

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/048/2016
(Present: V.V. Sathyarajan)
Dated: 16th November 2016

Appellant : Sri. Jojo Joseph,
Managing Director,
Meriya Petroleum Products Pvt. Ltd.,
Karikode P.O., Jathikamala,
Thalayolaparambu.

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

ORDER

Background of the case:

The appellant, Sri Jojo Joseph, is an industrial consumer under Electrical Section, Peruva was billed under LT IV tariff. The service connection availed is for LPG bottling plant but there was no categorization of LPG bottling plants in the tariff order prevailing at that time. The tariff order issued in 12/2012 clearly categorizes LPG bottling plants are under LT VII A Tariff. But by mistake the tariff of the appellant was not changed to LT VII A commercial and accordingly the appellant has paid the bills during the period under dispute till 1/2016 under LT IV tariff. While being so, the mistake was traced out during the inspection conducted by the APTS unit, Kottayam and the tariff was re-categorized to LT VII A with effect from 1/2016. Later, the respondent issued a short assessment bill for Rs. 5,53,349.00 for a period of 24 months on 22-01-2016 as per Regulation 134 (1) and Regulation 152 of the Kerala Electricity Supply Code 2014.

The appellant disputed the short assessment bill before the CGRF, Kottarakkara. But the Forum disposed of the petition vide OP No. 37/2016 with the following observation. "The bill issued to the petitioner for Rs. 5,53,349.00 is upheld and the respondent is directed to allow the petitioner to pay the amount by 10 interest free installments, if he desires." Being aggrieved

by this order of Forum dated 10-06-2016, the appellant has filed the Appeal Petition before this Authority.

Arguments of the appellant:

1. The Appellant is a consumer of electricity under the respondent. His consumer number is 8319 of Electrical Section, Peruva under LT IV industrial tariff. The connection is given for LPG bottling plant, which is an industrial unit. The appellant has been remitting the entire bills, as and when demanded, without any default.

2. While so the KSEB officials inspected the premises on 20-01-2016. They prepared a Mahazar alleging use of unauthorized additional load and also stating that the connection was given under LT IV industrial tariff, while as per the present tariff order, the tariff should be LT VII A. Thereafter the opposite party issued a provisional penal bill for unauthorized use of electricity and also issued a short assessment bill dated 22-01-2016. The appellant disputed the penal bill by separate appropriate proceedings and the short assessment before the CGRF, Kottarakkara.

3. It is submitted that the bill is issued alleging as short assessment, while there was no short remittance of the bills at any point of time by the appellant. In the letter dated 22-01-2016 it is stated that LPG bottling plant comes under LT VII A tariff and bills were wrongly issued under LT IV tariff, thereby there is a short assessment of Rs. 5,53,349.00 for a period of 24 months." The above bill is per-se illegal and unsustainable.

4. It is submitted that application for service connection was submitted by the appellant specifically showing the purpose as LPG Bottling plant. The Kerala State Electricity Board accepted the application, visited the premises, got satisfied of the electrical installations, the activities in the premises, purpose of supply, etc. and assigned the tariff, LT VII A. A true copy of the Bill No- 344747 dated 08-06-2011 for Rs. 16,640.00 issued under LT VII A tariff from the Electrical Section Thalayolaparambu is produced. (The premises was earlier included under Thalayolaparambu Section and later bifurcated). Later after inspection of the premises the KSEB informed the appellant that the tariff applicable to the premises is LT IV industrial and began to bill accordingly. In those monthly bills the tariff applicable is clearly shown as LT IV A. The calculation of the charges was also made under LT IV industrial tariff. Now arbitrarily, the opposite party issued a letter and short assessment bill stating that they wrongly billed under LT IV tariff. It was not a mistake on the part of the officials of the KSEB, but they voluntarily changed the tariff to LT IV industrial, and billed accordingly.

