Hence the statement that there was an inspection of the Appellant's premises by KSEB on 9.5.2006 is found to be as true.

As per the Tariff Order in force, the applicable tariff for an Oil Mill is LT IV - industrial. But that does not mean that the activities of "filtering and packing of extracted oil" alone done at a different place other than its original industrial premises, even though it is the last activity of a Production Process of Oil, will attract the industrial tariff. In the case of Kodakara Unit, the APTS inspection revealed that the machineries fitted there, were those needed for filtering and packing purpose of Oil only. It is an undisputed fact that the Filtering and Packing of extracted oil form part of an oil industry. That is why, if the whole activities of an Oil Industry Process, starting from the Sorting of copra to Packing of oil, if done at the same unit, industrial tariff is assigned. But the machineries found at Kodakara unit, if worked independently do not perform the basic activities needed for a Manufacturing or Production Process of Oil and thus not eligible for the industrial tariff applicable for an Oil Mill.

It is argued by the Appellant that the second unit (KLF Agro Extracts Pvt Ltd) at Kodakara, is a branch of the parent unit at Irinjalakuda (KLF Nirmal Industries Ltd), even though it has a different name. In normal case, the branch unit will have the same name of its parent unit. But here it is seen different. Even if the name is same or different, I am of the view that the activities done at a second unit situated at a different location, cannot be termed as a continuous process of the parent unit but only as a separate unit for carrying out the balance activities of the parent unit. And for this 'separate unit' the tariff should be assigned according to the purpose for which the electrical energy is utilized there and not depending on, whether it belongs to any other Unit's continuing process or work, going on at some other places. In such a situation, anybody can bring in claims that their "Electric Connection", belongs to or form part of another Industrial Process or Work done at another place and may seek beneficial tariff, and if accepted will ultimately lead to total chaos.

It is also argued by the Appellant that the complainant is not conducting any commercial activity in the Kodakara unit, where the filtration and packing process is carried out as a continuing process as part of Oil manufacturing, through stock transfer from one production unit to another production unit. But

the Kodakara unit cannot be treated as a Production unit as no 'transformation of raw material to final Product' is occurring at this end. Here only the activities of Filtering and Packing are being done which cannot be termed as Production. Hence the argument to that effect is not maintainable.

As per Para (10) in the Appeal Petition, the Appellant himself states that "If we are purchasing oil from others and conducting Packing and Labeling alone, the said activity is a commercial activity and no doubt the commercial tariff of LT VIIA is attracted". The appellant is convinced that the activity of Packing is a commercial one and he argues that the differentiation lies only on the fact of, whether the oil is purchased or not. It is to be noted that Electric service connections availed at different places cannot be treated as a single unit, as each unit is independent under separate Agreement. Hence there cannot be a continuous process under different connections at different locations. In this case also, the oil is brought from outside to Appellant's Kodakara unit which make it to be treated as equivalent to purchase of oil itself. Whether the Oil is brought from parent unit or purchased, the activity done at the Kodakara unit is one and the same i.e. Filtering and Packing only. Hence, even as per Appellant's own view, the applicable tariff has to be commercial only.

The Appellant has referred the Judgment of Appellate Tribunal for Electricity, in "Kailash Cashew Exports Vs KSEB" and is citing it as a similar one for assigning the industrial tariff. The Judgment reads as follows:-

"..... We hold that the processing and packing units of Cashew kernels with activities as described in Para (9) above shall be placed in category LT IV for the purpose of electricity charge as was being done by the respondent No 1 before coming into force of the tariff order dated 01.04.2003.".

