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APPEAL PETITION NO. P/99/2017  
(Present: A.S.Dasappan)  
Dated 28<sup>th</sup> December 2017

Appellant: Sri.Jeevan Varghese  
Company secretary & Compliance Officer,  
MPG Hotels & Infrastructure Ventures Pvt. Ltd.  
Muthoot Centre, Punnen Road,  
Thiruvananthapuram.

Respondent: The Development Commissioner  
Cochin Special Economic Zone Authority (CSEZA),  
Kakkanad, Ernakulam

**Background of the case:**

M/s MPG Hotels and Infrastructure Ventures Pvt. Ltd. Is a consumer of Electricity under the Distribution licensee, Cochin Special Economic Zone Authority. The appellant entered in to an HT service connection agreement on 22-04-2005 with the licensee for supply of electricity to M/s Muthoot Technopolis, 11kV(HT) consumer with contract demand 1000 KVA. The power supply was given to the consumer on 28.07.2006. There are three units in Muthoot Technopolis who are the sub-lessees of the Appellant and who have been supplied electricity by the Appellant. The impugned demand notice amounting to Rs.91,09,820/- towards electricity duty arrears was issued to the appellant in pursuance of a direction in the audit report of the Office of the Chief Electrical Inspector (CEI), to recover the Electricity Duty due to Government of Kerala, on detection of illegal resale of electricity at LT rates by the Appellant. Aggrieved by the payment demand, the appellant filed a complaint before the Hon. Consumer Grievance Redressal Forum, CSEZA. The CGRF disposed the Petition by disallowing the request to declare the demand for Rs.91,09,820/- as illegal and to set aside and the request refund electricity duty collected w.e.f. 01/2016 to up to date. Still aggrieved by the decision of CGRF vide order No. OP No.1/2017 dated 04-08-2017, the appellant has filed the Appeal petition before this Authority.

**Arguments of the appellant:**

The gist of the complaint raised by the appellant in the appeal petition is as follows:

"Muthoot Technopolis" is a software complex built and operated by this appellant within Cochin Special Economic Zone Authority area under the jurisdiction of distribution licensee CSEZA. Under clause 13 of the

agreement executed between the CSEZA and the appellant among other things, the appellant was required to provide power supply to sublease / purchaser of Muthoot Technopolis and entitled with the liberty to charge for it. Until this day, the agreement is in force and the appellant has never acted in variance to the conditions and no chance was ever given to the opposite party to invoke penalty clauses under the agreement. Thereby after completion of the project, the building was named Muthoot Technopolis and spaces were allotted to sub lessees under agreement in the specimen agreement which was approved by CSEZA under Clause 40 of the annexure to the agreement. Thereby, everything the appellant did was in compliance with conditions under the annexure to the agreement. CSEZA being the distribution licensee supplied HT electricity to the appellant at Muthoot Technopolis, issued bills under HT tariff and the appellant remitted electricity charges, which also included electricity duty applicable to HT supply. The appellant supplied LT electricity to subleases of Muthoot Technopolis as required by CSEZA under the conditions as stated above and shared electricity charges.

The Chief Electrical Inspector inspected book of accounts of CSEZA distribution licensee and demanded the licensee to remit electricity duty arrear for the period from 04/2011 to 03/2013 on the plea that there is LT electricity supply from the HT electricity supply to the appellant and electricity duty is applicable to that LT electricity use at LT rates. However, the Chief Electrical Inspector well stated in the audit report that LT electricity supply to others in Muthoot Technopolis is presumed to be 60% of total supply and electricity duty at LT rates is applicable to that and consumption by the appellant for the common facilities is treated as HT and the quantity of electricity so used is presumed to be 40% and for this electricity duty applicable is at HT rates. Thus the Chief Electrical Inspector assumed the electricity duty arrear amount and demanded the licensee to pay it. On the face itself, the assumed amount demanded basing presumed quantities is not an amount due. However the licensee never objected to this demand on their own reasons. Also the Chief Electrical Inspector instructed the licensee CSEZA to supply electricity to the subleases in Muthoot Technopolis and to collect electricity duty. The CSEZA distribution licensee never supplied electricity to the sub lessees and never-collected electricity duty as instructed by the Chief Electrical Inspector. Not only that, but it further required this appellant to continue to supply LT electricity and also required to supply to new lessee also. More over after a long period after this audit report and demand of arrear electricity duty from the licensee by the Chief Electrical Inspector, the licensee issued demand upon this appellant to pay electricity duty for the LT electricity supply used by others at LT rates arbitrarily fixed by the Chief Electrical Inspector for the presumed quantity of LT supply for the period from 04/2011 to 12/2015.

The licensee CSEZA has no case that, the appellant violated any of the conditions stipulated and never ever the appellant given chance to the licensee to invoke the penalty clauses. The appellant is innocent for supplying electricity to LT consumers with in Muthoot Technopolis and

thereby any fine, penal charges, duty applicable etc imposed by any statutory authority shall be levied only from the licensee but not from the appellant, which is just and proper.

