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APPEAL PETITION NO. P/077/2018
(Present: A.S. Dasappan)
Dated: 26th November 2018

Appellant	:	Sri. Roy George General Manager, M/s Parayil Exports, Narianganam P.O., Pala, Kottayam
Respondent	:	The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Ramapuram, Kottayam

ORDER

Background of the Case: -

The appellant, the General Manager of M/s Parayil Exports is a HT consumer with H Code LCN6/5168 under Electrical Section, Barananganam. The appellant obtained electricity originally under LT IV industrial tariff with consumer N.1850. But later in 2007, the appellant was reclassified under LT VII A category pursuant to Tariff Order 2007. Against this the appellant approached the CGRF, Ernakulam by filing complaint No. 78/2008-09 and the CGRF allowed the petition by holding that the appellant is entitled to be classified under LT IV industrial category. Later the appellant's LT connection was converted into HT connection by enhancing the connected and an agreement in this regard was executed with the respondent on 25-08-2009. The tariff assigned to this HT connection was HT IV commercial. It is alleged that the appellant had submitted vide letter dated 3/2/2017 before the Deputy Chief Engineer requesting to change the tariff wrongly assigned to him. But the officers of the respondent have not taken any action on this request and hence the appellant filed a petition before the CGRF, (southern Region), Kottarakkara on 19/05/2018, which was disposed directing the respondent to change the tariff to HT 1 industrial with effect from date of inspection of the respondent. Aggrieved by the Order No. 73/2018 dated 07/08/2018 of CGRF, the appellant has submitted this appeal before this Authority, requesting to revise all the bills issued to the appellant under HT1

industrial category from the date of giving connection under HT i.e. from 25-08-2009 and to refund the excess amount collected along with interest at bank rate.

Arguments of the appellant:

The appellant is conducting an industrial unit engaged in the production of various food items including frozen foods. The appellant obtained an electricity connection originally under LT IV Industrial Tariff with consumer No. 1850 of Electrical Section, Bharananganam in Pala. After the introduction of Tariff Order 2007, a short assessment bill was issued to them by demanding an amount of Rs. 2,25,000/- on the allegation that the activity in their premises are entitled to be classified under LT VII A Tariff as per the above Tariff Order. They were also reclassified and included in LT VIIA Category pursuant thereto. The said short assessment demand and the consequent change of tariff were challenged by them before the CGRF, Ernakulam by filing Complaint No. 78/2008-09. The CGRF passed a final order in the said complaint, by allowing the appellant is entitled to be classified under LT IV Industrial category. Based on the same, the appellant was included in the industrial category once again.

In the meanwhile, as part of capacity enhancement of the industrial unit, additional power became necessary. Therefore, the aforesaid LT connection was converted into a High Tension connection and an agreement in this regard was executed with 1st respondent on 25-08-2009. As per the schedule of the HT Agreement, the purpose of supply was mentioned as, Ready to Eat Foods, Bakery Products, Spice Powders, Agro Products etc. However, despite the fact that, the activity in the premises of the consumer remained the same as that of the LT Connection, the HT connection was classified as commercial. Since the tariff is decided by the KSEB and the role of the consumer in the said matter was very much limited, the appellant was under the bonafide belief that they have assigned the tariff in a proper manner.

Later, on account of the subsequent tariff revision, the difference of the charges between the HT I Industrial and HT IV for commercial has widened and this resulted in extreme hike in the monthly bills issued to them. The low monthly charges of the similar industrial units, in their field which were classified under HT I category, prompted them to verify the statutory provisions in this regard. Thus, it came to their notice that, from the date of availing of the HT supply itself they were being charged for electricity at higher rates than permitted by the Hon'ble Regulatory Commission as per the various tariff orders issued from time to time. The activities carried on in the premises are processing of Food Products, Curry Powder, Spices, Snacks, Pickles, Rice Products etc. In order to substantiate the same, the appellant produced before the CGRF the copies of the licenses/sanctions obtained from, Department of Factories and Boilers, Department of Industries, Food Safety and Standards Authority of India, Bharananganam Grama Panchayath etc. All the said documents would clearly reveal that the activity in the premises of the consumer is coming under industrial activity. Going by the various tariff orders issued by the Hon'ble

Regulatory Commission during the relevant time, the activities mentioned above are liable to be classified under HT I (now HT IA) Industrial Category. The rates mentioned in the Tariff Orders indicate that there are huge differences between the charges payable under the said categories. Therefore, it is evident that the respondents have collected charges from them in excess of rates fixed by the Regulatory Commission.