5. The contention of the respondent that the appellant (consumer) was benefited because of enjoying the reduced tariff is absolutely false. The market

cost of LPG is not fixed as stated by the respondent, as the same is fixed every month by the Oil Companies based on international crude oil price fluctuations. The price of 19 Kg cylinder in January 2014 was Rs. 2,196.50 which was Rs. 1,402.00 in January 2016. In fact, the LPG price has no bearing on the electricity cost incurred by the appellant.

6. On the other hand the appellant will be put to huge loss if the impugned bill is to be cleared by him. The appellant had been awarded the contract for filling based on public tender. The filling charges for the contract period of two years (2014 to 2016) was fixed after negotiation with tenderers including the appellant, which was Rs. 390.00 per MT of filled LPG and remained unchanged during the entire period of 2014 and 2015. This tender amount was quoted by the appellant duly considering the cost of electricity based on the tariff fixed by the KSEB, which was a major cost. The KSEB fixed the charges at a lower tariff of LT IV during the time of tender and after finalising the tender accordingly and much after starting operations they say that there was a mistake on their part and the actual tariff was under the higher rate, LT VII A commercial instead of LT IV and therefore the appellant is liable to pay the difference. If the higher tariff was made known to the appellant, he could have quoted a pro-rata higher tender amount and got the tender fixed accordingly and in such an event there would not have been any loss. The BPCL, for whom the appellant was filling the LPG, will not reimburse the short assessment bill issued by the KSEB to the appellant. So the KSEB is estopped from raising a short assessment bill at this stage alleging back arrears, especially when the original tariff of LT VII A was modified to LT IV by the KSEB themselves. So there was acquiescence on the part of the KSEB to use electricity under LT IV tariff. Hence, because of the callous negligence on the part of the officials of the Board, if any, the appellant shall not be put to loss. If at all any loss sustained to the KSEB, the same is to be realized from the officials responsible for the same. In any view, the appellant is not liable to pay the back arrears and impugned arrear bill is unsustainable.

7. The observation of the Honourable CGRF regarding the failure of the appellant to attend the hearing on all the date fixed is not correct. The notices for hearing were sent from the CGRF in a most irresponsible manner. The notice for hearing fixed on 25-04-2016 was received on 02-05-2016 and the notice for the hearing on 12-05-2016 was received only on 16-05-2016 and the notice for the hearing on 27-05-2016 was received on 28-5-2016. However after collecting the hearing date from the CGRF over phone, the appellant could attend the hearing on 12-05-2016. The hearing was closed on the same day and no further hearing was announced. Because of the delayed notice for further hearing, the appellant could not attend the subsequent hearing. As such a fair and just opportunity was also denied to the appellant to represent his case.

8. The officials of the KSEB has been making monthly visit to the premises. They also visited and made detailed inspection on various occasion and satisfied of the supply and usage of electricity and the charges demanded by the KSEB and paid by the appellant. No report or anomaly was made known to the appellant before. No notice showing any irregularity or error was given to him. The monthly bills were the final bills, which were remitted without leaving any arrears. There is no indication in the bill that those were provisional bills so as to enable the opposite party to demand arrears. It is quite illegal and unjust to impose a burden of the huge irregular arrear bill on the appellant. It will also invite audit objection, since the appellant is also a licensee of a Central Government undertaking, BPCL as that of the KSEB under the Electricity Act.

9. The impugned bill is seen issued relying on Regulation 134 (1) and 152 (2) of the Kerala Electricity Supply Code, 2014. These provisions have no applicability in the instant case. Regulation 134(1) provides for an opportunity to the licensee only to correct the arithmetical mistakes, if any in the bill. It does not confer any power upon the licensee to reopen a finally and undisputedly settled bill, on the basis of the agreed terms of supply. There is no arithmetical error in the calculation of the charges. Also there is no anomaly as contemplated under Regulation 152 (3), since there was no change in the usage of electricity. Further a large numbers of similar consumers are brought under LT IV industrial category, and the KSEB was not certain in the matter of the tariff applicable. The appellant was also earlier charged under LT VII A tariff, but later, the opposite party themselves charged under a different tariff, LT IV Industrial. Hence, even assuming without admitting that there was anomaly the period of assessment shall be limited to one year as contemplated in 152 (3) 1st Proviso.