The licensee issued regular bills including electricity duty in accordance with Clause 2(1) of "The Kerala Electricity Duty Rule, 1963, at the rates applicable under item No. 4(b) of schedule under "The Kerala Electricity Duty Act, 1963, which is 10 paise / unit and hence the duty payable by this appellant under Section (5) of the same Act. Even though in the promotional website of the appellant some rates for electricity were published with the consent of the licensee, it was withdrawn as advised by the licensee. This web site was only for promotional purpose and various charges due from the sublease /purchasers of Muthoot Technopolis were arrived at after discussion with each occupant separately, with the approval of the licensee. Thereby, all these activities were always under the scanner of the licensee and which were always approved by the licensee after appropriate corrections made by this appellant as directed by the licensee.

The distribution licensee CSEZA issued a letter dated 12-09-2014 stating among other things it was stated that, the Chief Electrical Inspector inspected the accounts of power distribution of the licensee and in the resultant audit report, the Chief Electrical Inspector demanded the licensee to remit Rs. 19,52,074.00 towards electricity duty arrears and Rs.6,07,118.00 towards interest thereon for the period from 04-2011 to 03-2013. This was stated to be due to the reason that this appellant supplied LT electricity to sublease / purchasers at Muthoot Technopolis and duty towards such distributed LT electricity shall be @ 10% of energy charge. The licensee did not collect electricity duty applicable to LT from LT electricity users in Muthoot Technopolis, despite instructions of the Chief Electrical Inspector to do so in the audit report. Thereafter, having some more communications in between the licensee and this appellant and presumably in between the licensee and the Chief Electrical Inspector, the licensee issued a demand dated 18-01-2016 to remit Rs. 90,33,122.00 towards electricity duty arrear and interest thereon for the period from 01-04-2011 to 31-12-2015. The licensee issued yet another demand for Rs.91,09,820.00 towards electricity duty arrears for the period from 04-2011 to 03-2016 dated 02-03-2017. This demand includes the period in which the licensee unilaterally collected electricity duty which was fixed arbitrarily under presumed rates for the month from 01-2016 to 03-2016 and also continues to realize electricity duty at the same rates from this appellant. The appellant is not at all a party to the audit report and hence to the arrear electricity duty demanded.

In this audit report, among other things it was stated that, "Muthoot Technopolis (this appellant) is selling power to other LT consumers - i.e. Technopolis act as another licensee within the supply area of CSEZA.xxx xxx. Since CSEZA is the licensee and sole authority to sell power no other is authorized to do so. Due to unaware of this fact, CSEZA has not yet taken any steps against unauthorized sale of by their HT consumer". CSEZA distribution licensee never gave this appellant the status of a licensee for the

area of Muthoot Technopolis as per the proviso under section 14 of Electricity Act, 2003 making this appellant liable to collect electricity duty from LT users. However, the licensee chose to transfer the burden of electricity duty at LT rates for the electricity used by others without any reason. Electricity duty is to be paid always by the user of electricity and is to be collected by the licensee. The appellant is not at all a party liable to pay electricity duty at LT rates for the LT electricity consumed by others.

In this context it is also submitted that, while this audit was made, no enabling regulation or orders of the state government was available for the Chief Electrical Inspector to observe and demand electricity duty @ applicable to LT where electricity is supplied at HT to a consumer then this electricity is supplied at LT to others by the HT consumer under directions of the licensee and that too on presumed quantity of electricity and assumed amounts and while the licensee realized electricity duty applicable to HT from the consumer and paid to the Government. Thereby, observation of the Chief Electrical Inspector such that, if LT electricity is supplied by an HT consumer to whom the licensee supplies HT electricity, the licensee shall collect and pay to Government electricity duty applicable to LT from such end electricity users is inappropriate, arbitrary and without authority for want of enabling regulations/orders. However, later Government of Kerala issued an order G.O (Rt) No 184/2015/PD Dated 03-08-2015 necessitating collection of electricity duty at LT rates by the licensee from the real LT consumers where a consumer after availing HT electric connection redistribute / share energy to any other person / firm. Copy of this order is produced and marked as Exhibit P12. Thereby, authorization for the above sort of electricity duty collection starts only after 03-08-2015. In this order it is ordered that, "in all cases where a consumer of a distribution licensee avails single point supply and redistribute/share energy to any other person/firm, with or without sub meters, the licensee shall collect duty from every such person/ firm, as if they have availed direct individual energy connection from the licensee, by applying the appropriate tariff rate". This order does not have any retrospective effect at all, but prospective effect only.

