

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

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

**Clarification Petition 1/08
in
D.P. No. 39/08**

Date : April 23,2009

1. M/s Seafood Association of India
Seafood House, Wellington Island
Cochin – 682 003
2. Abdu, Consumer No. 8565 – 0 -- Petitioners
10/763, (New No. 7/119)
Chandiroor, Alappuzha
3. Bell Foods, Consumer No. 5562012511
Pallichal Road, Cochin – 5
Represented by its Proprieter, Vikraman
4. P.C. Cherian, Consumer 55662007774 – 3
Managing Partner
Chemmeens (Regd)
Karuvilipady, Cochin – 5
5. Fathima Sea Foods (Old K.E.K. Industries), Consumer No. 5562007905 – 7
7/464-65, Kochangadi, Cochin – 2
Represented by its Proprieter, V.P. Abdul Basheer
6. Freeze Engineering Industries Pvt. Ltd., Consumer No. 5562007919
XVI/1109, Fisheries Harbour, Cochin – 5
7. K.G. Lawrance, Consumer No. 5562077827 – 3
GEO Seafoods, Palluruthy, COCHIN
8. Toyo Sea Foods, Consumer No. 5562007866
Kochangadi, Kochi – 5
Represented by its Proprieter, B.A. Rasheed

9. Kanthi Bai, Managing Partner
International Freefish Exports, Consumer No. 16364
A.P. II/29, Aroor – 688 534, Alappuzha
10. Kay Kay Exports, Consumer – 4412
Ravi Varma Mandhir, T.D. Road
11. Premachandra Bhatt, Consumer No. 5562014892
Managing Director, Managala Sea Products
Plot No. 8, Fisheries Harbour, Thoppumpadi, Cochin – 5
12. Valayalat Exports, Consumer No. 18161
Plot No. 18, Chemical Industrial estate
Aroor, Alappuzha
13. Lalji, Consumer No. 16707
Managing Director, Sea Bay Exports (P) Ltd.
No. 1/183, Industrial Area, Aroor, Alappuzha

Rep. by Advocates

**Blaze. K. Jose &
Tom. K. Thomas**

Kerala State Electricity Board

-- Respondent

Rep. by

Deputy Chief Engineer, TRAC, KSEB

In the matter of
Clarification on the Order dated 1-9-2008 on DP39 of 2008 and connected matters

ORDER

Background

The petitioner is the Association of Sea food manufacturers and exporters and other petitioners are its members engaged in the business of sea food manufacturing. Earlier the petitioners had approached the Commission by filing petitions against the tariff revision order no. T.P. 23 of 2006 and T.P. 30 of 2007 with effect from 01-12-2007 placing the petitioner sea food processing units as well as other sea food processing units of LT-IV industrial category under LT- VII (A) Commercial. The Commission after hearing both the parties and a detailed consideration of the cases before it went on to hold that:

“In the light of the discussions above, the Commission orders that ‘seafood processing units’ in LT shall be billed under LT IV industrial category. The concern of respondent Kerala State Electricity Board that approved ARR would be distorted is unfounded as the revenue implication due to category change was not factored in the approved ARR. The LT consumers engaged in the freezing and cold storage activity shall be billed under LT VII (A) commercial as mentioned in the Tariff order 2007. Similarly, the sea food processing units in HT IV commercial as provided in the tariff order 2007. With these directions, the above petitions are disposed off.”

However, now the petitioners contend that, the Board has issued bills placing the petitioners under LT VII A commercial category which is erroneous. The petitioners have approached CGRF, Ernakulam raising disputes on the bills. But the CGRF has opined that the same need clarification from the Commission itself. Accordingly, the petitioners had approached the Commission with a clarification petition on the ground that KSEB had issued bills placing the petitioners under LT VII A commercial category. It is also the allegation of the petitioner that the KSEB had misinterpreted the order of the Commission by arbitrarily placing the cold storage, treating it as a stand alone commercial cold storage unit, in spite of the order of the Commission placing all the sea food processing units under LT IV industrial category. Petitioners also stated that they are not carrying out any commercial cold storage activity but storing only the sea food processed in their own unit as a part of the processing activity. The processing, freezing and cold storage of a seafood processing unit cannot be segregated and it is a continuous activity in their manufacturing process.

It is also the case of the petitioners that treating the electrical connection to the cold storage as independent stand alone cold storage which are either situated adjacent or in the opposite side of the road and only because they are having separate door number and treating them as separate unit, in spite of the fact that processing & storing are part of a continuous activity. The petitioners are constrained to take a separate premises for the purpose of storing as there is no enough road access facilities for the container lorries to load the manufactured goods and thereby transport the same to the harbor.

