

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Shri. C. Balakrishnan Chairman.
Shri. C.Abdulla, Member
Shri. M.P.Aiyappan, Member

June 10, 2008

Petition DP No. 37	Dy.No. 01806 dated 10-03-08	M/s.Cochin Port Trust, Kochi Kerala State Electricity Board, Vaidyuthi Bhavanam, Thiruvananthapuram	Petitioner Respondent
-----------------------	---------------------------------------	--	----------------------------------

ORDER

1. Background

M/s. Cochin Port Trust is a deemed Distribution Licensee for distribution of electricity in Willingdon Island, Koch. M/s.Cochin Port Trust filed a petition vide letter dated 20-08-07 against levy of surcharge by KSEB on the entire energy sold to them by KSEB. The said petition was not accepted by the Commission since it was not in the form prescribed and the required fee was also not remitted. The petitioner was intimated of the above deficiencies vide Commission's letter dated 30th August 2007.

The petition in proper form along with the prescribed fee submitted by M/s.Cochin Port Trust vide letter dated 4th February 2008 was accepted by the Commission as Petition No. DP 37. A copy of the petition was forwarded to Kerala State Electricity Board, Govt. of Kerala, Chief Electrical Inspector to Government of Kerala (CEI) and all other Licensees on 20th February 2008 for their remarks. The said petition was heard by the Commission on 13th March 2008.

No remarks have been received from CEI. Govt. of Kerala vide letter No. 1995 C2/08 PD dated 13-03-2008 intimated that as per existing rules ie. Rule 3 of Electricity Surcharge (Levy and Collection) Rules, Kerala 1992, KSEB is authorized to levy and collect Electricity Surcharge directly or through Licensees payable under Section 3 of the Kerala Electricity Surcharge (Levy and Collection) Act 1989. The petition filed by M/s.Cochin Port Trust be disposed as per rules now in force. Technopark and Thrissur Corporation were present at the time of hearing by the Commission.

Petitioner has stated as follows.

As per Kerala Electricity Surcharge (Levy and Collection) Act 1989 and Rules dated 3rd October 1992, every consumer availing energy at high tension and extra high tension from KSEB either directly or through other Licensees shall pay every month the surcharge payable under Section 3 of the Act along with the electricity charges due for the month.

Hence the petitioner has to collect the surcharge from their HT consumers and remit it together with the surcharge for their own HT consumption after retaining one percent towards collection charges. But KSEB is having the practice of billing surcharge

@ 2.5 paise per unit for the entire units of energy drawn from KSEB. The anomaly was pointed out by the Chief Electrical Inspector to Govt. of Kerala vide their report addressed to KSEB vide letters dated 21-04-04, 21-11-06 and 24-07-07. As KSEB is not having any data about the energy distributed by the petitioner to LT consumers, HT consumers and self consumption separately, but they are raising the invoices incorporating the surcharge on the entire quantity of power supplied to the petitioner. This was brought to the notice of the Special Officer (Revenue) of KSEB vide letter dated 18-05-07 by the petitioner and was requested not to collect surcharge from May 2007 onwards. It was pointed out that Licensee shall calculate surcharge each month and remit it to Govt.

In spite of repeated requests, KSEB continues to levy surcharge on the entire power drawn by the petitioner. From the month of June 2007 onwards petitioner is paying the electricity charges after deducting the surcharge demanded by KSEB.

Petitioner has requested for intervention by the Commission in the matter and to give direction to KSEB to stop the practice of billing surcharge on the whole consumption.

2. Hearing on the Matter

During hearing on 13th March 2008, by the Commission the petitioner submitted as follows.

Petitioner is drawing about 280 lakh units of electricity per annum from KSEB. KSEB is billing the consumption including surcharge @ 2.5 paise per unit for the entire units drawn. As per Kerala Electricity Surcharge (Levy and Collection) Act 1989, all HT & EHT consumers have to pay 2.5 paise per unit towards surcharge for the units consumed and the Licensee has to collect and remit it to Government. KSEB is billing surcharge on the entire units drawn by the petitioner whereas as per the Act, surcharge is to be collected from HT /EHT consumers only. Petitioner further stated that they have represented to KSEB that they will collect surcharge and remit it to Government.

Representative of Thrissur Corporation supported the views of the petitioner. Thrissur Corporation is directly remitting the surcharge collected to the Government.

The Respondent KSEB has stated that Rule 3 provided for the time and manner in which surcharge is to be collected. Surcharge is to be collected on all units irrespective of whether power is drawn by a Licensee or consumer. Also, if surcharge is not paid to Government on time, interest will have to be paid. Government have exempted KDHPCPL, Thrissur Corporation and Technopark from paying surcharge to KSEB. Other Licensees are paying the amount collected to KSEB only. What is being done is as per the rule only. Respondent further stated that as far as KSEB is concerned, licensees are drawing power at HT / EHT and hence are liable to pay surcharge on the entire units drawn.

Petitioner also stated that they are also a Licensee. By collecting surcharge on the entire consumption, LT consumption is also included whereas LT consumers are exempted from paying surcharge. Petitioner stated that Electrical Inspectorate also has pointed out that levying surcharge on the entire power drawn by them is not correct.

Respondent reiterated that they are following the existing rules only and that Electrical Inspectorate has no authority on this issue and that petitioner has violated the rules.

3. Commission's Findings

- a. Respondent, KSEB has reiterated that they have followed the existing rules only. Rule issued in 1992 was based as per the provisions contained in Kerala Electricity Surcharge (Levy and Collection) Act 1989. Hence the issue has to be interpreted on the basis of the provisions of the said Act.
- b. The Electricity Surcharge (Levy and Collection) Act 1989 defines the term "consumer" and also gives an explanation for treating the consumption by a Licensee. The definition of consumer is also detailed in the Act as to avoid any confusion regarding whether Licensee receiving power from KSEB can be treated as a consumer. As per the definition, consumer does not include a Licensee to whom energy is supplied by KSEB for supply to others. Also it is clearly stated that if a Licensee uses energy generated by himself or supplied by KSEB, only that part can be treated as a 'consumer'.
- c. Section 3.a of the said Act 1989 provides for levy and collection of a surcharge on all HT and EHT supplies of energy made by KSEB either directly or through other Licensees. Thus the intention is to collect surcharge only from consumers and not on the entire consumption of Licensees. Also if a Licensee receiving power from KSEB at HT / EHT is distributing it to only LT consumers, then there is no question of levying of surcharge. But as per the argument of KSEB, Licensee has to pay surcharge. Thus the stand taken by KSEB is not correct and is against the provisions of the said Act 1989.
- d. As long as Government does not exempt from paying surcharge, licensees have to pay surcharge collected from consumers to KSEB.

4. Commission's Order

Respondent KSEB cannot levy surcharge on the entire power drawn by the petitioner. It should be limited to energy consumed by HT /EHT consumers connected to the distribution system of the petitioner. The same rule will be applicable for other Licensees also. The rate of surcharge will be at the rates fixed by Government of Kerala from time to time.

Sd/-
M.P.AIYAPPAN
Member(F)

Sd/-
C.ABDULLA
Member (E)

Sd/-
C.BALAKRISHNAN
Chairman

Authenticated Copy for issue

Secretary (in charge)