An amount payable demanded cannot be and shall not be based on assumptions or presumptions and, an "amount due" can never be based on assumptions and presumptions. It shall be based on well defined, well quantified quantities. In audit, under Para VII instructions were given to the licensee that, "CSEZA is the authority of distributing power to the entire supply area and none is licensed to sell or distribute power to other consumers. Hence, it should be ensured that, each and every power connection within the supply area is taken from CSEZA. If any unauthorized connection are detected that should be get regularized by installing separate meters and charging appropriate tariff." The licensee has never acted in compliance with the above instructions from the statutory authority before or after the above instructions. Non payment of electricity duty applicable is an issue in between the licensee and State Government and all the statutory provisions makes the licensee liable to collect it directly from LT consumers (here in this case firms in Muthoot Technopolis) and to remit to

the coffers of the State Government. Despite all the above statutory provisions, orders of the State Government and instructions of the Chief Electrical Inspector who is a statutory authority, the licensee is still continuing with violations, firstly by requiring this appellant for continued distribution of electricity to the sublease/ purchasers in Muthoot Technopolis, secondly not providing LT electric connections to the occupants of Muthoot Technopolis as instructed, thirdly not taking over the existing LT connection in Muthoot Technopolis, fourthly not collecting electricity duty at LT rates from the occupants in Muthoot Technopolis and fifthly demanded this appellant to remit the arbitrarily fixed electricity duty which this appellant never owe at any rate, sixthly started collecting electricity duty from this appellant since 01-2016 on the presumed consumption of 60% LT electricity by occupants in Muthoot Technopolis. There by this licensee is functioning as an irresponsible licensee

The opposite party CSEZA issued a demand notice for Rs. 1,42,76,732.00 immediately after the CGRF (CSEZA) releasing the order and it also contained disconnection notice also. This disconnection notice is issued in violation of Section 56 of Electricity Act, 2003 and regulations under Clause 138 & 139 OF Supply Code, 2014. This appellant has made a reply to CSEZA on the demand cum disconnection notice.

The appellant has sought for the following reliefs.

1. To call for the documents and to hold and declare that demand for Rs. 91,09,820.00 and further demand for Rs. 1,42,76,732.00 are illegal and to set aside them and any further demand of electricity duty issued upon the appellant.
2. To issue orders to refund electricity duty collected from the appellant arbitrarily towards the presumed quantity LT electricity consumption by others with effect from 01-2016 to up to date.

### **Arguments of the respondent:**

M/s Muthoot Technopolis is an 11kV(HT) consumer with contract demand 1000 KVA. The power supply was given to the consumer on 28.07.2006 vide the HT Service Connection Agreement dated 22-04-2005. There are three units in Muthoot Technopolis who are the sub-lessees of the Appellant and who have been supplied electricity by the Appellant. The impugned notice was issued in pursuance of a direction in the statutory report of the Office of the Chief Electrical Inspector (CEI), to recover the Electricity Duty due to Government of Kerala, on detection of illegal resale of electricity at LT rates by the Appellant, an HT consumer of the Respondent Licensee (CSEZA). The CEI is the competent authority to carry out assessments for identifying electrical duty evasions by any consumer.

It is misleading to state that the CEI or the Respondent licensee has no case that the Appellant is a defaulter in paying electricity duty for the consumption of electricity applicable to HT. The CEI had found in its inspection that the entire electricity supplied by the Respondent licensee was not consumed as HT, rather, 60% of it was consumed/diverted as LT by the Appellant. Hence, the Appellant consumer was legally mandated to make good to the Government of Kerala, the above said duty short.

The Appellant had entered into a lease agreement with dated 19-09-2003 (Exhibit P3) with Development Commissioner, M/s Cochin Special Economic Zone (CSEZ) to develop a software complex in CSEZ. There were no clauses therein giving permission to resell electricity as is illegally undertaken at present by the Appellant. The clauses therein also do not reveal any infringement of running laws and they do not advocate violation of any statutes in force related to electricity. The said clauses made the Appellant liable to pay all existing and future taxes, rates, assessments and outgoings of every description in respect of the demised premises. The Appellant was also bound to indemnify the Development Commissioner and hence the Respondent licensee, harmless from any and all proceedings and actions and third party claims, losses, damages, accidents, loss of life and expenses of whatever nature arising out of the design, engineering, construction, procurement, operation, maintenance, etc. of the software complex or arising out of any breach by the Appellant or sub lessee/purchasers of the Appellant.

The Electrical Inspector from the office of CEI conducted duty audit inspection of books of accounts of the Respondent licensee for the period April 1, 2011 to March 31, 2013 (Exhibit P-11) and also inspected the Appellant's premises during May 2014 and observed that Muthoot Technopolis is selling power to other LT Consumers. Further, again a similar inspection and audit of the above mentioned nature on the accounts for the period from 1/4/2013 to 31/3/2014 was conducted by Electrical Inspector and observed that urgent steps may be taken to remit the arrear due with 18% penal interest up to the date of remittance." Further inspection for the period April 1, 2014 to March 31, 2016 was also conducted by the Electrical Inspector and reiterated the above audit reports observations. The Electrical Inspector detected evasion of electricity duty which was identified not only from the records but also by the inspection of the Appellant's premises. The Appellant had stated in his petition before the Hon'ble CGRF by making the following submissions:

"Some rates of electricity were published with the consent of the respondent licensee in the promotional websites. It was withdrawn as advised by the respondent licensee. Various charges due from sub-lessees were arrived at after discussion with each occupant separately. All these were always under the scanner of respondent and the respondent neither raised any objection nor took any action. At no time, the respondent

disapproved or asked the appellant to make amends. CEI also never asked the appellant or the respondent to stop such redistribution."

