



Regarding the redressal of the grievances of the consumers, Sub section (5) of Section 42 of the Electricity Act, 2003 (Central Act 36 of 2003) provides for establishment of a Forum for redressal of the grievances of the consumers in accordance with the guidelines as may be specified by the State Commission. Sub section (6) of Section 42 of the Act provides for appointment of an Ombudsman by the State Commission for dealing with the appeals on non-redressal of grievances by the Forum and Subsection (7) of Section 42 provides that the manner and time of disposal of the appeals by the Ombudsman may be specified by the State Commission. The "Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005" had already come into force on 14.10.2005.

1.3 Determination of Tariff under Section 86(1) (a) of the Act, is one of the major functions of the Commission, wherein the tariff categorization would be covered. However, in all the previous Orders on ARR&ERC of the Board, the Commission approved the continuation of the existing Tariffs and Other Charges as there were no representations during the public hearings on tariff re-categorizations of consumers under various classifications, as well as there were no filings of Tariff Petitions from the Board. The Commission had not taken up *suo -motu* tariff rationalization because revenue gap of the Board was not necessitating a Tariff revision. In the past three years, the Commission had endeavored to contain the increases in expenditure of the Board by the applicability of an effective regulatory regime and the Commission was able to resist tariff increase in the State of Kerala during FY 2003-04 and FY 2004-05 and FY 2005-06. Subsequently, in the Order on ARR &ERC of the Board for the FY 2006-07, the Commission directed the Board to submit a detailed Tariff petition, rationalizing the existing historical tariff.

1.4 Therefore, the petition could be admitted only on the basis of the directive of the Honourable High Court in the judgment in WP(C) 34322/2003, WP(C) 34149 of 2005 and other connected WPs and WAs.

1.5 Thus, the Commission admitted the petition as TP-19(2 ) on 30.3.2006 and copy of the petition was served vide letter No KSERC/TP 19/2006/282 dated 1.04.2006 to the respondents for their comments.

1.6 KSEB was empowered to determine tariff and Terms and Conditions for Supply as per Section 49, 59 and subsection (j) of Section 79 and other enabling provisions under repealed statute, viz., The Electricity (Supply) Act, 1948. Accordingly, KSEB revised the tariff with effect from 10.08.2001 vide notification dated 7.8.2001. The LT consumers of the Board were classified under various categories viz., L.T.I. Domestic, L.T.II Colonies Supplied at L.T.(Single or Three phase), L.T.III - Temporary Connection for Illumination, Exhibition, Festivals, Public meetings and Fairs (Single phase or Three phase), L.T.IV - Industry, L.T.V - Agriculture, L.T.VI - Non Domestic (Single or Three

phase), L.T.VII - Commercial and L.T.VIII - Temporary Extension (Single phase or Three phase).

1.7 The “packing units of cashew kernels” were engaged exclusively in packing of cashew kernels processed elsewhere and were billed at LT VII (A) Commercial tariff. The proprietor of one of the “packing units of cashew kernels”, Shri G. Oommen, St Mary’s Cashew Factory, Puthoor, Kollam, consumer No: 615 of Puthoor Electrical Section of the Board, filed OP No. 31706/02 before the Hon’ble High Court of Kerala against billing the electricity consumption of their centralized packing center under L.T. VII (A), Commercial Tariff; it was reported that in this “packing unit of cashew kernels” the processed kernels obtained from various factories were pooled, packed and sealed for export. In the Judgment dated 5.03.03 on the said OP, the Hon’ble High Court in the single bench directed the Deputy Chief Engineer, Electrical Circle Kottarakkara to take decision on the earlier representation made “in the matter of higher tariff charged under L.T. VII (A)category” before the Board’s Assistant Engineer of Electrical Section at Puthoor by the St. Mary’s Cashew Factory, Puthoor dated 1.10.2001. Accordingly, the Deputy Chief Engineer Electrical Circle Kottarakkara issued a note on 26.3.03 and on the basis of this note the Board issued circular No. TRAC/LITG/1/03/96/03 dated 19.04.2003 in which it is stated that the cashew packing units might be charged under commercial tariff.

