



- d) The activity carried out by the company is sterilization and as per the prevailing tariff, the automobile service stations are categorized under LT VII (A) tariff category, which is akin to the activity carried out by the Company..
- e) Hence, the applicant will fall under service industry and not under manufacturing industry.
2. Subsequently, the company approached the Director, Distribution Central, Thiruvananthapuram vide letter No.M:KCY:184:07:16 dated 13.07.2016, with all supporting documents showing the eligibility for a categorization under LT IV (A) tariff. However, the Director has rejected the request of the applicant vide letter No.D(D&S)/D2/Tariff-E4204/2016/384 dated 09.09.2016.
3. In the above circumstances, the applicant filed this application before this Commission for including the sterilisation activity under LT IV (A) tariff treating their activity as an industry. The application was admitted as O.A.No.01/17 and notice was issued to KSEB Ltd. Hearing on the petition was held on 20-02-2017. Adv. Anil S. Raj represented the applicant and presented the matter and responded to the queries of the Commission. He stated that the company is having SSI registration from district industries centre, Ernakulam and also holds a licence from Joint Director of Factories under the provisions of the Factories Act and Kerala Factories Rules.
4. The applicant also submitted a copy of the license issued by the Department of Factories and Boilers, Government of Kerala. Under item 8 of the said licence, the manufacturing process & NIC Code mentioned as shown below:
- (a) Manufacturing Process : Sterilisation of spices and Medical devices
- (b) NIC Code : 10795
5. The applicant submitted that the process undertaken by the company is manufacturing which involves 14 distinguished steps as described below.

<b>Sln.</b>	<b>Process of manufacturing</b>
1	<b>Loading</b> Load Product into the sterilizer and close the door
2	<b>Hot water generation and circulation</b> Circulate hot water by using circulation pump maintain required temperature inside the sterilizer
3	<b>Evacuation</b> After reaching specified temperature create vacuum by using vacuum pump.

4	<b>Insert gas (Nitrogen/ Co2) injection</b> After reaching required vacuum inject gas from gas cylinder
5	<b>Evacuation</b> Again create vacuum by using vacuum pump
6	<b>Sterilant injection</b> Inject specified quantity of sterilant
7	<b>Dwell time</b> Hold for sterilant exposure
8	<b>Evacuation</b> After completion of exposure period create vacuum up to specified level
9	<b>Inert gas injection</b> Inject inert gas up to specified level
10	<b>Evacuation</b> Draw vacuum up to specified level
11	<b>Aeration</b> After reaching specified level of vacuum give aeration for specified time
12	<b>Vacuum break</b>
13	<b>Stop vacuum pump</b>
14	<b>Unloading:</b> Open steriliser door & unload the product

6. According to the counsel for the applicant, based on the classification under NIC and the processes undertaken by the company, it is clear that the company is engaged in the manufacturing process and qualifies for the tariff under LT IV A. He further argued that in the schedule of terms and conditions of tariff, 'Rubber smoke house', 'cardamom drying & curing' and 'power laundry' are classified as industry and the process involved in sterilization is akin to the rubber smoke houses and hence LT industrial tariff is applicable. He further argued with the support of the decision in M/s Chillies Exports House Ltd Vs Commissioner of Income Tax (1997 (5) SCC 157) wherein Hon Supreme Court ruled under Section 2(b)(c) of Finance Act 1971, that chillies, sorted, graded as per Agmark specifications and better quality chillies were clipped, stemmed, and subject to fumigation and treated with methyl bromide is amounting to business of processing of goods. Similarly the activities of the Company can also be treated as manufacturing and eligible for LT IV A tariff.
7. The applicant submitted a rejoinder on 06-03-2017, wherein applicant argued that since rubber smoke house and cardamom drying units are entitled to LT IV (A) Industrial Tariff, the applicant is also entitled to industrial tariff. Rubber smoke house and cardamom drying merely extract moisture from rubber latex sheet/ cardamom. The applicant's process involves sterilisation, a more advance process that involves both

removal of moisture as well as microbes whereby the end produce undergoes chemical change or transformation. Hence it is a manufacturing process. The applicant further argued that the sole test to determine whether a business is an industry and/or engaged in manufacturing is not whether it is subject to Excise Duty. It may be one of the many factors that may determine it. Many industries which are otherwise liable to levy of Excise Duty are exempted there from when it is established in an industrially backward rural area. The applicant further declared that the quantity of spices sterilized is 88.91% while medical equipments sterilized is only 11.09%.

