

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

**Present: Shri T.M.Manoharan, Chairman
Shri.K.Vikraman Nair, Member
Shri. S. Venugopal, Member**

OP No 27/ 2015

In the matter of: Categorization of tariff for electricity connection of unit of SreeGokulam Food and Beverages (P) Ltd, Chalakudy, manufacturing packaged drinking water

SreeGokulam Food and Beverages (P) Ltd.,
Konnakuzhy P.O., Athirampilly Road, Chalakuddy : Petitioner

Kerala State Electricity Board Ltd. : Respondent:
VydyuthiBhavanam,
Pattom, Thiruvananthapuram.

Order Dated: 11th September 2015

K. Vikraman Nair, Member

1. The petition has been filed under Regulation 22(d) of KSERC (Conduct of Business) Regulations, 2003 as directed by the Hon High Court of Kerala in Judgment dated 29-08-2014 in WP(C) No 27871 of 2013 (H). The Hon High Court has directed the petitioner to approach the KSERC in a petition seeking clarification with respect to the tariff applicable for the activity of manufacturing of packaged drinking water carried out by the petitioner and the Commission to take an appropriate decision after hearing the parties at the earliest possible, at any rate within a period of two months from the date of receipt of the petition.

The petitioner is a consumer of electricity with consumer No.9745, having power allocation for using 13 KW of electricity. KSEB Ltd. changed the tariff of petitioner company from LT IV Industry to LT VII A Commercial unilaterally without affording to the petitioner any opportunity of being heard.

Prayer

The Petitioner has prayed that the Commission may fix the tariff applicable to electricity connection of the unit of SreeGokulam Food and Beverages (P) Ltd,manufacturing packaged drinking water.

Hearing of the petition

2. In the petition filed and also in the hearing held on 21-7-2015 SreeGokulam Food and Beverages (P) Ltd. stated as follows:

The petitioner is a consumer of electricity of KSEBLtd with consumerNo: 9745 having power allocation for using 13 kW of electricity. KSEBLtd had unilaterally changed the tariff of the petitioner from LT IV Industrial to LT VII A Commercial. KSEB Ltd had issued an assessment order dated 26-06-2013 for Rs 17,19,455.00 and directed the petitioner to remit Rs 9,80,129.00 being the amount of short assessment, commencing from 2008. The petitioner is paying the current charges in the Commercial tariff under protest.The Hon High Court in the interim order dated 13-11-2013, restrained KSEB Ltd from realizing the current charges under LT VII A Commercial category.The petitioner company is manufacturing packaged drinking water and the manufacturing process involves filtration,ozonisation and ultra-violet (UV) treatment and a new product is manufactured for sale and consumption. Hence the activity is purely industrial in nature and categorization of petitioner's industrial unit under LT VII A (Commercial) is illegal. As per the schedule of tariff published by the respondent 'unit carrying out filtration and packing and other associated activity using extracted oil brought from outside' is included in LT VII A category. Petitioner

stated that in the industrial unit of the petitioner, no extracted oil is being used in the manufacturing process. Therefore, the respondent ought not have included the petitioner's unit in Tariff LT VII A (Commercial) for the purpose of assessment of the electricity charges.

3. In the hearing held on 21-7-2015 and in the response dated 20-7-2015 KSEB Ltd. has stated as follows:

- (i) The petitioner is a consumer of Electricity under Electrical Section, Pariyaram bearing consumer No. 9745 and is engaged in the business of filtering and packing of drinking water. The petition was filed in compliance of the directions issued by the Hon. High Court vide the judgment in Writ Petition W.P. (C) No.27871 of 2013-H dated 29th August 2014.
- (ii) Regarding the production of packaged drinking water, KSEB Ltd submitted that water is the nature's gift and there is no production of water involved in the manufacturing process of packaged drinking water. KSEB Ltd. stated that according to the petitioner the process involved in the production of packaged drinking water are filtration, ozonisation and ultra-violet treatment only, besides packaging. The activities involved in the manufacturing process for packaged drinking water are similar to the activities of units carrying out filtering and packing and other activities using extracted oil brought from outside which is categorized under LT VII A Commercial Tariff. The only difference between the manufacturing of packaged drinking water and units carrying out filtering and packaging and other activities using extracted oil from outside are, in the latter the oil is brought from elsewhere and there is no manufacturing process of oil or extraction of oil. In the case of manufacturing of packaged drinking water the water is the nature's gift and hence there is also no extraction or production of water through other means. The petitioner has been using the water available as nature's gift and after filtration, ozonisation and ultra-violet treatment, it is packed in pet bottles for sale. The sale of packaged drinking water is at a commercial rate and the petitioner himself