Further, the Para (9) referred above, reads as **".....But there are several other machines performing functions like sealing, roasting, oil suction, lamination, gas filling etc. These functions are some thing more than a simple function of packaging as we normally understand.....To control the quality of the product and to standardize the product; the appellant has to dry the cashews at a particular level so that every grain of cashew contains the same level of moisture. Roasting is also a process that cashew kernels have to undergo. There are several stages of sieving as to remove foreign particles. Garnishing is done by adding spices. Extraction of oil is also necessary to maintain the required level of oil content in the cashews."**

In the case referred above, it is noted that there are many activities like drying, roasting, sieving, Garnishing, Extraction of oil etc are being carried out on Cashew kernel where as in the case under dispute only Filtering and Packing of Extracted oil is being done. The learned Judge has clarified that the Processing and Packing units shall be placed under LT IV Industrial. As no processing activities, as described above, are being done at Kodakara unit, there is no similarity with the referred 'Kailash cashew' case and hence it is not relevant in this case.

The meaning of the Expression 'Manufacturing or Production Process' given in the Factories Act, 1948, or elsewhere cannot be imported in the matter of Tariff fixation under Electricity Act, 2003. The Section (3) of the Electricity Act 2003, empowers the Central Government to formulate the Tariff policy and announces the National Electricity Policy and Tariff Policy in consultation with State Governments and Central Electricity Authority. The Act also requires that the State Electricity Regulatory Commissions (SERCs) shall be guided by this Tariff Policy in discharging their functions. Many socio-economic guide lines are taken into considerations while drafting and notifying the proposals of tariff categorization and only after conducting Public Hearings these Tariff classifications and rates are finalized. Hence the method of Tariff categorization has no binding on the Definitions given in the Factories Act, 1948.

The documents submitted by the Respondent relate to the Board orders issued as per the Hon: Commission's verdict in the petitions filed before it and shows that the Tariff fixation is not solely depend on the meaning of 'Industrial Production' given in the Factory's Act, namely;

1). The Hon: KSERC's order dated 15.7.2009 in the Petition No TP-65/2009 states that the Tariff for Tea blending and Packing units shall be LT VII Commercial and not LT IV Industrial.

2). Similarly in the Order dated 8.10.2009 of the Commission, in the Petition- DP No 10/2009, it is clarified that the tariff applicable to M/s Mithun Agro Oil Pvt Ltd shall be LT VII A Commercial as the activity in the premises was only storing and packing of oil.

3). The Hon: Commission in its order dated 18.3.2009 has specifically categorized the activity of 'Filtering and Packing units using extracted oil brought from outside' under LT VII A tariff.

Decision:-

From the above analysis, findings and conclusions arrived at, I am convinced that the KLF Agro Extracts Pvt Ltd, Kodakara, is not eligible for an Industrial tariff classification as the activity done at that unit, namely the Filtering and Packing of extracted oil alone, does not tantamount to an Industrial Production process. Further, the tariff classification is not governed by the Factories Act, 1948. Considering the activities going on at the premises of the consumer, the eligible tariff for the Appellant's unit is LT VII A- commercial only. The Commission's decision on a Petition filed by KSEB and the verdict issued on 18.3.2009, establishes that the applicable tariff for Filtering and Packing of extracted oil brought from outside is LT VII A- commercial. This order endorses the stand taken by the Board that the appellant's tariff is LTVIIA- commercial. Hence the action taken by the Respondent to change the tariff of the appellant from LT IV-industrial to LT VII A commercial with retrospective effect, and raising a short assessment bill thereof is found to be in order. All the reliefs sought by the appellant, as listed above, is therefore, declined. Having concluded and decided as above, the Appeal Petition No P/159/2010, stands dismissed as it is found devoid of merits. No order on costs. Dated the 26th of September, 2011,

Electricity Ombudsman.

No.P/159/2010/ /Dated 26.9.2011

Forwarded to:-

- (1). Sri.Paul Francis,
Chairman, KLF Agro Extracts (P) Ltd,
Irinjalakkuda, Thrissur.
- (2).The Assistant Executive Engineer
Electrical Sub Division, KSEBoard, Kodakara, Thrissur.

Copy to:-

- (1). The Secretary,
Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam,
Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard, Vidyuthibhavanam, Pattom, Thiruvananthapuram-4.
- (3).The Chairperson
Consumer Grievance Redressal Forum, Power House Bldg, Power House Road,
Ernakulam-18