As per Section 62(6) of the Electricity Act, 2003, if any licensee recovers a price or charge, exceeding the Tariff determined by the Regulatory Commission, the excess amount shall be recoverable by the person, who has paid such price or charge along with interest equivalent to the bank rate. In this case, going by the stipulations contained in the tariff order and the findings of the CGRF, it is evident that the charges ought to have been collected by respondents from them were to be at the rates fixed for HT I Category. However, the charges actually collected were at the rates applicable for HT IV Category. Therefore, there is excess collection by the respondents and the same is liable to be refunded to the appellant by virtue of the statutory provision mentioned above. In this regard, on several occasions the appellant approached respondents with the above request but every time the requests in this regard were turned down. In the above circumstances, the appellant submitted another communication dated 3.02.2017 requesting the 1st respondent to reclassify the appellant with effect from the date of providing connection and to refund the excess amount collected. On the basis of the said application, the respondent conducted a hearing on 15.06.2017 in which the complaint appeared through authorized representative and submitted their contentions. However even after a period of more than one year, no order was passed thereon. In the above circumstances, the appellant had filed a complaint before the CGRF, Southern Region Kottarakkara which was numbered as OP No. 73/2018. The CGRF, found that the appellant is entitled to be classified under HT IA Industrial Tariff, with effect from 9.07.2018, which was the date on which the respondents have conducted inspection in the premises of the appellant, on the basis of the direction of the CGRF. However, the prayer of the appellant to classify the appellant with effect from the date of the giving the HT connection and to refund the excess amount was declined.

This specific case advanced by the appellant was that, going by the activities carried on in the premises of the appellant, they were entitled to be classified under HT I A industrial tariff category. The above fact cannot be disputed by the respondents, as the industrial nature of the activities in the premises of the appellant stands confirmed as per the order passed by the CGRF. In the said order, it was categorically found that, the activities in the premises of the appellant is that of industrial nature and hence they are entitled to be included under industrial category for the purpose of fixation of tariff. The aforesaid order has become final and hence it is binding upon the respondent herein. Therefore under no circumstances the respondents could have changed the tariff.

The CGRF committed a grave error in declining the request of the appellant to classify them under HT I A industrial category, with effect from the date of giving connection, is not at all justifiable.

The section 62 (6) of the Electricity Act, 2003 specifically provides as follows "If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with the interest equivalent to the bank rate without prejudice to any other liability incurred by | the licensee." In this case, the respondents have included the appellant at the time of providing the HT connection, in the commercial category and collected excess charges. Therefore, the aforesaid actions of the respondents are amounting to violation of the statutory stipulations contained in the above provision. Therefore, the appellant is entitled to get the entire invoices issued to them during the relevant period, revised. Upon such revision, the excess amount is also liable to be paid to the appellant.

The only objection raised by the respondents during the consideration of the complaint before the CGRF was that, they have attempted to put the blame upon the appellant for wrongly including the commercial category, by submitting that the appellant never objected to these. As a matter of fact going through the high tension agreement itself it can be seen that, the activities of the appellant has been specifically type written in the schedule. Going by the entries contained in the said schedule, the unit of the appellant can only be included in the industrial category. However despite the above, the respondents have included the appellant in commercial category by writing down the said category using a pen. The above endorsement specifically shows that the decision to include the appellant in the commercial category was that of the respondents, despite the specific guidelines stipulated by the Regulatory Commission in this regard through the Tariff Order. It is also to be noted in this regard that, as far as the high tension agreement is concerned, it is not something which is possible to be interpreted as an ordinary contract between two parties. The HT agreement is something which is formulated as per the statute and the decision as to the inclusion of the consumer in a particular category for the purpose of tariff, is also to be taken by the respondents. Hence, if there is a wrong classification, it can only be due to the mistake of the respondents/licensee. Therefore, the respondents cannot be allowed to take the benefit of their own mistake or wrongful act by raising such a defense.