Hence it is admitted by the Appellant that he had charged tariffs different from the one fixed by the KSERC. He availed 11 kV supply and redistributed to different occupants at LT voltage in the same building. The Appellant conducted resale of electricity by installing individual LT Electricity meters to the tenants, issued monthly electricity bill with Electricity Duty applicable to LT consumers and collected the amount illegally from the tenants/occupants without the authorization of the licensee, which is against the conditions in the HT connection Agreement and the rules in force. Somehow the licensee didn't notice the illegal arrangement for quite some period, even though this action is considered as misuse of electricity attracting penalty and disconnection under Section 126 & 135 of Electricity Act 2003. This was corroborated by the findings of the Electrical Inspector's audit report as under:

"As per the notification in the website (enclosed) regarding the facilities of Muthoot Technopolis, the LT Tariff of the consumers will be Rs. 3.25/-. The duty @ 8.2 and surcharge @ 2.2 will be collected from the consumers. This is a clear violation of the provisions of Indian Electricity Act, 2003. The Muthoot Technopolis is an HT consumer of CSEZA and pay 10ps/ unit as duty whereas they collect 27ps/unit (the present duty rate is 42.5ps/unit). Even if they are not collecting any duty, the revenue loss to government is very huge.' It is submitted that the Electrical Inspector, empowered official vide section 7 of KED Act 1963 decided to levy electricity duty for 40 of energy consumed at HT rate (10 Ps/unit) and 60 of Electricity consumed at LT rate (10 of the tariff rate) and raised a demand for Rs.25, 59,192/- for short assessment of Electricity duty for the period April 2011-March 2013 (including interest up to March 2014). Since Electrical Distribution Licensee is the authority to collect Section 4 duty from the consumers and remit the same to the Government of Kerala, the demand was forwarded to the consumer for remittance. Meanwhile, based on a subsequent demand raised by the Electrical Inspector, after inspection of the records of the consumer for the period from 1/4/2013 to 31/12/2014, the licensee issued a consolidated demand notice dated 18-01-2016 for Rs. 90,33,122/- towards short levy of Electricity duty up from @ 1.4.2011 to 31.12.2015 ( Exhibit P5) including interest for the amount already demanded. In the mean time Electrical Inspector submitted Inspection report for the period from 1/4/2014 to 31.3.2016 also wherein Electrical Inspector had considered the entire power consumption within Muthoot Technopolis as LT consumption and duty was demanded accordingly. And since the earlier demand notice was not honoured, a fresh consolidated demand notice was issued for an amount of Rs. 91,09,820/- towards duty arrears and interest thereon for the period April 1, 2011- March 31, 2016( Exhibit P9). Ext P13 notice was issued in pursuance to the order of the Hon'ble CGRF dated 04-08-2017. From January, 2016 onwards Electricity duty in the ratio 40:60 (HT: LT) is being collected in the monthly bills as directed by the Electrical Inspector

earlier, as an interim arrangement and till the time the Installation is regularised as per rules in force.

The powers of the Respondent licensee were severely limited due to the absence of an authorized officer to identify, prevent and take punitive measures against such unauthorized use of electricity as proven. Appellant is aggrieved by the duty assessment done by the O/o the CEI against him, which in his opinion, was communicated to him by the Respondent Licensee without application of mind. Here, it is to be appreciated that the Respondent licensee is only a collection agent on behalf of the Government of Kerala and do not have any authority to revise or review the findings of the Electrical Inspector, Government of Kerala. The electricity duty is a statutory payment due to the Government and if in arrears could be claimed by the government at the time of detection. Any non compliance in this regard by the consumer shall attract actions contemplated under Section 5 of the KED Act. Even if the licensee fails to recover the duty arrears/ dues, the government is fully empowered to recover it exercising the powers of revenue recovery as provided in section 8 of KED Act. The Appellant filed a petition before the O/o CEI against the duty assessments in the audit reports of the Electrical Inspector, which mischievously was presented by him as a dispute between him and the Respondent Licensee. This resulted in its dismissal by the O/o CEI. It is evident that the Appellant fully knows that he has a meritless case against the O/o CEI on duty assessment and finds no scope in further appeal. Hence the only option is to draw in the Respondent Licensee as a party or to squarely go against the Respondent Licensee on the vain hope of either buying time for short duty payment citing the cases against the Respondent licensee or attempting to transfer the duty burden to the latter as a last ditch effort, both calamitous moves, based on imprudent advice.

