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Review Petition Nos. P/337/2013

(Present: Sri. V.V. Sathyarajan)

Dated: 31st August 2015

Review appellant : Sri. James Jose,
Managing Director,
Cochin Assay [P] Ltd.,
Ravipuram,
Ernakulam.

Review respondent : The Assistant Executive Engineer,
KSEB Limited,
Electrical Sub Division,
College, Ernakulam.

ORDER

Background of the case

The review appellant herein in Appeal No P-337/2013, is Sri James Jose, Managing Director, Cochin Assay [P] Ltd., Ravipuram, Ernakulam with consumer No. 9277 under Electrical Section, College, Ernakulam. The service connection was registered with effect from 28-06-2002 under LT VII A tariff. Pursuant to an application submitted by the appellant by the tariff of the said premises was changed from LT VII A to LT IV with effect from 15-04-2005. On 18-09-2012, the APTS team conducted an inspection in the premises and detected that only quality testing and certification (hallmarking) process was carried out in the units and there was no production of bullion products carried out in the premises. Hence a short assessment bill was issued to him for Rs. 18,99,602/- with effect from 15-04-2005 the date of change of tariff from commercial to industrial. Being aggrieved by the impugned short assessment bill and change of tariff, the review appellant has filed a complaint before the CGRF which held that assessment to be revised under LT VII A tariff within 2 weeks and the amount shall be permitted to be remitted in 15 equal instalments with applicable interest.

Aggrieved against the orders, the review appellant filed appeal petition before this Authority which was disposed upholding the decision of CGRF, vide order dated 30-10-2013. Now the review appellant has submitted this review petition with a plea to review based on the direction issued by Hon'ble KSERC in OP No. 13/2012.

Arguments of the review appellant:

The review appellant has submitted that as per the direction of Hon'ble High Court of Kerala in W.P. (C) No. 9962 of 2008, the KSERC has decided that the recovery of arrears

should be from the date of detection only i.e. only from the date of inspection. Various judgments of Hon'ble Supreme Court mentioned in the above WP (C) and Regulation 4 of KSERC Tariff Regulation, 2003 clearly rules out any retrospective operation of a tariff. Hence the appellant requested the following reliefs.

1. Direct KSEB to apply D.P 75 and also to cancel the Penal Bill released by the Assistant Engineer.
2. Hon'ble Ombudsman may direct KSEB not to disconnect the supply till hearing and disposal.

Arguments of the review respondent

The review respondent stated that Consumer No. 9277 was registered in favour of the review appellant under LT VII A tariff. Pursuant to an application submitted by the review appellant, the tariff of the said premises was changed from LT VII A to LT IV, with effect from 15-04-2005. LT IV tariff was made applicable to the consumer on the pretext that the said premises were used solely for industrial purpose and such a conclusion was arrived based on the SSI certificate submitted by the review appellant. In the interregnum, pursuant to an inspection carried out by the Anti Power Theft Squad on 18/09/2012, it was revealed that the entire load connected to the premises of the review petitioner were totally used for quality testing and hall mark certification before trading and that no production of bullion products were carried out there in the said premises. Moreover it was also revealed that the said premise was continuously and exclusively used by the review appellant, from the date of connection for testing and hallmarking bullion products.

Manufacturing Process by the term means, 'the act of making something (a product) from raw materials'. In the ibid case, what is being carried out in the premises of the review appellant is quality testing and certification of an already manufactured product, which as matter of fact will not fall under the purview of "manufacturing process". Hence the tariff applicable to the premises owned by the review petitioner cannot be included in LT IV tariff. Since the tariff applicable to the review appellant was misclassified as LT IV, the review respondents are legally entitled to rectify the same and to recover the amount for the energy misused by him.

By virtue of extra ordinary gazette notification dated 26-11-2007 issued by the Kerala State Electricity Regulatory Commission vide order no. TP 23 of 2006 and TP 30 of 2007, there is no separate tariff prescribed for quality testing and quality assessment and therefore the tariff of review appellant was re-fixed in the category of LT VI C. Accordingly, a short assessment bill from the date of connection was also issued to the review appellant on 25-09-2012. Challenging the same, the review appellant approached the Hon'ble CGRF, Ernakulam.

The Hon'ble CGRF, Ernakulam inspected the said premise owned by the review appellant, since there was dispute of facts. The Hon'ble CGRF, Ernakulam on proper appreciation of facts, evidence and law, found that the said premise is used for quality testing and for hallmarking and thereby accepted the contention of the review respondents and rightly found that LT IV tariff is not applicable to the review appellant. However, the CGRF, Ernakulam found that the most applicable tariff in the instant case is

LT VII A and not LT VI C and thereby directed review respondents to reassess the short assessment bill dated 25-09-2010 under LT VII A tariff.

In sheer compliance of the said directions a revised bill along with a detailed calculation statement was issued to the review appellant on 27-12-2012 for a sum of Rs. 16,84,819/-. The above order dated 10-12-2012 of the Hon'ble CGRF, Ernakulam and the revised bill dated 27-12-2012 are legal and proper. Though assailing the same the above appeals were preferred by the review petitioner, the same were also rejected by confirming the order dated 10-12-2012 of the Hon'ble CGRF, Ernakulam. This Authority by common order dated 30-10-2013 directed the review respondent herein to reassess the consumer for differential tariff rates due to wrong fixation, limiting for two years i.e. from 10/2011 to 09/2012 and also directed to grant the consumer one month time to pay the same. Accordingly the above direction has been complied by the review respondent.