The first respondent had conducted a hearing on the said application on 14/06/2017 in which the appellant had appeared through an authorized representative and reiterated their contentions. However, even after expiry of more than a year since then, no decision has been taken by them on the said petition. Now the impact of the order passed by the CGRF is that, the respondents were benefited by the delay caused by them in considering the application submitted by the appellant. This is also something, which is not at all justifiable on the part of the CGRF, which is a quasi-judicial Forum.

Arguments of the respondent:

1. The averments made by the appellant about the LT IV service connection with Consumer No: 1850 Electrical Section, Bharananganam in Pala have no particular relevance in the context of this Appeal filed for the reason that the above service connection stands dismantled and entire issues related to the above service connection also stands settled. The appellant availed new HT service connection with HT Code LCN 6/5168 on executing fresh agreement.

2. It is admitted that there was a dispute regarding classification of tariff on interpreting the Tariff notifications issued by the Hon'ble Kerala State Electricity Regulatory Commission at that time. The above issue stands settled based on the clarification issued by the Hon'ble Kerala State Electricity Regulatory Commission as well as the orders passed by the C.G.R.F. which stands complied with. There is no rationale in the Appellant, raising the above issue in the context of this appeal filed for the reason that the above dispute relates to the interpretation of the Tariff Orders issued which stands settled upon the clarifications made by the statutory authorities.

3. It is admitted that the tariff applied to the LT premises of the Appellant was LT IV Industrial. The appellant applied for HT service connection and the HT Agreement dated 25.08.2009 was executed with KSEB Ltd. The officers of KSEB Ltd inspected the premises and as per the HT agreement executed the tariff was HT IV commercial based on the purpose for which energy was used. At no point of time the appellant disputed the application of HT IV commercial tariff applied to the subject premises except for the application dated 03.02.2017 submitted to the Deputy Chief Engineer, Electrical Circle, Pala under Section 62 (6) of Electricity Act 2003.

4. The purpose revealed by the consumer and facts adduced by the officers of KSEB Ltd are integral to the determination of the tariff applied in the premises. It is on the basis of the findings of the inspection and the facts revealed by the appellant the HT agreement was signed with KSEB Ltd with HT IV commercial tariff. It may be kindly noticed by this Ombudsman that the Appellant filed complaint No.78/2008-09 before C.G.R.F and disputed the commercial tariff applied to the LT premises and consequently changed the tariff to LT IV industrial. Therefore there is no lack awareness on the part of the Appellant regarding tariff and the contention raised by the Appellant that there is no role for the consumer in applying tariff cannot be taken for granted. As a matter of fact the tariff applicable to the HT premises is HT I A commercial based on the purpose and activities undertaken in the premises and the HT agreement with mutual consent was executed with the above tariff. The appellant at no point of time protested against the application HT I A commercial tariff except for the application dated 03.02.2017. There is no sufficient reason cited by the appellant for sleeping upon an alleged erroneous application of tariff for a long period of time since 25.08.2007.

5. It is an admitted position that the Appellant had filed complaint No: 78/2008-09 and successful fought for the application of LT IV Industrial tariff when the premises was under LT category. Besides this the factual position is that the appellant executed HT agreement with mutually consented tariff of HT I A commercial. Now the position taken by the Appellant is that they came to know about the tariff as HT IV Commercial when the rate variation between HT I A industrial HT IV Commercial became phenomenal defies logic and inconsistent with the earlier contentions raised. The factual position is that the based on the purpose and activities undertaken in the premises the tariff applicable is HT IV Commercial and the Appellant had consented for the same by executing HT agreement with the above tariff.

6. The premise was under LT IV tariff when the supply was under Low Tension doesn't mean that the Appellant inheres the right for above tariff in the HT premises. The tariff is determined based on the purpose. The LT service connection was dismantled and the Appellant availed new HT connection on executing HT agreement. As per the purpose for which energy was utilized in the premises as informed by the appellant and as ascertained by the officers of KSEB Ltd during the inspections conducted, and on examining the papers submitted the tariff applied was HT IV Commercial. The Appellant have consented to avail supply under above tariff on executing agreement with tariff as HT IV Commercial. In case of any change in purpose the Appellant should have applied for tariff change with the licensee in compliance of due procedural formalities and changed the tariff. But till date no such application is seen received. The KSEB Ltd have only realized the approved rates under HT IV Commercial tariff form the appellant as approved by the Hon'ble Kerala State Electricity Regulatory Commission and there is no question of overcharging resulted. The Appellant should submit proper application with the licensee for changing tariff in case they are eligible for HT I A industrial tariff and get the tariff changed. The suo moto claim made that they are eligible for HT I A Industrial tariff is against the provisions of HT agreement executed by them with tariff as HT IV commercial. The claim made about overcharging is based on the inference that HT I A industrial tariff is applicable is hypothetical and cannot be accepted and there is no overcharging on this ground. The tariff applied to the premises is HT IV Commercial and the appellant is billed as per the rates approved by the Hon'ble Kerala State Electricity Regulatory Commission and there is no question of excess charges collected arises.