The sub-lessees are not the consumers of the Respondent licensee as per Electricity Act, 2003, while it is the Appellant who is the consumer of the respondent. In fact in pursuance of the audit report, the Respondent licensee had issued directions to the Appellant for regularisation of their electricity supply (Exhibit R2), giving clearly two options, (i) restructure and revamp of the electrical installations so as to enable this licensee to give direct LT connection to sub-lessees within Muthoot Technopolis and (ii) option of availing single point power supply user status. The Appellant declined option (i) and agreed for option (ii) (Exhibit R3). Since the Appellant is yet to obtain single point user status, and since the provisions in G.O dated 03-08-2015 is applicable only for the cases where single point supply status is already available, the same cannot be made applicable in the instant case."

The Appellant in the petition before the Hon'ble CGRF as well as in the instant appeal has admitted to the publication of "some rates" in his website and also "arrived at".....various charges" "after discussion with each occupant separately". These admissions by themselves justify the conclusions of illegal resale of electricity as detected by the Electrical



Inspector. It is preposterous for the Appellant to state that the abovementioned illegalities were done "with the consent of licensee" or the "approval of licensee" and these allegations being false are categorically denied by this Respondent licensee

There is no delay or suppression of the contents of the Electrical Inspector's audit report by the Respondent Licensee. As and when the reports were issued to the Respondent Licensee, these were forwarded without delay to the Appellant with relevant extracts applicable to him. If the Appellant has a case that the Electrical inspector was without jurisdiction or enabling regulations and statutory powers at the time of making of the audit reports in question or that the duty assessment done in such reports were presumptive and hence not an amount due, then it is for the Appellant to challenge the relevant audit reports at the appropriate forums. It is not the function of the Respondent licensee to either raise a challenge on such duty assessments or attempt interpretations of the statutory directions in such reports as the Appellant suggests. Rather, the Respondent licensee has the bounden duty of collection and remission of electricity duty due with arrears to the Government.

All along the appeal, the Appellant is trying to justify his illegal activity, resale of Electricity to customers and collection of Electricity charges by raising monthly bills, highlighting certain clauses in the lease agreement between the parties. Any clauses in the lease agreement in contravention of the general statutes, acts, rules, regulations prevalent in India are illegal, irrelevant and can't be considered as permission to carryout illegal activities. Authorising to make arrangements for distribution of electricity within the building doesn't mean permission for resale of electricity. Any sale of electricity without a license is punishable as per electricity laws. The Appellant himself agree that he had published the rate of electricity duty @ 8.2% in the place of 10% to promote business, which is totally illegal. His version that 10 ps/unit only was collected is irrelevant. The Electrical Inspector has verified all these facts and came to the conclusion that the consumer is liable to pay @ 10 for the energy distributed at LT, which is the prerogative of the authorised official. This is not a dispute on the Electricity charges or matters related to the licensee. It is based on the notice issued by the Electrical Inspector, to recover the Electricity Duty due to Government of Kerala, on detection of illegal resale of electricity at LT by an HT consumer. The Respondent licensee is only the collecting agency of electricity duty and can't revise or review the findings of the Electrical Inspector. Government of Kerala is the Appellate Authority to review the orders of Chief Electrical Inspector. The licensee can issue bills to consumers alone and as long as sub lease customers in Muthoot Technopolis are not the consumers of Respondent licensee, no electricity or duty bill can be issued as per rules. Respondent licensee informed the consumer of their illegal distribution/resale of power to the occupants of the building and gave direction for suitable modification in the distribution network vide letter dated 23 November 2005 (Exhibit R 9).

In the light of the facts and law in the above Paras it is submitted that the reliefs No. 1 to 4 in the instant appeal may be dismissed with costs and appropriate directions may be issued to the Appellant to comply with the Order dated 04.08.2017 of the Hon'ble Consumer Grievance Redressal Forum (CSEZA).

**Analysis and Findings.**

Hearing of the case was done on 21.11.2017 in my chamber at Edappally, Kochi. Sri. Jeevan Varghese, Company Secretary, MPG Hotels and Sri. Anandakuttan Nair appeared for appellant's side and Sri. Saju Surendran, Deputy Development Commissioner, CSEZ, Sri Rajeash K., Legal Adviser and Sri Krishna Varma, consultant, CSEZ appeared for respondent's side.

On examining the appeal petition, counter of the respondent, documents submitted and the arguments made during the hearing and considering all facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The subject matter of the dispute pertains to the demand notice dated 02-03-2017 of electricity duty arrears amounting to Rs.91,09,820/- issued to the appellant by the respondent. The appellant is an HT consumer of the Licensee, the Cochin Special Economic Zone Authority (CSEZA) having 1000 KVA contract demand under HT 1b tariff. The power supply was effected on 28-07-2006. All the laws conferred by the Electricity Act 2003 and all the Regulations of Kerala Electricity Regulatory Commission govern the matters with regard to electricity between the Licensee, CSEZA and its consumers. The appellant and the respondent entered into a HT service connection agreement on 22-04-2005 for supply of electricity.