8. The applicant also submitted that in **M/s. Kailas Cashew Exports v. KSEB and another** the Hon'ble APTEL rightly held "processing and packing units of cashew kernels" is an industrial activity and is entitled to LT IV (A) Tariff. The said decision is squarely applicable to the applicant's case.
9. Sri. Bipin Sankar, Deputy Chief Engineer, KSEB Ltd submitted the written remarks on the application, wherein it is stated that LT IV (A) Industrial Tariff is applicable to manufacturing units. Since, M/s. Microtrol is engaged in the sterilization of "spices and medical devices" which does not involve manufacturing of any new product and hence LT VII (A) Commercial Tariff is assigned by KSEB Ltd. He further stated that the adjudication of a dispute under Section 86(1) (f) by the Commission does not cover a dispute between a consumer and a licensee and therefore requested to reject the petition. In the Counter Affidavit, KSEBL has stated as follows.

*"7. The petitioner's contention of classification similar to that of 'Rubber Smoke House' or Cardamom drying units etc cannot be equated to the activity of the petitioner which involves sterilizing medical equipments also and cannot claim the benefits given to the industrial, processing of agricultural products. The tariff support given to the agricultural product processing cannot be extended to other activities. It is also respectfully brought to the notice of the Hon'ble Commission that the petitioner company name M/s. Microtrol Sterilization Services Private Limited itself indicates that the activity is not Industrial or Manufacturing one.*

*8. The Supreme Court Order referred by the petitioner in the context of section 2 (b) (c) of the Finance Act, 1971 cannot be applied in the present context. It is a well established fact that in respect of classification of electricity consumers for retail tariff determination by State Regulatory Commission is a different process then. That categorization of an activity for different purposes such as collection of tax, administration of*

government subsidy etc. It may be noted that Supreme Court has categorized hospitals as an industrial activity, the same is not applicable in the case of electricity tariff determination.

9. The petitioner's plea is an individual request seeking industrial classification. It is respectfully submitted that the adjudication of a dispute by this Hon'ble Commission under section 86 (1) (f) does not cover a dispute between a consumer and a licensee. This position has been set out very clearly by the Hon'ble Supreme Court of India as well as by the Appellate Tribunal for Electricity in various judgments.

*The Hon'ble Supreme Court in Maharashtra State Electricity Distribution Co. Ltd. Vs Lloyd's Steel Industries Limited (Appeal (civil) 3551 of 2006) held "Therefore, now by virtue of sub-section (5) of section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. "(Para 7)."Hence wherever a Forum/ Ombudsman have been created the consumer can only resort to these bodies for redressal of their grievances". (Para 8)."In this connection, we may also refer to section 86 of the Act which lays down the functions of the State Commission. Sub-section (1) (f) of the said section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it and individual consumer".*

10. Considering the averments as detailed above, the Hon'ble Commission may kindly reject the petition filed by M/s. Microtrol Sterilisation Services Private Limited."

### **Analysis of the Commission**

10. During the hearing, the Commission has examined the objection of the KSEBL that the matter is a dispute between licensee and consumer and hence Commission does not have jurisdiction in the matter. It is true that generally the Commission should not entertain individual complaints of the consumers. However, as held by Apex Court in

WBERC Vs.CESC (2002)8SCC715 , the Commission is the sole authority to determine tariff. As observed by the Hon'ble Supreme Court in Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd. (2007) 8 SCC 381 and in M/s H.P. State Electricity Board v. M/s Gujarat Ambuja Cements Ltd. and others (judgment dated 22.2.2011 in Civil Appeal No. 2005 of 2011), the State Commission, being State Electricity Regulator, is under statutory obligation to ensure that any particular category of consumers has been rightly considered under the approved tariff category to which it belongs and is charged the tariff approved by the State Commission for the said category.

11. The power to determine the tariff and to decide on the categorization of consumers is vested with the Commission. In BSNL Vs PSERC and others (Appeal No. 116 of 2006) Hon. APTEL held that under section 62 (3) of the Electricity Act 2003, it is for the State Commission to decide the category in which a consumer should be placed. It is held therein that,-

*“On the basis provided in sub section (3) of Section 62, it is for the Commission to decide, the category in which a consumer should be placed. The arguments of the learned counsel that the offices and telephone exchanges of the appellant should be treated as an industry, in view of the provisions of the Finance Act, Industrial Disputes Act, Factories Act and Employees’ State Insurance Act, cannot be accepted. The categorization, as already pointed out, depends upon the factors which are relevant to the Electricity Act, 2003 particularly, sub section (3) of Section 62. It is possible that the appellant may fall under the category of ‘Industry’ on applying the meaning of term ‘Industry’ as it is found in the other Statutes but that cannot be the basis to determine whether the appellant is to be charged tariff by treating it as an industry. The appellant has not shown any violation of the Electricity Act, 2003 or the Regulations framed there under in charging the tariff from it under the nonresidential supply category.”*

