

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/034/2016
(Present: V.V. Sathyarajan)
Dated: 13th July 2016

Appellant : Dr. Sr. Fides Thottan
Administrator,
Holy Cross Hospital,
Kottiyam, Kollam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Kottiyam,
Kollam.

ORDER

Background of the case:

The appellant is the Administrator of the Holy Cross Hospital, Kottiyam, an HT consumer with consumer No LCN-23/2338 under Electrical Section, Kottiyam with tariff HT II (B). The appellant had submitted an application to the Assistant Engineer, Kottiyam, to change the tariff from HT-II (B) to HT- 11(A), applicable to private hospital registered under Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955 as provided in the tariff revision order dated 14-08-2014. The tariff of the hospital of the appellant was changed from HT II B to HT II A w.e.f. 01-10-2015. The appellant's contention is that that they are entitled for tariff revision w.e.f. 16-08-2014 as per the revised tariff order issued by KSERC.

Aggrieved against the denial of request for changing the tariff by the licensee, the appellant approached before the CGRF (South), Kottarakkara, with a petition. But the petition was dismissed by the CGRF vide order in OP No.10/2016 dated 22-04-2016. Against the above order of CGRF, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

- (1) The tariff regulatory commission of KSEB has revised the tariff from HT II (B) General to HT II (A) General for all charitable institutions registered under Travancore-Cochin Literary Scientific and charitable societies Registration Act 1955. The appellant's hospital is registered under the above Act with Registration No Q 350/99 and availing Income Tax exemptions since 2009.
- (2) Along with the application submitted to the Assistant Engineer, Electrical Section, Kottiyam for tariff revision, the appellant have enclosed the Income Tax exemption certificate letter No. C 302/80G/New/No. New/1/2009-2010 dated 13th July 2010, of the Commissioner of Income Tax, Trivandrum, in which the expiry date is shown as 31/03/2014.
- (3) The Deputy Chief Engineer, Electrical Circle, Kollam directed the appellant to produce the fresh Income tax exemption certificate. Accordingly appellant have approached the Commissioner of Income Tax and collected fresh certificate on 07-10-2015, which was self explanatory, and beyond any doubt clarifying that vide CBDT (Central Board of Direct Taxes) Circular Para 5 "The certificates issued that as regards existing approvals expiring on or after 01-10-2009 granted under Section 80G by the Commissioner of Income Tax/Directors of Income Tax shall be deemed to have been extended in perpetuity unless specifically withdrawn". Also the appellant's case is specifically mentioned and clearly states that even though the approval under Section 80G(5)(vi) granted by the Commissioner of Income Tax, Trivandrum vide C. No. 302/80G/New/No. New/1/2009-2010 dated 13-07-2010 expires on 31-03-2014, there is no need for fresh renewal. The CBDT circular referred in the above letter is also attached herein and marked as exhibit P3.
- (4) In the remarks offered by the Assistant Executive Engineer, Electrical Sub Division, Kottiyam, it is stated that there is no valid documents to prove the donation made to M/s. Holy Cross Hospital, Kottiyam, Kollam qualified for deduction under section 80(G) of the Income Tax Act 1961 during the period from 31-03-2014 to 06-10-2015.

A letter No. CIT (E)/CHN/80G/2015-16 dated 7th June 2016 which clarifies that the exemption under Section 80G (5)(vi) of the Income Tax Act granted on 13-07-2010 vide order No. C 302/80G/New/No. New/1/2009-2010 of Commissioner of Income Tax, Trivandrum covers the period from 31-03-2014 to 06-10-2015 also. The respected Ombudsman may go through the details that the appellant have furnished herein, and redress the grievance by revising the tariff with effect from 8/2014, as per KSERC order.

Arguments of the respondent:

The appellant is the Administrator of a hospital named Holy Cross Hospital, Kottiyam, an HT consumer bearing consumer no: LCN-23/2338 under Electrical Section, Kottiyam. The appellant had requested the Dy. Chief Engineer, Electrical Circle, Kollam, to change their tariff from HT-II (B) to HT-II (A), applicable to private hospital registered under Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955 as provided in the tariff revision order dated 14-08-2014. The Deputy Chief Engineer sought clarification from Chief Engineer (Commercial and Tariff) regarding the tariff change. Chief Engineer (C&T) instructed to verify the following documents submitted by the consumer for its genuineness and if both of the criteria are satisfied then the request of the consumer can be considered under HT II (A) tariff as per prevailing rules.

- (1) The certificate issued by the District Registrar for the Hospital being registered under Travancore Cochin Literary Scientific and Charitable Societies Act, 1955.
- (2) Whether the donations to the institution are exempted from payment of Income Tax.

But the appellant had not submitted necessary certificate from the Income Tax Authorities along with the application for tariff change stating that the institution is exempted from payment of Income Tax as per the tariff order dated 14-08-2014. So Deputy Chief Engineer, Electrical Circle, Kollam had sent letter to the applicant for submitting certificate from the Income Tax Authorities. Appellant had submitted letter ref: C. No. 302/806/New/No.New/1 /2009-2010 dated 13-07-2010 issued by the income tax authorities stating that the Income tax exemption is valid from 01.04.2009 to 31.03.2014 only. Again the appellant had submitted another letter ref: F. No. CIT(E)/CHN/ 80G/2015-16 dated 07-10-2015 stating that vide Para 5 of CBDT's Circular cited above, clarification has been issued that as regards existing approvals expiring on or after 01-10-2009 granted under Section 80G by the Commissioner of Income Tax /Directors of Income Tax shall be deemed to have been extended in perpetuity unless specifically withdrawn.