has been fixing the rate for resale after accounting all costs involved in the manufacturing process of packaged drinking water. As per prevailing "Schedule of Tariff and Terms and Conditions of retail supply of electricity" the tariff applicable to units carrying out filtering and packaging and other activities using extracted oil from outside are under LT-VII A Commercial tariff. Hence the electricity used for the manufacturing of packaged drinking water shall be under LT VII (A).

- (iii) Commission vide the order dated 28th January, 2013 in petition No.13/2012, (KSEB vs Vianney Enterprises) has affirmed that, 'the activity including filtering, refilling and packing of oil' brought from outside shall be categorized under LT-VII (A) Commercial Tariff.
- (iv) Hon. APTEL vide the judgment dated 7th August 2014 in Appeal Petition No. 131 of 2013 has endorsed the order of the Commission , dated 28th January 2013 in petition No. 13/2012. The judgment of the Hon. Tribunal dated 7th August 2014 in Appeal Petition No. 131 of 2013 was not challenged before the Hon. Supreme Court. The manufacturing process of packaged drinking water involves filtering, refilling and packaging of water. There is no process of production of water by artificial means. Hence KSEB Ltd contended that the appropriate tariff applicable to the petitioner is LT VII(A) Commercial.

Analysis

4. The Hon. High Court vide the judgment in Writ Petition W.P. (C) No.27871 of 2013-H dated 29th August 2014 directed the petitioner to approach the KSERC in a petition seeking clarification with respect to the tariff applicable for the activity of manufacturing of packaged drinking water carried out by the petitioner and the Commission to take an appropriate decision after hearing the parties at the earliest possible, at any rate within a period of two months from the date of receipt of the petition. Relevant portions of the judgment is extracted here under.

“5. On a perusal of the Schedule of tariff for retail supply, which is approved by Kerala State Electricity Regulatory Commission (KSERC) it is noticed that the category of consumers mentioned under LT-VII A are mainly commercial consumers and it includes, “unit carrying out filtration and packing and other associated activities using extracted oil brought from outside”. But it does not include either manufacturing or filtering or purification or packing of drinking water. At the same time tariff applicable under LT IV category which are industrial loads includes pumping of water for non-agricultural purposes, along with so many other industrial activities. Going by the categorization, it can be seen that a lot of activities which does not actually include any manufacturing process and production of a different product from the raw material is also included under industrial category. Therefore, question arises as to the unit engaged in manufacturing of packaged drinking water can be included under commercial tariff, treating the same as similar in nature of the activity in the case of filtering and packing of extracted oil, is a matter to be decided.

Going by the provisions contained in the Electricity Act, 2003 and the Regulations made thereunder, the competent authority to decide the issue relating to the fixation of tariff, is the KSERC/ Provisions contained in the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003 provides that the Commission is entitled to initiate proceedings upon petition filed by any affected party, under Regulation 22(d) . Therefore this court is of the opinion that the petitioner can be given liberty to agitate the above said issue with respect to fixation of tariff, before the

KSERC. It is for the KSERC to take a decision considering all aspects of the issue involved.

Hence this Writ petition is hereby disposed of by directing the petitioner to approach the KSERC in a petition seeking clarification with respect to the tariff applicable for the activity of manufacturing of packaged drinking water carried out by the petitioner. If any petition is submitted in this regard before the KSERC, within a period of 2 weeks from the date of receipt of a copy of the judgment, the same shall be considered by the Commission with opportunity of hearing afforded to the petitioner and the authority of the Board. An appropriate decision shall be taken thereon at the earliest possible, at any rate within a period of 2 months from the date of receipt of this petition.