12. Similarly in Appeal No. 131 of 2013 (Vianney Enterprises Vs Kerala State Electricity Regulatory Commission & ors, judgment dated 07.08.2014), Hon APTEL had held that the categorization of consumer for the purpose of electricity tariff is under the domain of the State Commission. It is held that,-

*“The categorization of consumer for the purpose of electricity tariff is under the domain of the State Commission under the Electricity Act, 2003. Under Section 62(3) of the Electricity Act, the State Commission can differentiate between the tariffs based on interalia, purpose for which the supply is required. Accordingly, the State Commission is empowered to differentiate in tariff based on a purpose for which the supply is required. In this case the State Commission has differentiated between the units which use electricity for extracting oil from seeds which is a manufacturing activity and those units which are only engaged in packing of oil brought from outside which has been considered as commercial activity. Secondly, each State Commission is empowered to decide the retail supply tariff and categorization of consumers for its State. It is not binding for the State Commission to follow the categorization of consumers for tariff purpose decided by the Regulatory Commissions of other States.”*

13. Hence in the present matter, the Commission is of the view that, the matter is not limited to a dispute between a consumer and a licensee, but the essential matter raised in the application is categorization of the activity of sterilization and the Commission is to decide the tariff applicable to it. Accordingly, the Commission decided to admit the application and in its order dated 20-02-2017 directed the applicant to submit the following within two weeks

- a) To clarify whether the unit is registered under the Central Excise Act or the process is subjected to Excise duty
- b) To provide the details of revenue earned from sterilization of medical equipments and that earned from sterilization of spices, if they have such details.
- c) To file argument note incorporating details sought as well as rejoinder if any after examining the case laws relating to the matter.

14. Under sub-section (3) of Section 62 of the Electricity Act, the Commission, while determining the tariff under the Act, may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. Regarding classification, it is a settled position of law that classification should not be in violation

of Article 14 of the Constitution and it should be reasonable and have direct nexus to the purpose sought to be achieved.

15. Before discussing whether the activity of sterilization is eligible for industrial tariff, it is pertinent to examine the present categorization under LT IV (A) industrial and LT VII Commercial. As per the approved schedule of terms and conditions of Tariff, LT IV(A) industrial category comprises of :-

*“Tariff applicable for general purpose industrial loads (single or three phase) viz., grinding mills, flour mills, oil mills, rice mills, saw mills, ice factories, rubber smoke houses, prawn peeling units, tyre vulcanizing/retreading units, workshops using power mainly for production and/or repair, pumping water for non-agricultural purpose, public waterworks, sewage pumping, power laundries, screen printing of glass ware or ceramic, printing presses, bakeries (where manufacturing process and sales are carried out in the same premises) diamond cutting units, stone crushing units, book binding units with allied activities, garment making units, SSI units engaged in computerized colour photo printing, audio/video cassette/CD manufacturing units, seafood processing units, granite cutting units (where boulders are cut into sheets in the same premises), Cardamom drying and curing units, and units carrying out extraction of oil in addition to the filtering and packing activities carrying out in the same premise under the same service connection, manufacturing rubber sheets from latex, telemetry stations of KWA, processing of Milk by pasteurization and its storage & packing, soda manufacturing units, plantations of cash crops, all non-agricultural pumping, drinking water pumping for public by KWA, corporations, municipalities and panchayats, electric crematoria, pyrolators installed by local bodies.”*

Similarly, LT VII Commercial category include:

*“Tariff for commercial consumers such as shops, other commercial establishments for trading, showrooms, display outlets, business houses, hotels and restaurants (having connected load exceeding 1000W), private lodges, private hostels, private guest houses, private rest houses, private travelers bungalows, freezing plants, cold storages, milk chilling plants, bakeries (without manufacturing process), petrol/diesel/LPG/CNG bunks,*



*automobile service stations, computerized wheel alignment centres, marble and granite cutting units, LPG bottling plants, house boats, units carrying out filtering and packing and other associated activities using extracted oil brought from outside, share broking firms, stock broking firms, marketing firms”.*