The appellant had been paying electricity duty under Section 4 of the Electricity Duty Act 1963 at 10 paise per unit. There are three units in the appellant's premises who are sub lessees of the appellant and who have been supplied electricity by the appellant. The Chief Electrical Inspector had conducted inspection of books of accounts of the Respondent licensee for the period April 1, 2011 to March 31, 2013 and also inspected the Appellant's premises during May 2014 and observed that the appellant is selling power to other LT Consumers. The following instruction was issued to the licensee in the inspection report. " CSEZA is the authority of distributing power to the entire supply area and none is licensed to sell or distribute power to other consumers. Hence it should be ensured that each and every power connection within the supply area is taken from CSEZA. If any unauthorized connections are detected that should be got regularised by installing separate meters and charging appropriate tariff rate." Further inspection for the period April 1, 2014 to March 31, 2016 was also conducted by the Electrical Inspector and reiterated the above audit reports observations. On the basis of the audit report, the respondent issued a

demand notice dated 12-09-2014 for an amount of Rs.19,52,074/- towards duty arrears and interest thereon for the period from 01-04-2011 to 31-03-2013. As the appellant had not remitted the amount further demand notices dated 18-01-2016 and 02-03-2017 for Rs.90,33,122/- for the period from 01/04/2011 to 31/12/2015 and for Rs.91,09,820/- for the period from 01/04/2011 to 31/03/2016 respectively were issued to the appellant by the respondent.

The appellant has adduced the following contentions. Regarding the matter of duty arrears as found in the audit report, is not an amount due because it was based on assumptions and presumptions and the actual sale was not correctly ascertained. Fixing 60:40% ratio consumption as LT and HT was only a guess or assumption. No enabling regulation/orders existed at the time when the audit report was prepared and to demand duty @ 10%. Only after issuance of Govt. Order in G.O (Rt) No 184/2015/PD dated 03-08-2015, that they could make such a demand.

On going through the orders of CGRF, CSEZA, it is found that the Forum has made the following observations.

1. Electricity duty is a statutory due under the KED Act and Electrical Inspector is the appropriate authority under section 7 of the KED Act to fix the rate of duty to be collected from each consumer. The Electrical inspector detected evasion of electricity duty during his inspections.
2. The Forum is convinced from the submissions of the appellant that he had charged tariffs different from the one fixed by the KSERC and the appellant has no authority to arrive at various charges due from sub lessees after discussion with each occupant separately. The appellant sold electricity by installing individual LT electricity meters to the tenants, issued monthly electricity bill with electricity duty applicable to LT consumers and collected the amount illegally from the tenants/occupants which is against the conditions in the HT connection Agreement and the rules in force. The licensee has not noticed the illegal arrangement for quite some period, even though this act is considered as misuse of electricity attracting penalty and disconnection under Section 126 & 135 of electricity Act 2003.
3. The appellant had reselling electricity right from the time they had leased out their premises to tenants and they are collecting rate/charge more than even the 10% LT duty fixed by the Government.
4. Though the appellant has argued that he was given consent from the licensee for the collection of the duty from the tenants, he has not produced any proof and the licensee has denied such consent.
5. The appellant has put forward two contradictory arguments with regard to the act of illegal sale of electricity and the powers/actions of CEI. According to the appellant the CEI has no powers before 03-08-2015 to demand an LT duty for the redistribution undertaken by him. The appellant contended that the CEI had never asked the appellant or the licensee to stop such redistribution which took place long before 3/8/2015.
6. The appellant indulging in an illegal activity and then lamenting that it happened because he was not prevented from doing so.

7. The appellant had made a profit out of the resale of electricity and had been making a margin between duty collected from sub lessees and that given to the licensee.

The appellant has sought for the following reliefs.

1. To call for the documents and to hold and declare that demand for Rs. 91,09,820.00 and further demand for Rs. 1,42,76,732.00 are illegal and to set aside them and any further demand of electricity duty issued upon the appellant.

2. To issue orders to refund electricity duty collected from the appellant arbitrarily towards the presumed quantity LT electricity consumption by others with effect from 01-2016 to up to date.

These two reliefs were considered by the CGRF Forum and declined to allow the same after examining in detail the contentions of both the appellant and licensee. While disposing the petition, the CGRF Forum has examined the relevant provisions of KED Act which is reproduced below for ready reference.

#### Section 4

**LEVY OF ELECTRICITY DUTY ON CONSUMERS:-** Every consumer belonging to any of the classes specified in column (2) of the schedule shall pay every month to the Government in the prescribed manner a duty calculated at the rate specified against that class in column (3) thereof.