The contentions raised by the review appellant in the petition contra to the above are made without any bonafide and hence liable to be dismissed. The BO dated 28-11-2013 is not applicable insofar as the ibid case is concerned and the same has no relevancy at all. The judgment in Writ Petition No. 9962/2008 of the Hon'ble High Court of Kerala will not help the review petitioner to absolve from the liability.

Moreover, it is trite law that if there is a mistake in categorization or if there is under billing, it is always open to the review respondents to rectify the said anomaly/mistake and to demand proper charges due from the review appellant. Review respondents are competent to realize the short assessment of current charge from the consumer. Thus, it is respectfully submitted that the revised bill dated 27-12-2012 is legal and proper and the review respondents have not done anything which amounts to deficiency in service. Without prejudice to the above contentions it is humbly submitted that the contention of the review appellant in so far he challenges the revised bill dated 27-12-2012 is premature. If at all the review appellant has any dispute with regard to the bill, he ought to have exhausted the statutory remedies available to him. This Hon'ble Forum has no jurisdiction to decide the said issue.

Analysis and findings:

The review petitions numbered P-336/2013 and P-337/2013 are filed by the same review appellant being the Managing Director of two companies against the change of tariff and the short assessment bill issued on two of his service connections with consumer No. 12482 and 9277. The case deals with similar issues and cause of action and hence decided to hear together. As such hearing of the case was conducted on 20-08-2015 in my chamber at Edappally, Kochi. Sri James Jose represented the review appellant and Sri. Emerson P.A., Assistant Executive Engineer, Electrical Sub Division, College and Sri E.A. Rajan, Nodal Officer appeared for the review respondents and argued the case on the above mentioned lines. Also the review appellant submitted a detailed argument note for consideration.

On perusing the review petition, the statement of facts filed by the review respondent, the arguments of both sides in hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The review appellant already approached this Authority with appeal petition Nos. P-336/2013 and P-337/2013 against the change of tariff and the short assessment bills issued by the review respondent in respect of service connection with consumer Nos. 12482 and 9277. While disposing the above appeal petitions this Authority found that tariff applicable to the premises of the review appellant as commercial and upheld the decisions of the CGRF. There was a delay of 7 years for detecting the wrong tariff in the premises; it was decided to limit the arrears of electricity charges for a previous period of 2 years, as there was negligence or lapses on the part of review respondent in assigning appropriate tariff. Not satisfying with the above order the review appellant again approached this Authority with this review petition.

In the review petition, the review appellant argued that the orders issued in appeal petitions P-337/2013 may be reviewed based on the judgment of Hon'ble High Court of Kerala in W.P. (C) No. 9962 of 2008 and based on the direction of Hon'ble KSERC in OP 13/2012 on a similar issue. The review appellant also contended that in the case of wrong application of tariff in OP No. 13/2012, the Hon'ble KSERC has directed to make the assessment only from the date of detection of irregularity. On the other hand, the review respondent has stated that the said judgment of the Hon'ble High Court is not applicable in this case since the issue in that OP was related to Unauthorized Additional Load, misuse of tariff etc. This is a clear case of application of wrong tariff and in such cases undercharged consumers can be charged as per Regulation 24 (5) of Supply Code 2005.

As per Sub Clause 5 of Clause 24 of Kerala Electricity Supply Code, 2005, if the licensee establishes that it had undercharged the consumer either by review or otherwise, the licensee may recover the amount undercharged from the consumer by issuing a bill. In the case referred above the Commission has not accepted the above argument since there is lapse on the part of licensee in fixing the appropriate tariff.

On scrutiny of the order in OP No. 13/2012 dated: 28-01-2013 of Hon'ble KSERC (in the matter of wrong application of tariff to M/s Vianney Enterprises, Kanjikode as per petition filed by KSEB in compliance with the direction in WP(C) No. 9962 of 2008 by the Hon'ble High Court of Kerala) will reveal that the respondent, M/s Vianney Enterprises is liable to pay the arrears from the date of inspection only. Hence the petitioner (KSEB) was directed to revise the tariff under commercial only from the date of inspection and the arrear invoice already issued to the respondent is withdrawn.

Since Hon'ble Commission has approved the recovery of arrears in the case of wrong application of tariff from the date of detection of error, this Authority cannot take a different stand and hence decided to review the order already issued in this regard.

Decision

Since there is lapse on the part of review respondent in fixing appropriate tariff timely to the review appellant, it is not just and fair to issue such a huge short assessment as per Regulation 24(5) of Supply Code, 2005. Hence it is decided to reconsider the decision taken in P-337/2013 dated: 30-10-2013 and to limit the recovery of short assessment under LT VII A tariff from the date of inspection by the review respondent i.e. from 18-09-2012.

Having decided as above it is ordered accordingly. The review petition filed by the review appellant is disposed of with the said directions.

ELECTRICITY OMBUDSMAN

Review Petition No. P/337/2013

Forwarded to:

1. Sri James Jose, Managing Director, Chemmannur Gold Refinery [P] Ltd., M.G. Road, Ernakulam.
2. The Assistant Executive Engineer, KSEB Limited, Electrical Sub Division, College, Ernakulam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, CV Raman Pillai Road, Thiruvananthapuram-10.
2. The Secretary, KSE B Ltd, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018