7. There is no violation of Section 62(6) of the Electricity Act 2003. As already mentioned the tariff applied in the premises is HT I A commercial. The respondent has taken effective action towards the compliance of the above order on obtaining sanction of the higher authorities. The Appellant is yet to segregate the light and power load and submit completion report as per tariff notification for the application of HT I A industrial tariff. The C.G.R.F. as per order dated held that the Appellant is eligible for HT I A Industrial tariff with effect from 09.07.2018 i.e. from the date of inspection conducted by the officers of KSEB Ltd. There is

neither excess collection resulted from the appellant till 09.07.2018 nor is any amount is refundable as on above date. There is no order passed by the C.G.R.F., Kottarakkara in this regard in the petition filed by the appellant. The order dated 12.11.2008 of State Electricity Ombudsman in Representation P 16/2008, P 22/2008 & P 24/2008 have no bearing on this Appeal as the same is on a entirely different context.

8. The application dated 03.02.2017 by the Appellant cannot be acted upon for the reason that no excess charges were realized by the KSEB Ltd as per Section 62 (6) of the Electricity Act 2003. The mutually agreed tariff based on the purpose for which energy is utilized comes under LT IV Commercial. In case of any change of purpose it is incumbent upon the Appellant to submit formal application to KSEB Ltd and applied for tariff change. So far no such application is received. Besides this the appellant is yet to segregate the light and power loads as per tariff notification of Hon'ble Kerala State Electricity Regulatory Commission. The KSEB Ltd is willing to examine the compliance of the Exhibit D2 order of Hon'ble C.G.R.F., Kottarakkara dated 07.08.2018 and take appropriate course of action on merit. But there is lack of co-operation from the part of the appellant in proceeding with the matter in due adherence of required procedural formalities.

9. It is admitted that a personal hearing was granted to the appellant to present the case. During the personal hearing certain clarifications were sought for from the appellant regarding out sourcing of semi-finished products manufactured in a different premise brought to the HT premise for value addition and packing. Since the above activity would constitute commercial activity a clarification in this regard is found to be an imperative. But no satisfactory reply was provided by the Appellant. The appellant was also asked to segregate light load and power loads. But without providing the above required clarifications and taking effective actions the appellant filed O.P. No: 73/2018.

10. The compliance of the order dated 07.08.2018 of C.G.R.F. in O.P. No.73/2018 will be examined by KSEB Ltd on merit and suitable actions will be taken. The reclassification of tariff with effect from date of HT connection i.e. 25.08.2009 cannot be considered for the reason that the purpose for which the energy used in the premises is commercial. The appellant has executed the HT agreement with tariff as HT IV commercial based on the purpose for which the energy was used. In case of any change of purpose the appellant should have applied for tariff change with the licensee and changed the tariff. As a matter of fact no application for tariff change from the appellant is pending with KSEB Ltd till date. The application submitted as per Section 62 (6) of Indian Electricity Act 2003 cannot be considered in favour of the appellant for the reason that no excess amounts over and above the HT IV commercial tariff is realized from the appellant.

Analysis and findings:

The Hearing of the case was conducted on 30-10-2018, in my chamber at Edappally, Kochi and Mr. Ziyad Rahman, Advocate represented the Appellant's side and Mr. Dennis Joseph, Assistant Executive Engineer, Electrical Sub Division, Ramapuram Mr. Baiju Sebastine, Nodal Officer, (Litigation), Electrical Circle, Pala represented the respondent's side. On examining the Petition, the argument note filed by the Appellant, the statement of facts of the Respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

The point to be decided is as to whether appellant is eligible to be categorized under HT1 industrial category from the date of giving connection under HT i.e. from 25-08-2009 and the request of the appellant to refund the excess energy charges realized from the appellant with effect from the date of service connection under HT is admissible or not?