Provided that in cases where the supply of energy to a consumer is regulated by an agreement entered into between the Government or the licensee and the consumer it shall be competent for the Government either to reduce the rate at which duty is livable on such consumer or to exempt such consumer from payment of duty under this section subject to such terms and conditions as may be imposed by the Government.

#### 5. COLLECTION AND PAYMENT OF ELECTRICITY DUTY LEVIED ON CONSUMERS

(1) Every licensee shall collect and pay to the Government at the time and in the manner prescribed, the electricity duty payable under section 4 of this Act on the units of energy consumed by every consumer to whom energy is supplied by him. The duty so payable shall be a first charge on the amounts recoverable by the licensee for the energy consumed, and shall be a debt due by him to the Government.

(2) When any consumer fails or neglects to pay at the time and in the manner prescribed, the amount of electricity duty due from him, the licensee may, without prejudice to the right of the Government to recover

the amount under Section 8, after giving not less than seven clear days” notice in writing to such consumer, cut off supply of energy to such consumers and he may, for that purpose, exercise the power conferred on a licensee by sub-section (1) of section 24 of the Indian Electricity Act, 1910, for the recovery of any charge or sum due in respect of energy supplied by him.

8. RECOVERIES:- Any sum due on account of Electricity Duty, if not paid at the time and in the manner prescribed, shall be deemed to be in arrears, and thereupon such interest not exceeding eighteen present per annum which the Government may by general or special order fix, shall be payable on such sum and the sum together with any interest thereon, shall be recoverable either through a Civil Court or as an arrear of land revenue.

(i) if the amount was payable under section 3, from the licenses,

(ii) if the sum was payable under sub-section (1) of section 5, either from the consumer or from the licensee, at the option of the Government and

(iii) if the sum was payable by a person who consumed energy generated by himself from such person.

#### 10. OFFENCES BY COMPANIES:-

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed guilty of that offence and shall be liable to be proceeded against and punished accordingly.

From the above provision, it is clear that the licensee has the right to recover the amount of electricity duty due from the consumer and when any consumer fails or neglects to pay at the time and in the manner prescribed cut off supply of energy to such consumers and he may, for that purpose, exercise the power conferred on a licensee the Indian Electricity Act, 2003 for the recovery of any charge or sum due in respect of energy supplied by him. Hence the argument of the appellant those duty arrears is an issue between the licensee and the government is not acceptable.

The appellant has put forward an argument that the licensee should have collected the duty arrears directly from the tenants of the appellant has no basis. The appellant is the consumer of the licensee and the licensee can collect the electricity duty from its consumers only.

The appellant's argument of single point supply status has also no validity on the following grounds and provisions described below.

The provisions of the G.O. dated 3/8/2015 is applicable to consumers of single point power supply user. The provision for single point supply is inserted after the coming into force of Kerala Electricity Supply Code 2014, as Regulation 56. The appellant's contention that he already has a single point supply user status from the service connection agreement dated 22-04-2005 is not valid and hence rejected since on the grounds that as per Regulation 56 (2) of the Kerala Electricity Supply Code, 2014," (2) The development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall submit an application to the licensee for availing single point supply with a detailed project report (DPR) on the scheme for giving supply to all beneficiaries and such other necessary particulars". Regulation 49 (8) emphasis this ." If the authority or promoter or builder or developer or any other person submits an application for single point supply, the same shall be processed as per the regulations for single point supply under regulation 56 and such other relevant provisions in the Code". The respondent has stated that any such application for single point supply is not pending with him. The provisions for single point supply is depicted in regulation 56 of Electricity Supply Code, 2014.

*" 56. Single point supply and sharing of electricity charges.- (1) The licensee may give single point supply to the following premises with multiple beneficiaries subject to the conditions specified in the subregulations hereunder:-*

*(i) multi-storeyed buildings;*

*(ii) colony developed by any development authority or private builder or promoter or developer;*

*(iii) domestic, commercial or industrial complex;*

*(iv) residential complex constructed by any employer for his employees or by a panchayat or a cooperative society or a registered association of beneficiaries.*

*(2) The development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall submit an application to the licensee for availing single point supply with a detailed project report (DPR) on the scheme for giving supply to all beneficiaries and such other necessary particulars.*

*(3) The development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall bear the expenditure for the augmentation or upgradation or uprating of the distribution system, exclusively required for the supply of electricity to the entire premises included in the detailed project report (DPR) and shall also construct at his cost the internal distribution network within the project*

*area as per the standards and specifications stipulated in this Code.*

*Provided that the expenditure to be borne by the development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall be governed by the relevant provisions in regulation 36.*

*(4) Supply may be provided by the development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries to the individual beneficiaries and for common service by installing sub-meters.*

*(5) The development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall remit the charges for the entire electricity availed at such single point of supply as per the bill preferred by the licensee within such time as indicated in the bill.*