5. Section 62 of the Electricity Act 2003 deals with the determination of tariff. Sub section (3) of Section 62, stipulates that the consumers will not be shown undue preference by the Commission while determining the tariff under the Act, but they may be differentiated according to their load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. Therefore, categorization of consumers is possible on the basis provided in Sub section (3) of Section 62 and the Commission can decide, the category in which a consumer should be placed. While designing the tariff structure, the Commission has to consider various competing or conflicting factors. Since electricity is the life line of all developmental activities in the society and is a tool for engineering socio economic development, tariffs of electricity for various categories of consumers are fixed taking into consideration the role played by such categories of consumers in the process of socio economic development. The nation is committed to provide electricity to every household including those of below

poverty categories. Therefore the domestic consumers in the low income group as well as in the below poverty line category are supplied with electricity at subsidized tariffs. Similarly for agriculture as well as for charitable institutions also electricity is supplied at subsidized rate. For providing such subsidies to such categories, some other categories such as commercial and private institutions are charged at higher tariff and the amount collected in excess over the cost of supply is provided as cross subsidy to the poor consumers. While determining tariff the Commission has to ensure that cross subsidy is not increased as stipulated in clause (g) of Section 61 of the Act. The said clause does also stipulates that the tariff shall progressively reflect the cost of supply of electricity. While determining the tariff the Commission has to ensure that the licensee can recover cost of supply and bridge the revenue gap if any. It should also be ensured that while reducing cross-subsidies, for the subsidizing categories, it should not result in tariff shock to any category of consumers. It is in view of the above facts, Section 62(3) allows the Commission to differentiate the tariffs for different consumers on one or more of the criteria mentioned above. Considering the above aspects, the Commission has been assigning tariffs for different categories of consumers, as per the tariff orders issued from time to time. Accordingly the Commission has issued the latest tariff order dated 14.08.2014. The "Schedule of Tariff and Terms and Conditions for Retail Supply of Electricity by Kerala State Electricity Board Limited and all other Licensees with effect from 16-08-2014 to 31-03-2015" has also been published. Validity of the said order has been extended further up to 30.09.2015 or till the date of issue of new tariff order whichever is earlier. As per the said tariff order the consumers are broadly classified into extra high tension, high tension and low tension categories depending upon the voltage level at which electricity is supplied and such categories are further divided into consumer categories such as domestic, agriculture, industrial, commercial etc depending upon the purpose for which the electricity is consumed. In the low tension supply the consumer categories under consideration for the purpose of resolving the issue presented before the Commission are LT IV Industrial and LT VII Commercial.

6. The following consumers are included under LT IV(A) – Industry tariff in the tariff notification dt 14.08.2014

“ Tariff applicable for general purpose industrial loads (single or three phase) which include manufacturing units, 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 water works, sewage pumping, power laundries, screen printing of glassware or ceramic, printing presses including presses engaged in printing dailies, 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, units carrying out extraction of oil in addition to filtering and packing activities carrying out in the same premise under the same service connection, manufacturing rubber sheets from latex , telemetry stations of KWA, dairy, processing of milk by pasteurization and its storage and packing, soda manufacturing units, plantations of cash crops, all non agricultural pumping, drinking water pumping for public by Kerala Water Authority, corporations, municipalities and panchayats, electric crematoria, pyrolators installed by local bodies.”

7. LT VII (A) Commercial tariff is applicable to 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 hotels, 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.

8. The issue to be decided is whether the petitioner namely Sree Gokulam Food and Beverages PvtLtd is to be included in LT VII (A) Commercial or in LT IV Industrial or in any other category. The petitioner has stated that they are manufacturing packaged drinking water and the manufacturing process involves filtration, ozonisation and ultra-violet treatment and a new product is manufactured for sale and consumption. During the hearing the Commission directed the petitioner to produce further documents relating to payment of excise duty and such other documents to substantiate their claim that they are industry. M/s. SreeGokulam Food and Beverages (P) Ltd, Chalakkudy has submitted copies of the following documents