Again in the above letter mention that 'Since in your case last approval under Section 80G(5)(vi) granted by the Commissioner of Income Tax, Trivandrum vide C.No.302/80G/New/1/2009-2010 dated 13th July, 2010 expires on 31-03-2014, there is no need of fresh renewal.

As per the documents attached by the appellant, KSEB Ltd has changed tariff w.e.f. 07-10-2015. Hence the consumer approached Hon'ble Consumer Grievance Redressal Forum, Kottarakara and filed petition for getting Tariff revision from 14-08-2014. But in the order of CGRF/KTR/OP No. 10/2016 /5174 Dated 23-04-2016 (Exhibit-3) the Forum said that "There is no valid documents to prove the donation made to M/s Holy Cross Hospital, Kottiyam, Kollam qualified for deduction under Section 80(G) of the Income Tax 1961 during the period from 31-03-2014 to 06-10-2015. Hence the Forum dismissed the case.

Analysis and findings

A hearing of the case was conducted in the Court hall of CGRF (South), Kottarakkara on 22-06-2016. The appellant, Sr. Fides Thottan and Sri Mathias Pius were present for the appellant's side and Smt. Sunitha S, Assistant Executive Engineer, Electrical Sub Division, Kottiyam represented the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The point to be decided in this case is as to whether the appellant's institution is a charitable one and the donations to which are exempted from payment of Income Tax, thereby entitled to get concessional tariff under HT II A with effect from 16-08-2014.

The criteria for considering a consumer under HT II A tariff as per prevailing rules are:

- (1) Registration certificate under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act, 1955.
- (2) The certificate to show that whether the donations to the institutions under Section 80G of Income Tax Act, 1961 are exempted from the payment of Income Tax.

On going through the certificate dated 24-04-1999 issued by the Registrar of Societies produced by the appellant, it is admitted that the appellant's institution is registered under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act. Hence the next question to be clarified is whether the appellant's institution has been issued with a certificate to show that the donations are exempted from the payment of Income Tax under Section 80G.

An approval under Section 80G of the Income Tax Act is mandatory to decide whether the donations to which are exempted from payment of Income Tax. As per the Circular No. 07/2010 issued by the Central Board of Direct Taxes, New Delhi, the Proviso to Section 80G (5)(vi) under which approvals granted by the Commissioner had a maximum validity period of five years has been deleted with effect from 01-10-2009. Accordingly, approval once granted on or after 01-10-2009 is now valid forever unless withdrawn by the Commissioner where he is satisfied that the activities of the institution or fund are not genuine or are not being carried in accordance with its objects.

On a close perusal of the copy of Circular No. 7/2010 [F. No. 197/21/2010-ITA-1] dated 27-10-2010 issued by the Central Board of Direct Taxes, New Delhi, it can be seen that **“it appears that some doubts still prevail about the period of validity of approval under section 80G subsequent to 1-10-2009, especially in view of the fact that no corresponding change has been made Rule 11A (4). To remove any doubts in this regard, it is reiterated that any approval under Section 80G (5) on or after 01-10-2009 would be a onetime approval which would be valid till it is withdrawn”**.

The Section 62 of the Electricity Act, 2003, enabling the provision for determination of tariff and is read as follows: ***The appropriate Commission shall determine the tariff in accordance with the provisions of this Act.*** As per tariff notification issued by the Hon’ble KSERC, the eligibility for concessional tariff under HT II A is applicable to private hospitals and charitable institutions registered under Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955 and the donations to which are exempted from payment of Income Tax.

On going through the documents, it is found that the appellant’s hospital was registered under Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955, vide certificate no. 6350/99 dated 24-03-1999 and also filed balance sheet for the year 2013-14. The appellant has also produced a copy of the letter No.CIT(E)CHN/80G2015-16 dated 07-10-2015, in which Income Tax Officer (Hq) (Exemptions), Kochi specifically stated that even though the approval under Section 80G(5)(vi) granted by the Commissioner of Income Tax, Trivandrum vide C. No. 302/80G/New/No.New/1/2009-2010 dated 13-07-2010 expires on 31-03-2014 in the case of the appellant, there is no need for fresh renewal.

The appellant has obtained a further clarification from the Commissioner of Income tax vide letter No. CIT (EVCHN/80G/2015-16 dated 7th June 2016 regarding the issue which clarified that the exemption under Section 80G (5)(vi) of the Income Tax Act granted on 13-07-2010 vide order No. C 302/80G/New/No.New/1/2009-2010 of Commissioner of Income Tax, Trivandrum covers the period from 31-03-2014 to 06-10-2015 also. So the appellant satisfies both the criteria for considering a consumer to avail HT II-A tariff as per the prevailing rules.

Decision

In view of the above discussions it is concluded that the respondent is directed to revise the tariff of the appellant to HT-II (A) tariff with effect from 16-08-2014. This shall be done at any rate within one month from the date of receipt of

this order. The order of CGRF in OP No. 10/2016 dated 22-04-2016 is set aside.
No order as to costs.

ELECTRICITY OMBUDSMAN

P/034/2016/ _____ / _____

Delivered to:

1. Dr. Sr. Fides Thottan, Administrator, Holy Cross Hospital, Kottiyam, Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kottiyam, Kollam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.