10. The impugned bill is unsustainable. Even assuming without admitting that, there is anomaly in the billing, the appellant has no role in fixing the tariff or calculating the electricity charges. The officials of the KSEB themselves fixed the tariff and they billed as per the tariff so fixed. The appellant paid all those bills, without leaving any arrears. No arrears of electricity charges are left by the appellant and there are no valid reasons to raise any arrear demand. The impugned demand is per-se illegal, unsustainable and liable to be set aside.

11. It is submitted that the Honourable APTEL, in a similar case, in the order dated 07-08-2015 in Appeal No. 131/2013 categorically held that the arrears on account of wrong classification of tariff can be realized only from the date of detection of error. In the appellant's case the error, if any, was detected only on the inspection made on 20-01-2016, as per the mahazar, and hence the appellant is liable to pay the charges under LT VII A tariff only from 20-01-2016. This Honourable Ombudsman also in his orders in Review Petition Nos. 336/2013 and 337/2013 held that the recovery of short assessment on account of wrong application of tariff can be made only from the date of

inspection. Further the Honourable High Court of Kerala in the judgment dated 16-02-2011 in WP (C) No. 9962/2008, in a similar case, held that the arrears of electricity charges can be realized only from the date of inspection. Challenging the short assessment bill, the appellant filed a complaint in OP No. 37/2016 before the CGRF, Kottarakkara. The CGRF simply dismissed the complaint by order dated 10-06-2016.

The contention of the respondent that the appellant (consumer) was benefited because of enjoying the reduced tariff is absolutely false. On the other hand he will sustain huge loss if the impugned bill is remitted by him. This tender amount was quoted by the appellant duly considering the cost of bottling/refilling of the cylinders, including the cost of electricity based on the tariff fixed by the KSEB, which was a major cost. The KSEB fixed the charges at a lower tariff of LT IV during the time of tender and after finalising the tender accordingly and much after starting operations they say that there was a mistake on their part and the actual tariff was under the higher rate, LT VII A commercial instead of LT IV and therefore the appellant is liable to pay the difference. If the higher tariff was made known to the appellant, he could have quoted a pro-rata higher tender amount and got the tender fixed accordingly and in such an event there would not have been any loss. The BPCL, for whom the appellant is filling LPG, will not reimburse the short assessment bill issued by the KSEB to the appellant.

The impugned bill is issued alleging as short assessment, while there was no short remittance of the bills at any point of time by the appellant. The appellant had no role in issuing the bills. Therefore no liability can be cast upon the appellant for the mistake on the part of the KSEB. If at any loss has occasioned as alleged, the same is to be made good from the officials of the KSEB as suggested by the CGRF in their order.

It is submitted that the Honourable APTEL in its order dated 29-11-2014 in Appeal No. 317/2013 (M/s TS Alloys Limited Vs Odhisha Electricity Regulatory Commission) categorically held that the quasi-judicial authority cannot sit in appeal over the judgment of the Tribunal. It was not open to the lower Authority to say that the order of the Tribunal was wrong. In the hierarchy system of the Court, it is necessary for each lower tier to accept loyally the decision of the higher tiers. The orders of the Tribunal is binding on the lower authorities who function under the jurisdiction of the Tribunal - The principles of judicial discipline require that the orders of the Appellate Authorities should be followed unreservedly - by the subordinate authorities. In view of the above observation of the APTEL it is incumbent upon the Honourable forum to accept the dictum in the above case. Therefore the dictum in the above judgments of the APTEL and also the order of the Ombudsman were to be followed by the Honourable Forum in this case. The above decisions of the Honourable APTEL and Ombudsman are also applicable to the KSEB also. The appellant produced copy of all the above judgments and

brought settled legal position before the CGRF. But nothing is mentioned in the impugned order of the CGRF regarding those judgments. In fact the CGRF has not considered that judgment at all.

