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REPRESENTATION No: P 46/09

Appellant : M/s Pooja Milk Foods Private Ltd
33/283 D1 Ambedkar Road
Vennala (Po) Kochi 682028

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

ORDER

M/s Pooja Milk Foods Private Ltd, Vennala (Po) Kochi submitted a representation on 30.1.2009 seeking the following relief :

1. *Set aside the Order No CGRF/Comp 54/08-09 dated 6.1.09 of CGRF KSEB Ernakulam*
2. *Declare that the Schedule of Tariff and Terms and Conditions published in the Gazette Notification No 2148 dated 27.11.2007 is not applicable to the complainant*
3. *Declare that the KSEB has no authority to change the tariff from LT IV to LT VII A in the case of the complainant.*

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 5.5.09 and 18.5.2009 .

The Appellant is an LT consumer with Consumer number 14360 and connected load 145KVA engaged in the process of receiving raw chilled milk, pasteurizing/processing, packing, storing and distribution of milk and milk products .Formerly the consumer was under LT IV tariff .During an inspection by the APTS wing of KSEB on 25.9.2008 the connected load of the chilling/freezing/cold storage was found to be 43.35 KW which is more than 20% of the total connected load of 118.87KW. Hence the consumer was put under LT VII tariff as per the revised tariff regulations dated 27.11.2007 and revised assessment under LT VII A tariff wef 1.12.2007 was made by KSEB .The short assessment was to the extent of Rs 10,09,331/- .The Consumer aggrieved by this short

assessment and change of tariff approached the CGRF as per directives of the Hon: High Court on WP (C) 29352/2008 . The CGRF upheld the actions of KSEB.

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:

The petitioner is conducting a milk processing unit and not a chilling plant or dairy farm and hence the provision in the note (e) under LT IV tariff in the notification dated 27.11.2007 can not be applied.

The functions of dairy farm, milk chilling plant and milk processing plant are different. The function in the dairy farm is rearing of cattle and production of milk. The function in the chilling plant is collection of milk from dairy farms grading, chilling and storing at low temperature till transportation to the processing dairy. The functions of the processing units starts from the point when raw chilled milk is received. The Appellant receives the chilled milk, pasteurize or process the same , pack, store and dispatch milk and milk products to consumers. There fore the Appellant unit can not be classified under LT VIIA tariff.

Even though the notification was issued in November 2007 the Respondent had been issuing bills regularly under LT IV tariff . The Respondent had not informed the change in tariff brought in by the notification in time. The Respondent was not aware of the changes involved in the notification until the additional bill was received. Hence it is not fair to demand higher rates from the Appellant.

If the changes in tariff were brought to the notice of the Appellant in time the loads in the plant could have been re-arranged in such a way that the chilling/freezing loads are within 20% of the connected load.

The conclusion of the CGRF that the milk processing plants are not included in the list of LT IV tariff and hence the Appellant is not eligible to continue under LT IV is not correct since the LT IV tariff is meant for general purpose industrial loads and the list is illustrative not conclusive.

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

The Managing Director of the Plant himself had witnessed the site mahazar wherein the presence of equipments like Chilling Compressor (40HP), Cold Storage Compressor (5Hp), Condenser Pump, Cold Storage Fan, IBT Agitator, Cold Room Blower etc had been recorded. Hence the contention that they are not engaged in milk chilling activity is not correct. Out of 118.87KW connected load 43.35 KW is used for the purpose of chilling plant.

It is the obligation of the consumer that his installations are as per the terms and conditions of supply. He could have limited the load of chilling plant to 20% .

No penalty or interest is demanded. The demand is only for the balance amount to be paid under the appropriate tariff.

Discussion and Findings:

The Milk Chilling plants, Freezing plants , Cold storage etc were under LT IV Industrial tariff as per and up to the Tariff notification dated 24.10.2002. Tariff notification dated 27.11.2007 took these activities out of LT IV listing and put the following note below the LT IV tariff rates as Note (e) :

The dairy farms/milk chilling plant with or without chilling/freezing/cold storage activity shall be charged under industrial category provided the chilling/freezing/cold storage load is limited to 20% of the total connected load. If it exceeds 20%, LT VII (A) tariff shall be applicable.