- (i) Acknowledgement from the Manager, District Industries Centre, Thrissur on the filing of Memorandum for a Manufacturing Enterprises at the address Pariyaram Panchayat Building No. VII/5 for the Manufacturing of packaged drinking water, 12 lakh litre capacity.
- (ii) License granted by Joint Director, Factories & Boilers Government of Kerala for the above factory.
- (iii) License issued by the Secretary, Pariyaram Grama Panchayat for packaged drinking water and soda.
- (iv) License under FSS Act 2006 issued by the designated officer, Thrissur District food and safety and standard authority of India for Manufacturing, packaging, storage, transporting, sales and service of packaged drinking water.
- (v) Details of E-payment of Excise duty Rs. 2,49,234/- dated 16.4.2015 and Rs. 5,00,000 dated 16.4.2015

9. Thus as per the documents submitted by M/s SreeGokulam Food and Beverages (P) Ltd it has to be concluded that it is a manufacturing unit engaged in production of packaged drinking water. They are using ordinary water as the raw

material which is processed for converting into potable water. They are also paying excise duty for the manufactured product. The licenses granted to this unit also indicate that it is an industrial unit. As per tariff notification dated 14.8.2014 manufacturing units are included under LT IV A Industrial Tariff. From the above it can be concluded that the petitioner's unit is eligible for LT IV(A) industrial tariff. The information gathered by the Commission from various offices of the respondent also indicates that similar units are assigned the tariff under LT IV (A) Industrial.

10. In the hearing held on 21.7.2015 and in the written response dated 20.7.2015, the respondent namely KSEB Ltd has argued that the manufacturing process of packaged drinking water is similar to the activity of filtering and packaging extracted oil brought from outside. As per Schedule of Tariff and Terms and Conditions for retail supply of electricity, the units carrying out filtering and packaging of extracted oil brought from outside are categorized under LT VII A Commercial tariff. This issue has been examined by the Commission. The Hon'ble Supreme Court has already decided the question as to whether refining of edible oil is a manufacturing process or a commercial process. The question whether any manufacturing takes place when edible vegetable oil is processed and refined was considered by the Supreme Court of India in M/s Tungabhadra Industries Ltd vs The Commercial Tax Officer, Kurnool, reported in [1961(2) SCR 14] and it was held as follows

"When raw groundnut oil is converted into refined oil, there is no doubt processing, but this consists merely in removing from raw groundnut oil that constituent part of the raw oil which is not really oil. The elements removed in the refining process consist of free fatty acids, phosphatides and unsaponifiable matter. After the removal of this non-oleic matter therefore, the oil continues to be groundnut oil and nothing more. The matter removed from the raw groundnut oil not being oil cannot be used, after separation, as oil or for any purpose for which oil could be used. In other words, the processing consists in the non-oily content of the raw oil being separate and removed, rendering the oily content of the oil 100 per cent. For this reason refined oil continues to be groundnut oil

within the meaning of rules 5(1)(k) and 18(2) notwithstanding that such oil does not possess the characteristic color, or taste, odour, etc. of the raw groundnut oil."

Thus, it was held that prior to refining, it was raw groundnut oil and after refining even though the characteristic color, taste and odour might have changed it remained groundnut oil. Thus the Hon'ble Supreme Court held that there was no manufacture of a new and distinct commodity in the case of refining of oil. Therefore the Commission is perfectly justified in assigning commercial tariff to the units engaged in filtering and packing of extracted oil brought from outside.

11.The process involved in the manufacture of packaged drinking water is not similar to the process involved in filtering and packaging of extracted oil brought from outside. In the case of manufacture of packaged drinking water, the raw material namely ordinary water which is not safe for drinking, is converted into potable water by various processes such as filtering, ultraviolet ray treatment, ozonisation etc. In view of the above facts, it is found that the tariff applicable to units manufacturing packaged drinking water is LT IV Industrial.

Order

12.The Commission hereby orders that the tariff applicable to the electricity used for the manufacture of packaged drinking water by the industrial unit of the petitioner namely Sree Gokulam Food and Beverages (P) Ltd, Chalakudy, shall be LT IV (A) Industrial. The respondent is directed to take appropriate action to implement the order on or before 31.10.2015 and report compliance.

The petition is allowed as above and it is ordered accordingly.

Sd/-
S. Venugopal
Member

Sd/-
K.Vikraman Nair
Member

Sd/-
T.M.Manoharan
Chairman

Approved for issue

Santhosh Kumar K.B
Secretary