Therefore, the appellant is liable to pay the electricity charges under LT VII A tariff only from 20-01-2016, the date of detection of the error, on the basis of the dictum laid down by the Honourable APTEL in its order and also on the basis of the above orders of the Honourable Ombudsman and also on the basis of the judgment of the Honourable High Court.

Reliefs sought for:

- i) To call for the records leading to the order dated 10-06-2016 of CGRF and set aside the same
- ii) To declare that the appellant is liable to pay the charges under LT VII A tariff only from 20-01-2016, the date of detection of error and pass an order setting aside the impugned bill.
- iii) To pass such other orders as this Honourable Forum may deem fit and proper in the interest of justice and in the circumstances of the case. All the facts stated above are true and correct

Arguments of the respondent:

1. The appellant is a consumer with consumer No 8319 (Old No 26410), the connection was being billed under LT IV tariff. The connection serves the purpose of an LPG bottling plant.
2. The APTS unit of Kottayam conducted an inspection at the premises on 20-01-2016 and it was found that the consumer had connected a load of 64 kW to the system against a sanctioned load of 51 kW, thus an unauthorised additional load of 13 kW was detected at the premises. This is a violation to the terms and conditions of the service connection agreement with the Board. Hence a penal bill under section 126 of IE Act 2003 amounting to Rs. 1,68,840.00 was issued to the consumer which was later revised as per the order of Electricity Appellate Authority to Rs 1,38,911.00 and was remitted vide receipt No. 84420 dated 18-03-16 and receipt No. 54491 dated 11-07-16. During the inspection, it was also noticed that the tariff assigned to the premises was wrong. An LPG bottling plant has to be billed under LT VII A tariff, and a short assessment bill of Rs. 5,53,349.00 based on Regulation 134(1) & Regulation 152 of the Supply Code, 2014 was issued to the consumer.
3. The tariff applicable to LPG bottling plant is LT VII A tariff, but the connection was being mistakenly charged under LT IV tariff. As per the records, the connection is under LT IV tariff from 21-07-2011. Hence the short

collected bills for the past 24 months are assessed and a short assessment bill of Rs 5,53,349.00 was issued to the consumer on 22-01-16 . Hence the bill is legal and sustainable.

4. The appellant has availed a connection with consumer No 24217 for construction purpose under LT VII A, tariff and a separate connection for industrial purpose with consumer No 26410. The details of the connection are:

i) Consumer No 24217:- The appellant availed a connection on 21-06-2008 for construction purpose with a connected load of 3910Watts under VII A tariff. The connection was later dismantled as per request on 31.10.11.

ii) Consumer No 26410 (New No 8319) -A separate connection was availed for the LPG bottling plant on 21-07-2011 with a connected load of 28 kW. The Gazette then applicable, had not mentioned about the categorisation of LPG bottling plants. As the consumer had produced SSI certificate, this connection is presently in use and the bill is pertaining to this connection Gazette Notification 11/2012, clearly categorises LPG bottling plants under LT VII A). Although the monthly readings were taken, the wrongly assigned tariff was not noticed by the officials concerned. Hence the statement that 'KSEB voluntarily changed the tariff to LT IV industrial and billed accordingly' is false.

5. All the LPG bottling plants in the State are billed under LT VII A tariff. The per unit rate/charge of the cylinder for domestic/commercial use are not billed in accordance with the expenditure in each individual plant. The rates of all petroleum licensees are approximately uniform. The argument that tenders submitted at BPCL were quoted at a very low rate is not convincible. All the other LPG bottling plants are billed under LT VII A, and the appellant was billed under LT IV tariff; the appellant has gained more profit on the basis that they have paid less (being charged under LT IV tariff) for the electricity charges. The appellant has been enjoying the reduced tariff structure from the date of connection in 7/2011 (i.e. more than 4 years) whereas the short assessment bill is issued only for a period of 24 months.