On going through the documents it can be seen that the appellant had submitted an application for tariff change from HT IV A to HT I A on 03-02-2017. But as per the contention of the respondent, the appellant is eligible to be changed the tariff to HT I A only on 09-07-2018 as per the direction of Forum. The appellant has entered with an agreement on 25-08-2009 and paid the energy bills under commercial tariff without any objection till 03-2-2017. It is strange to see that the appellant paid the bills, which carried a substantially higher tariff rate, without any objection for almost eight years.

Regulation 98 of Supply Code, 2014 clearly indicated the procedures to be followed in the case of tariff change application which reads as follows: *As per Regulation 98 of Supply Code, 2014 (1) if a consumer wishes to change his consumer category he shall submit an application to the licensee in the format given in Annexure 10 to the Supply Code and the licensee shall process the application as per the relevant provision of the Code.*

(2) The licensee shall conduct site inspection within 7 days from the receipt of application and record the meter reading at the time of inspection.
(3) If on inspection, the request of the consumer for reclassification is found genuine, change of category shall be made effective from the date of inspection and a written communication shall be sent to the consumer to this effect within 15 days of inspection.
(4) Arrear or excess charge, if any, shall be determined based on the actual period of wrong classification and the account of the consumer shall be adjusted accordingly.
(5) If the actual period of wrong classification cannot be ascertained reasonably, the period shall be limited to a period of 12 months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter.

(6) If the licensee does not find the request for reclassification genuine, it shall inform the applicant in writing giving the reason for the same, within 7 days from date of inspection.
(7) For the period in which the application of the consumer for reclassification is pending with the licensee the consumer shall not be liable for any action on the ground of unauthorized use of electricity.

The appellant had submitted application for tariff change from HT IV A to HT I A. The KSEB authorities allowed the change of tariff as per the direction of CGRF with effect from the date of inspection i.e. 09-08-2018 only. The grievance of the appellant is that the change had to be done with effect from the date of conversion from LT to HT and excess amount so far collected as not been refunded.

In this case there is no dispute that the appellant's eligibility for industrial tariff and the tariff applicable to such an industry is HT I A category. The appellant has not pointed out the wrong tariff fixation during the long years. The appellant approached the KSEB authorities later, on account of the subsequent tariff revision, on realizing that the difference of the charges between the HT I Industrial and HT IV for commercial has widened and this resulted extreme hike in the monthly bills issued to them.

There are instances of short assessment bills made by the KSE Board, in cases of detection of wrong tariff fixed to consumers, for realizing the back arrears. The Clause 134 of the Supply Code permits the licensee to recover the amount undercharged from the consumer and hence refund of the overcharged amount to the consumer is also natural if it were found as a bonafide one. The appellant was well aware the terms and conditions of the agreement executed by him with the Licensee and the tariff of supply and category shown as HT IV commercial in the schedule of the agreement. The consumer has requested the refund of the overcharged amount during the period from 25-08-2009 onwards.

Decision

From the analysis done, the findings and conclusions arrived at which is detailed above, this Authority takes the following decision.

The activity or the purpose for which the electrical energy is being used by the appellant has been found as industrial type. Hence the decision of the CGRF to assign HT I A industrial tariff category is found justifiable and is upheld. But the appellant had executed an agreement with the Licensee on 25-08-2009 for getting the supply under commercial category and not raised any objection till he submitted an application dated 3-2-2017 for reassigning the tariff category. Though the appellant claimed that on several occasions the appellant approached respondent with the request of tariff change, he had not produced any supporting

evidence to establish this. Considering the above facts, it is decided that the change of tariff of the appellant from HT IV commercial to HT I A industrial shall be given from 3/2/2017 i.e. from the date of application submitted by the appellant. The respondent is directed to adjust the excess charges based on the actual amount remitted and the account of the consumer shall be adjusted within one month of this order with details of calculation for his information.

The order of CGRF, Kottarakkara vide order no. 73/2018 dated 07-08-2018 is modified to this extent. Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed. No order on costs.

ELECTRICITY OMBUDSMAN

P/077/2018/ /Dated:

Delivered to:

1. Sri. Roy George, General Manager, M/s Parayil Exports, Narianganam P.O., Pala, Kottayam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Ramapuram, Kottayam

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.