*(6) The development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries shall collect, on a no profit no loss basis, the cost of energy consumed by individual beneficiaries.*

*(7) The tariff charged from the individual beneficiaries shall under no circumstances exceed the tariff specified by the Commission for the respective category of consumers.*

*(8) Providing of connection to individual beneficiaries in such premises with multiple consumers and sharing of expenses of consumption of electricity as per the above provisions shall not be construed as unauthorised extension of supply or resale of energy.*

*(9) The maintenance of internal distribution network and providing services to individual beneficiaries shall be the responsibility of the development authority or promoter or builder or developer or panchayat or cooperative society or registered association of beneficiaries.*

*(10) The tariff applicable to the single point supply shall be as determined by the Commission:*

*Provided that the provisions of this regulation shall not in any way affect the right of a person residing in the housing unit sold or leased by such development authority or promoter or builder or developer or panchayat or cooperative society or registered association of licensee of the area.”*

There are 3 sub lessees in the software complex of the appellant namely M/s Cognizant Technology Solutions, M/s Williams Lee India Pvt. Ltd and M/s Sutherland Global Services Pvt. Ltd and it is revealed that the appellant selling power to LT users within the building at arbitrary rates in complete violation of electricity tariff fixed by Hon'ble KSEERC. According to the respondent, the appellant is charging Rs.8.41/unit (inclusive of fixed charges) where as the HT rate is only Rs.5.80/unit, from M/s Cognizant Technology Solutions and M/s Williams Lee India Pvt. Ltd. From Sutherland Global Services, the appellant is charging Rs.6.25/unit plus fixed charge of Rs.300/KVA for 220 KVA/floor, whereas HT rate is Rs.5.80/unit. This reveals a clear resale of power at a very high rate. In addition to the above

charges, the appellant is charging energy cost towards Air Conditioner consumption which is worked out using the following formula.  
 Tonnage of AC x running hours of AC x a factor 1.5 x the unit cost of energy.

The appellant's submissions that the appellant, an HT consumer to supply electricity to LT consumers, secondly the system of distribution described in the audit report as unauthorized use and resale was sanctioned by the licensee and thirdly the licensee insisted that the appellant continue violating law and prevented the appellant complying with electricity statutes, is found as an attempt of the appellant to justify the illegal sale of electricity. The Clauses in the agreement do not reveal any sanction for resale of power supply to sub lessees. Regulation 55 of Supply Code, 2014 deals with Restriction on resale of electricity which reads as follows; *"No person shall sell the energy supplied to him by the licensee to any other person, firm or to other premises unless he holds a suitable sanction or license for distribution and sale of energy issued by the Commission or has been exempted by the Commission from holding such license for sale."*

The appellant has contended that fixing 60:40 ratio consumption as LT and HT was only a guess or and the actual sale was not correctly ascertained. It is observed in the audit report that since the actual sale towards LT consumers is not accounted it is presumed that 60% of the consumption availed by Technopolis is sold to LT consumers. The rest is used to the common facilities such as air conditioning, water pump houses etc. Hence a correct calculation of the loss sustained is not seen prepared. But the respondent's contention is that the Chief Electrical Inspector empowered official vide Section 4 of the KED Act 1963 decided to levy electricity duty for 40% of energy consumed at HT rate and 60% of electricity consumed at LT rate for short assessment of electricity duty. It is revealed that electricity Duty in the ratio 40:60 (HT:LT) is being collected in the monthly bills as directed by the Chief Electrical Inspector as an interim arrangement.

It is pertinent to note that the following instructions were given to the licensee in the audit report. "CSEZA is the authority of distributing power to the entire supply area and none is licensed to sell or distribute power to other consumers. Hence it should be ensured that each every power connection within the supply area is taken from CSEZA. If any unauthorized connections are detected that should be got regularised by installing separate meters and charging appropriate tariff rate." This shows that the licensee did n't take proper action against illegal arrangement made by the appellant for quite some period.

### **Decision**

In view of the factual position I don't find any reason to interfere with the findings and decision taken by the CGRF, CSEZA in this case and hence the order of CGRF is upheld. The appeal is found devoid of any merits and



hence dismissed. Having concluded and decided as above, it is ordered accordingly. No order on costs.

**Electricity Ombudsman**

Ref No: P/ 099/ 2017 dated

Forwarded to:

1. Sri Jeevan Varghese, Company Secretary & Compliance Officer, MPG Hotels and Infrastructure Ventures Pvt. Ltd., Muthoot Centre, Level 3, Punnen Road, Thiruvananthapuram 695034.
2. The Deputy Development Commissioner, Cochin Special Economic Zone Authority (CSEZA), Kakkanadu, Kochi 682037.

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4
3. The Chairman, Consumer Grievance Redressal Forum, Cochin Special Economic Zone Authority (CSEZA), Kakkanadu, Kochi 682037.