6. Even if the case of the appellant is admitted that the tenders for 2014-15 were quoted at a lower rate owing to the lower electricity charges. The appellant has still benefitted of the lower electricity charges for the past 4.5 years. And the licensee is put to financial loss during these 4.5 years. The bill changed has not penalised the consumer in any respect. The financial loss of the licensee is marginalised by recovering the due charges @ of a single time in the respective tariff. Hence the bill is sustainable. Moreover the Hon'ble CGRF has directed "to allow the consumer remit the charges in 10 interest free instalments.

7. Inspection was conducted at the premises at the time of availing connection to consumer No (26410). Thereafter only monthly readings were taken. The

licensee is a Public Undertaking and hence inspection of the premises of all consumers during meter reading is not possible. Random inspections are done by the section office and APTS wing. The inspection done on 20-01-2016 is one such, and anomalies noted were charged as per the respective Regulations of Supply Code, 2014 & tariff order in force.

8. The short assessment bill is issued on the basis of Regulation 134(1) and 152(3). Regulation 134- Under charged bills and over charged bills.- (1) If the licensee establishes either by review or, otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.

Regulation 152- Anomalies attributable to the licensee which are detected at the premises of the consumer.- (1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.

(2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.

3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realised by the licensee without any interest:

Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months.

Regulation 134 is for under charged bills, no clarification is given as to the nature of undercharge. The same has been clarified in Regulation 152(1) – incorrect application of tariff. The Regulation has clarified that the anomalies attributable to the licensee shall not attract provisions under Section 126 or Section 135. The subject bill is not billed under section 126 or Section 135. As stated earlier, a connection was effected at the premises in 6/2008 for construction with Con No 24217. The present service connection was effected in 7/2011 with Con No 26410 (old 8319) for the LPG bottling plant.

9. The bill issued on 22-01-16 is a short assessment bill for a period of 24 months. No arrear bill has been raised. No penalization or interest from 07/2011 has been levied on the bill. The appellant is not penalised for the wrongly assigned tariff. Due to the incorrect application of tariff by the

licensee, i.e. lower tariff assigned to the consumer, there is a loss of revenue to the KSEB Ltd. And this loss can be fully compensated by collecting the actual short demand (i.e. from the 7/2011), otherwise there will be loss to the licensee. But due to the limitation in Regulation 152, the undercharged bill of 24 months is considered for calculating the short assessment bill. Hence the bill is legal and sustainable.

10. WA No.211/2012 in WPC 34168/2011 Hon'ble Division Bench of High Court of Kerala held that the quantum of normal period of limitation is not applicable both towards electricity and water charges. In a Judgement Swasti Industries Vs Maharashtra State Electricity Board (1997)9CC 465 the Hon'ble Supreme Court held that on upholding the order of the National Commission held that even where electricity distribution company had woken up after 9 years to make the claim, the electricity duties are to be paid.

The order dated 07-08-2014 in Appeal 131/2013 of APTEL, was a judgement in a petition before the implementation of the Supply Code, 2014 (the original case is pertaining to 2008). The orders quoted are also concerned with matters before the implementation of the Supply Code, 2014. As per Supply code 2005, the short assessment period had no limitation, i.e., the short assessment was collected for actual short demand. But this inconvenience/ burden has been taken care of in Supply Code, 2014, clear directions have been given to realize the short demand limiting it to a period of 24 months. Hence documents submitted by the appellant would not have relevance to the present case. Similarly the cases mentioned in the appeal petition are cases arising before the implementation of Supply Code, 2014. And hence have no relevance to the present case. But as per Regulation 152 of the Supply Code, 2014 there is limitation for realizing the short demand in revenue, Regulation 152(3) states that realisation of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months." In this case, the undercharged period is clear and vivid (i.e. from 7/2011), hence Regulation 152(3) would be applicable and the penal bill was assessed for a period of 24 months. The undercharged bills, only from 1/2014 to 1/2016 have been taken into calculation, at a single time. Penalization (@ twice the rate) has not been levied on the consumer.