The main contention of the Appellant is that their unit is neither a dairy farms nor a milk chilling plant but it is a milk processing unit. Hence the Appellant claims that this unit is not covered under the note (e) of the Tariff notification dated 27.11.2007. But 'milk processing units' were not covered in the listings of LT IV tariff in the notification dated 24.10.2002 either. Still the unit had enjoyed the benefits of LT IV tariff up to 12/07 since milk chilling plants, freezing plants , cold storage etc were under LT IV then.

By the same reason, the note under LT IV tariff has to be made applicable to such units also. If the LT IV Tariff were applicable to Milk Processing plants prior to 12/2007 then the Note(e) under the LT IV tariff in the notification dated 27.11.2007 should also be applicable to such units. More over the tariff listings can only be 'illustrative not conclusive' as rightly pointed out by the Appellant. It is a well accepted principle that no Electricity Tariff notification can cover all the activities of the economic domain.

Activities of similar character are classified under any particular group applying the idiom of 'nearness' also. As such the contention of the Appellant that the Note(e) is not applicable to them can not be accepted.

The activities in the milk processing plant have been explained in a text book which the Appellant has produced as an exhibit.

Milk processing involves

- Receiving Milk
- Pre-heating
- Filtration/Clarification
- *Cooling and Storage(5 degree C or below)*
- Standardization
- Pasteurization (63 degree C etc)
- Homogenization
- Bottling& Packing
- *Storage (5 degree C or below)*

The term 'processing' is generally used in a wide sense in dairying and includes pasteurization, homogenization, evaporation, drying etc. After pasteurization 'the milk is immediately cooled to 5 degree C or below'. Chilling to 5 degree C or below is an integral part of these activities. 'The temperature of the milk storage rooms should be below 5 degree C or below so as to check bacterial growth'.

The documents produced by the Appellant itself proves beyond doubt that milk chilling to 5 degree C or below and storage at very low temperature is an essential activity in the Milk processing units also.

The tariff notification dated 27.11.2007 recognizes this fact but specifies that the load for chilling freezing etc shall be limited to 20 % of the total load, for a unit to be eligible to be under LT IV tariff. Hence classification of the Appellant unit under LT VIIA can not be challenged.

But the Respondent has a case when he submits that, had the Respondent classified him under LT VIIA in time and bills under LT VIIA tariff issued in time, he could have done the rearrangement of loads earlier and avoided the payment of higher rates. The irresponsible manner in which the Respondent had handled the whole issue is highly deplorable. *Why the field Engineers did not check the premises of milk plants in time once such an important change had been incorporated in the tariff classification? Why they had waited till the inspection of APTS in September 2008 ?*

The legal position that once a Gazette Notification is issued a citizen can not escape behind ignorance is unquestionable. Hence the Appellant can not raise the excuse of ignorance. The tariff change from the date on which the new tariff comes into effect ie, wef 1.12.2007 is legally correct. The consumer can not be exempted from payment of amounts due to the Licensee, simply because the officials of the Licensee did not care to collect it in time.

The Appellant shall be allowed to make payment of the balance dues on this account in *Nine equal monthly installments*, as suggested by CGRF, commencing from the normal invoice payment date in August 2009. The respondent *shall not collect any interest* on the dues if the Appellant makes payment of the installments in time as directed above.

It is noted that the Tariff of the consumer had been changed back to LT IV consequent to the alterations made in the installations from February 2009 consequent to the inspection by the Respondent on 19.2.2009. As a relief to the Appellant, it is ordered that the change in tariff from LTVIIA to LT IV may be *made effective from the date on which the alterations were completed and officially communicated to the KSEB.*

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 arguments/claims/points raised by the Appellant in support of the reliefs sought for are devoid of merit and hence the reliefs are not allowed.*
2. *No order on costs.*

Dated this the 19th day of June 2009 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 46/09 / 267/ dated 19.06.2009

Forwarded to: 1. M/s Pooja Milk Foods Private Ltd
33/283 D1 Ambedkar Road
Vennala (Po) Kochi 682028
2. The Assistant Executive Engineer
Electrical Sub Division
PALARIVATTOM Ernakulam

Copy to :

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2. The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,
VaidyuthiBhavanam Power House ERNAKULAM