16. It is clear from the above, sterilization process is not categorized either under LT IV(A) Industry or under LT VII (A), Commercial. The sterilization process is the main activity of the applicant, irrespective of whether such sterilization process is for spices or medical equipments.
17. The applicant has mentioned that the licence has been granted on the terms that the activity is “Manufacturing process: Sterilisation of spices and Medical devices” and hence tariff under industrial category is applicable. However, such argument does not have the force of law as mere mention in a category shall not qualify the process under manufacture. It was held by Hon. Supreme Court in Aman Marble Industries Pvt. Limited Vs collector of Central Excise (2003 (157) ELT 393 (SC) that the argument that an activity had been specifically brought into the tariff item indicating the process amounts to manufacture was held negative. Accordingly, the activity merely mentioned in the license may not qualify for the process under manufacture.
18. As per the Standard Industrial and Occupation Classification 1962, based on United Nations International Industrial Classification (UNISIC) of Economic Activities “Manufacturing” is defined as follows:

*“Manufacturing comprises units engaged in the physical or chemical transformation of materials, substance or components into new products. The materials, substances or components transformed are raw materials that are products of agriculture, forestry, fishing, mining or quarrying as well as products of other manufacturing activities”*

19. In Hindustan Petroleum Corporation Ltd. Kochi vs Kerala State Electricity Regulatory Commission, Kerala (2016 ELR (APTEL) 1191) Hon APTEL held that :

*“In light of the above findings in the judgments of the Hon'ble Supreme Court and considering the process of Appellant's LPG Bottling plant and Terminal where in the process/activity performed by the Appellant, the goods (LPG/ Petrol/Kerosene) essentially remain the same, we*

*conclude that the process at Appellant's plant is not to be termed as manufacturing process."*

20. Similar views were held by the Hon'ble APTEL in M/s Shym Oil cake ltd Vs Collector of Central Excise, Jaipur judgment dated 23-11-2004. In the said matter it was held that edible vegetable oil even after refining it remain edible vegetable oil and actual manufacturing has not been taken place.

21. Hon'ble Supreme Court in its judgment dated 7-5-2015 in Civil Appeal No 583 of 2005 in Servo-Med Industries Private Limited v/s Commissioner of Central Excise, Mumbai has identified four categories to ascertain if any process of manufacturing is involved. These categories are as follows:

- i) Where the goods remain exactly the same even after a particular process, there is obviously no manufacture involved. Processes which remove foreign matter from goods complete in themselves and/or processes which clean goods that are complete in themselves fall within this category.
- ii) Where the goods remain essentially the same after the particular process, again there can be no manufacture. This is for the reason that the original article continues as such despite the said process and the changes brought about by the said process.
- iii) Where the goods are transformed into something different and/or new after a particular process, but the said goods are not marketable. Examples within this group are cases where the transformation of goods having a shelf life which is of extremely small duration. In these cases also no manufacture of goods takes place.
- iv) Where the goods are transformed into goods which are different and/or new after, a particular process, such goods being marketable as such. It is in this category that manufacture of goods can be said to take place.

22. Thus the activity undertaken by the applicant squarely fall in first category, where the goods remain exactly the same even after the sterilization process and obviously no manufacture is involved. Further the activities mentioned by the applicant in the process of sterilization, as detailed in para 5 above, such as loading, hot water

generation and circulation, evacuation, insert gas injection, sterilant injection, aeration, vacuum break etc, also does fall in the first category.

23. In this context, it is to be noted that the Commission has directed the applicant to furnish the registration if any under Central Excise Act. However, in the rejoinder filed, the applicant did not address clarification sought by the Commission on the registration under Central Excise Act. Instead, only mentioned that the sole test to determine whether a business is an industry or engaged in manufacturing is not whether it is subject to excise duty. Thus, it can be presumed from the averments that there is no manufacturing process involved in the company.

24. As per Section 62(3) of the Electricity Act, the consumers can be categorised according to the nature and purpose of use of electricity. The purpose for which electricity used is of prime importance in deciding the tariff category. The applicants' activity cannot be treated as manufacturing and the classification made by the licensee is proper and sustainable. Therefore there seems no necessity for the Commission to interfere in the order of classification made by the respondent licensee.

#### **Orders of the Commission**

25. After considering the averments of the applicant and the respondent in detail, the Commission is of the considered view that the request of the petitioner to include the impugned unit engaged in sterilization of species and medial equipments in IV(A) category of the tariff schedule cannot be granted.

26. The application is disposed of. Ordered accordingly.

**Sd/-**  
**K.Vikraman Nair**  
**Member**

**Sd/-**  
**S.Venugopal**  
**Member**

**Sd/-**  
**T.M.Manoharan**  
**Chairman**

Approved for Issue

Santhosh Kumar.K.B  
Secretary