A distribution licensee supplying electricity to its consumers under a statutory liability casted on it by Section 43 of the Electricity Act, 2003 at the same time, consumer has a liability to pay its charges under the agreement executed by it. Besides, the Act further confers right on the licensee under Section 45 to recover the charges of electricity supplied by it to its consumers. Tariff of different categories of consumers are determined by the Kerala State Electricity Regulatory Commission (KSERC) under Section 62 of the Electricity Act, 2003. The KSERC has imposed Regulations on the KSE Board Ltd. for recovering the electricity charges and the Board is bound to recover the

charges within the Regulations stipulated. Otherwise the licensee would be put to irreparable loss of revenue.

The demand raised by the Assistant Engineer is legally sustainable and issued based on the tariff notification and Supply Code in force. The complaint is liable to be dismissed and the appellant may be directed to remit the demand challenged in this complaint.

Analysis and Findings

The hearing of the case was conducted on 08-11-2016 in my chamber at Edappally, and Sri K.M. Mathew, Chief General Manager, Meria Petroleum Products Pvt. Ltd appeared for the appellants' side and Sri N.V. Joshy, Assistant Executive Engineer, Electrical Sub Division, Kuravilangad represented for the respondent's side. On examining the petition and argument notes filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The APTS Wing of KSE Board Limited had conducted an inspection of the appellant's premises on 20-01-2016 and detected that he had connected unauthorized additional load and the billing is being carried out under wrong tariff. As per the activities carried out in his premises and purpose of energy usage, the tariff applicable to him comes under commercial tariff instead of industrial tariff. Accordingly, the respondent based on the inspection report changed the tariff and issued a short assessment bill to the appellant, for realizing the difference in the tariff (between commercial and industrial rate) for a previous period of 24 months. The appellant is aggrieved against the issuance of short assessment bill dated 22-01-2016 for Rs. 5,53,349.00, for the previous period from 1/2014 to 1/2016 which is the reason for the present dispute.

The point to be considered is as to whether the issuance of short assessment bill for the period from January 2014 to January 2016 is in order or not.

As per the schedule of tariff notified by Kerala State Electricity Regulatory Commission with effect from 01-07-2012, the LPG bottling plants come under the category of LT-VII-A (commercial) tariff. The appellant has not a contention that the LPG bottling plant does not come under the category of commercial and being so, there is specific tariff earmarked for such purpose of activity or use of electricity by the Hon'ble KSEERC in the tariff orders. The appellant is of the view that, if at all the tariff has to be changed and payable, it

can be assessed from the date of inspection. This is because, fixation of wrong tariff assigned to him was not due to his fault, as he has no role in the fixation of tariff and also there is no allegation of any misuse or malpractice being done by the appellant. This argument is not found correct because any genuine error or omission occurred on either side has to be rectified. The appellant is also bound to pay the charges of electricity which he has consumed at the applicable tariff fixed by Hon'ble Commission.

Another argument raised by the appellant is that the contract for filling was awarded on public tender and the filling charges for the contract period of two years (2014 to 2016) was fixed after negotiation with the tenderers including the appellant, which was Rs. 390.00 per MT of filled LPG and remained unchanged during the entire period of 2014 and 2015. If the higher tariff was made known to the appellant, he could have quoted a pro-rata higher tender amount and got the tender fixed accordingly and in such an event there would not have been any loss due to the difference in the higher rate of tariff. But appellant has not produced any evidences to substantiate this argument and hence cannot be accepted.