It is also the contention of the petitioner that freezing and cold storage being intrinsic and integral part of the seafood processing industry it cannot be segregated on the ground that they are having two different electric connections or it is placed in two different buildings and two different premises. The petitioners also brought to the notice of the Commission that they have approached the Consumer Grievance Redressal Forum, raising disputes but CGRF have expressed that the same needs clarification from the Commission itself.

The petitioners also attempted to canvass an argument that what is to be gathered from the order of KSERC is that such consumers engaged in the seafood processing who have freezing plant and cold storage as a part of their processing activity is to be billed under LT IV tariff and whereas other LT consumers who are doing the activity of freezing plant and cold storage only as a part of the processing activity in their own name, is to be billed under LT VII.

The Petitioners also attempted to draw Section 62 (3) of the Electricity Act 2003 and Regulation 46 in support of their arguments. It was the case of the petitioners that the classification and the categorization are done by the Hon'ble Kerala State Electricity Regulatory Commission very broadly and the fixation and placing of each consumer in particular tariff is to be done by KSEB in a fair manner, understanding the spirit of the tariff revision order. Merely placing or fixing the consumer in a higher tariff in order to charge a price in excess of the price fixed by the Commission and thereby to make huge profits, ignoring the spirit or purpose of the tariff order and broad categorization will only lead to chaos and destruction of industry in the state. The interpretation given by KSEB is unsustainable. The classification must be founded on an *intelligible differentia* which distinguishes those that are grouped together from others and the differentia must have a rational relation to the object sought to be achieved by the law. Therefore the petitioners prayed for a clarification of the Order in D.P. 39 of 2008 and other connected cases to the effect that the benefit of LT- IV industrial tariff granted to the sea food processing unit shall also be extended to those cold storage unit which are part of the manufacturing process either in the same premises or in nearby plots having separate door number or even in 2 different premises if the same is owned by the owner of the manufacturing unit and the processed food is stored in the said cold storage in continuation of the processing activities. The petitioners also prayed for an interim relief and sought for a direction to KSEB to permit the petitioners to remit the charges under LT-IV, industrial tariff, pending final decision of the above petition.

In response to the petition, KSEB filed objections vide its letter No. KSEB/TRAC/COMP(R)/ 22/05/124 dated 24-2-2009. They have objected to the petition and stated that there is no apparent error in the order and there is no reason to exercise the review jurisdiction of the Commission. Board further stated that the Commission may take appropriate decision in the matter.

Public hearing on the matter

The Commission posted the petition for admissibility on 25th February 2009. After hearing the parties, the matter was admitted and posted for further hearing on 16th March 2009. On 16th March, 2009, the Advocate for the petitioners and the representatives of KSEB were heard in detail. KSEB had filed further objections vide their letter No. KSEB/TRAC/COMP(R)/ 33/05/174 dated 13-03-2009. Later the petitioners filed a reply statement to the objection filed by KSEB dated 21st March 2009 reiterating their contention put forward in their petition.

KSEB put forward the contention that there is no room for doubt in the Order issued by the Commission. The petitioners are trying to avoid charging under LT VII A with strange and unsustainable claims; the tariff claimed by the petitioners for commercial freezing or cold storage units cannot be equated with processing units. KSEB further contented that the prayer before the Hon'ble Commission to review the order in D.P. 39 on the ground that even though they were registered as separate consumers operating in different premises, either near to seafood units or operate in other buildings or at places away, the products from sea food units are stored in these independent cold storages. The main contention of KSEB is that when multiple connections are availed in one name at different premises for different uses under different tariff, they cannot be treated as a single unit and treated as a single consumer and be assigned with the same tariff. According to KSEB legal status of each unit is independent since each connection is provided to a consumer under separate agreement. Hence chilling/freezing unit registered as separate consumer and assigned with separate consumer number may not be treated as part of another consumer. The service connection is provided to one consumer based on a service connection agreement executed by him for a specified 'premises'. The dues, liabilities, etc. for a particular connection are attached to the 'premises'.

It is also the apprehension of KSEB that any attempt to deviate or modify the definition of the term 'premises' would have a wider ramification by throwing open avenue for disputes through wrong categorization. The Board contented that it had implemented the Orders of the Commission in its true spirit and the petitioners are attempting to question the Commission itself. Therefore the LT VII (A) tariff applied to independent freezing plants/cold storages are fully in order and in consonance with the tariff assigned by the Commission vide the schedule of tariff and terms and conditions for retail supply by KSEB with effect from 01-12-2007 vide order dated TP 23 and TP 30 of 2007 dated 26-11-2007 under LT- VII(A).