Further, the appellant has pointed out orders in Appeal No. 131/2013 dated 07-08-2015 of Honourable APTEL, orders in review petition Nos. 336/2013 and 337/2013 of this Authority and the judgment dated 16-02-2011 of the Honourable High Court of Kerala in WP(C) No. 9962/2008 supporting his argument, in which it was held that the arrears of electricity charges can be realized only from the date of inspection. In the decision reported in Appeal No. 131/2013 dated 07-08-2015 of Honourable APTEL, in paragraph 11 (ii) and (iv), it has been observed as follows:

“Clause 24 (5) of the Supply Code, 2005 allows recovery of amount uncharged by the licensee from the consumers. However, the Regulation does not provide unrestricted authority to the licensee to reopen the assessment for any period. The reassessment has to be reasonable and fair and consumer should not be penalized for the incompetence of the licensee.”

“The respondent consumer is not responsible for incorrect categorization at the time of connection in industrial category instead of commercial category and incorrect billing in the wrong category thereafter till the error was detected in the inspection on 10-03-2008. Therefore, it is unreasonable to reopen the reassessment from the date of connection on the basis of wrong categorization. Hence, reassessment is allowed only from 10-03-2008 i.e. the date which the error was detected by the Electricity Boards.”

On going through the judgments mentioned by the appellant in his appeal, it is found that the issues are concerned with matters before the implementation of Supply Code, 2014. As per the Supply Code, 2005, the short assessment period had no limitation as specified in Supply Code, 2014.

Since there is clear provision regarding incorrect applications of tariff by the licensee which are detected on inspection of the premises of the consumer as envisaged in Regulation 152 of Supply Code, 2014, the orders issued in the above judgments have no relevance to the present case.

Regulation 152 of the Supply Code, 2014 deals with *Anomalies attributable to the licensee which are detected at the premises of the consumer* which reads thus: **“(1) Anomalies attributable to the licensee which are detected on inspection of the premises of the consumer such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of section 126 of the Act or of Section 135 of the Act.**

(2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during such anomalies persisted.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest: Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months.”

Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months.

Here in this case it is clear that the appellant was using energy for his bottling plant with effect from 21-07-2011 onwards and billed under wrong tariff. The tariff applicable to his service is LT VII A instead of LT IV A and due to this the respondent sustained huge revenue loss. Though the licensee undercharged the appellant from 07/2011, the period of short collection was limited for a period of 24 months as per Regulation 152(3) of Supply Code, 2014, which is found in order. The distribution licensee supplying electricity to his consumers under a statutory liability cast on it by Section 43 of Electricity Act, 2003. At the same time consumer has liability to pay the charges under the agreement conditions. Besides, the Act further confers the right on the licensee under Section 45 to recover the charges of electricity supplied by it to its consumers.

As per Section 62 of Electricity Act, tariff of different categories of consumers are determined by the Hon’ble Commission has imposed Supply Code Regulations for the recovery of electricity charges and the licensee KSEB

is bound to recover the charges within the said Regulations. In short, regarding the appellant's case, he has been enjoying the reduced tariff structure from the date of connection in 7/2011 (i.e. more than 4 years) whereas the short assessment bill is issued only for a period of 24 months which is admissible as per rules. The respondent issued the short assessment after limiting the period as per Regulation 152(3) of Supply Code, 2014. In this background I don't find any reason to intervene in the matter.

Decision

So, in view of the above findings, I hold that the appeal is not maintainable and hence dismissed. However, no interest or surcharge need be levied on the appellant during the appeal pending period before the CGRF and this Authority. The appellant may be allowed suitable installments if he desires so as per Regulation 135 of the Supply Code, 2014. The order of CGRF in OP No. 37/2016 dated 10-06-2016 is upheld. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/048/2016/ _____ /Dated: _____

Delivered to:

1. Sri. Jojo Joseph, Managing Director, Meriya Petroleum Products Pvt. Ltd., Karikode P.O., Jathikamala, Thalayolaparambu.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Kuravilangad.

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