In support of its arguments KSEB also submitted some information gathered from the field about the petitioners to show that if two connections are registered in two different names and provided in two different premises for different purposes, the two connections cannot be treated as for the same purpose and hence cannot be assigned the tariff for seafood processing units. KSEB also pointed out that in some cases transfers are not registered and in some cases processed food from some other firms are stored in the cold storage of the petitioner. In the case of the 12th & 13th petitioner the LT connection itself is for cold storages only. On these grounds KSEB prayed for rejection of the clarification petition filed by the petitioners. KSEB also filed copy of statements filed before CGRF, Ernakulam showing details gathered from field reports.

Analysis of the Commission

The Commission heard both the parties in detail and analysed the petitions & reply statement of KSEB on the clarification petition. At the outset, it is to be pointed out that the Commission in the original order, made it clear that it is not appropriate to go into larger issue of consumer categorization and the Commission has confined itself to the limited issue of billing of seafood processing units in the existing tariff category, in the absence of separate category 'seafood processing' in the existing LT tariffs. The Commission held that seafood processing units were to be billed under LT industrial and the freezing and cold storage units should be billed under LT VII (A) Commercial as provided in the Tariff Order 2007. The petitioners, in this petition sought clarification on the order of the Commission. The petitioners also alleged that the Board had misinterpreted the order by arbitrarily placing the cold storage treating it as a standalone commercial cold storage unit. Thus the Commission admitted the petition for detailed hearing.

According to the Commission, no clarification is required on the Order dated 1-9-2008. However for the general understanding the Commission would like to state the following. As per Section 62 of the Act, the Commission determines tariff for Retail Supply. Supply is defined in the Act as "sale of electricity to a consumer or a licensee". Hence tariff is determined for sale of electricity to a consumer. A consumer is a person who is supplied with electricity for his own use by a licensee, and includes a person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee. Accordingly, tariff determined by the Commission is applicable for a consumer having specified consumer number.

In the impugned order the Commission neither determined the tariff nor changed the tariff, however clarified the Order dated 27-12-2007. The Commission ordered that consumers engaged in seafood processing having activities other than 'freezing' and 'cold storage', who were billed under the category of 'freezing plants' and 'cold storage' prior to 1-12-2007 shall be continued to be billed under LT-IV. Since in the Tariff order dated 27-12-2007, the Commission placed the 'freezing plants' & 'cold storage' alone under LT - VII Commercial. Hence the order is clear in all respects that any consumer who has taken connection for freezing or cold storage shall be billed under LT- VII only. The argument of the petitioner that the activity of processing and storing being part of an integrated activity and as it cannot be differentiated and categorized separately cannot hold good if separate connections are taken for each activity. Each separate connection will necessarily be a separate consumer for all practical purposes. At present, the benefit of LT- IV industrial tariff is being enjoyed by seafood processing units having integrated activity with single LT connection. When separate connection is taken for freezing and cold storage, the same has to be billed as per the existing tariff in force for which separate category is present in LT- VII Commercial. Hence, the contention of the Board is justified that if a separate connection is given for different purposes, then there is a separate agreement and the consumer should be treated as separate consumer. In other words, where a separate connection is taken for a specified purpose it shall be the basis for determining the category. The same cannot be hooked with another activity in order to gain material advantage. Further such argument or interpretation would open the doors for plethora of unnecessary interpretations paving way for unwanted and unfounded disputes which cannot be entertained at any cost.

During the hearing, KSEB stated that on field verification of the petitioners premises, it is seen that in the cold storage premises, the finished products of some other units are stored in the premises of the petitioners. Also the Commission staff has pointed out that the statements made by the petitioners in the present petition and the original petition under affidavit are different. Though the Commission is empowered to proceed on the difference in the sworn statements, it is not intending to proceed further on these grounds.

On the role of the CGRF, Commission strongly deprecates the practice of CGRF in sending the petitioners to seek clarification on an order of the Commission which itself is clear and unambiguous. The CGRF cannot delegate its duties and the process of adjudicating indirectly on the Commission. The powers and functioning of the CGRF are well defined in KSERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005 and the CGRF have to function accordingly. Further appellate powers have been vested with Ombudsman. Hence, the Commission hereby directs that all CGRF shall conscientiously follow the regulations in disposing off the petitions. A copy of this order shall be given to all CGRF for compliance.

Order of the Commission

As stated above, the Commission is of the view that the Order dated 1-9-2009 is clear and no clarification is required except to the extent stated above. The Commission hereby reiterates that seafood processing units shall be billed under LT IV industrial category and the consumers engaged in freezing and cold storage activity shall be billed under LT- VII (A) commercial as mentioned in the Tariff Order 2007. If a separate connection is taken for the purpose of cold storage/freezing it shall be deemed to be billed under LT- VII (A) commercial. With the above observations, the petitions are dismissed.

Sd/-

M.P. Aiyappan
MEMBER (F)

Sd/-

C. Abdulla
MEMBER (E)

Sd/-

C. Balakrishnan
CHAIRMAN

Approved for issue

Secretary-in-Charge