1.8 The petitioner in OP 31706/2002 and others filed Writ Petitions and Writ Applications before the Hon’ble High Court of Kerala challenging the Board’s Circular dated 19.04.2003. The Hon’ble Single Bench of the Hon’ble High Court dismissed all the WPs on 12.6.2003, upholding the Board’s Circular dated 19-04-2003 and observed that the same was within the powers of the Board.

1.9 The Division Bench of the Hon’ble High Court while admitting the WPs and WAs issued orders on 29.10.2003 preventing the Board from billing the petitioners at L.T.VII (A) and decided to hear all petitions together. The Division Bench of the Hon’ble High Court of Kerala having heard the WPs and WAs, in its common Judgment dated 28.11.2005 observed the following:

“... it would be appropriate that a direction be given to the Kerala State Electricity Regulatory Commission to decide as to whether cashew packing units would fall under LT – IV Industrial Tariff or LT- VII Commercial Tariff. Commission would give opportunity of being heard to the Board officials as well as the petitioners. Petitioners may make available all the relevant materials before the Commission.

In such circumstances, we are inclined to allow all the writ appeals and writ petitions and set aside judgment of the learned Single Judge as well as circular issued by the Board on 19.04.2003 and direct the Regulatory Commission to pass appropriate orders in accordance with law within a period of 4 months from date of receipt of copy of this judgment, till that time the petitioners would be treated as falling under LT-IV Industrial tariff. The KSE Board will place the matter before the Regulatory Commission.”

1.10 Thus, the petitioner prayed the Commission to order that the clarification issued by the Board vide circular dated 19-04-2003 for charging the cashew packaging units under L.T.VII (A) Commercial Tariff was valid and the Board was competent to issue such a classification.

1.11 The respondent, Sri. P. Somarajan, Proprietor, Kailas Cashew Exports, Cheerankavu, bearing Consumer No: 8979 at Edavattom under Ezhukon Section of KSEB submitted his response on 18.6.2006 through advocate Shri. M.R. Anison. It was stated in the submission that their tariff category was changed from LT-IV to LT-VII in the invoice issued by the Board on 13.5.03 and their petition challenging the same was dismissed by the single bench of the Hon'ble High Court of Kerala; and the Judgment against their Writ Appeal No. 1365/03, was disposed along with the connected cases on 28.11.2003, directing the Commission to decide whether the Cashew Packing Units would fall under LT-IV, Industrial tariff or LT-VII, Commercial Tariff. To emphasize that his unit qualify as “factory”, reference was made to the proceedings 1958 KLT 161 and 1958KLT (SC) 116, wherein the process of garbling and packing of pepper for sale was pronounced as manufacturing process; and to elucidate the Manufacturing Vs. Commercial activity, the definition of “manufacturing process” under Section 2(k) of Factories Act and that of “Commercial Activity” under Section 2(4) of Kerala Shops and Commercial Establishment Act were quoted in his response. The respondent ascertained that his unit purchase no cashew kernels from “elsewhere” and kernels converted and processed from raw cashew nuts at their own factories located at various places in the state were only packed in this packing unit for export purpose, which might be deemed as an integral part of the manufacturing process at their factories; a separate central packing center for all their factories was established in 1989 to ensure that packing would be carried out in a pollution free and hygienic atmosphere. The respondent in conclusion pleaded to treat the electricity tariff of the said Cashew Kernel Packing Unit under Industrial Category.

1.12 Further to this in the counter affidavit submitted on 19.7.2006 through his advocate Shri. M.R. Anison, it was stated that there was no resale of cashew at the packing center as mentioned by the petitioner and high standards of quality mandatory in the international market was ensured by the various activities involved in his Cashew Packing Unit.

1.13 The respondent Shri. G. Ooman, proprietor of St. Mary's Cashew Factory, bearing Consumer No: 615 of Puthur Electrical Section of the Board submitted his response through his counsel Shri. K.Y. Johnson on 10.5.2006. The respondent stated that the prayer in the petition was not allowable as the issue referred to the Commission by the Honourable High Court was whether Cashew Packing Unit would fall under LT-IV or LT-VII (A) Tariff category and not the approval or disapproval of the Board's circular dated 19.4.2003; and the Board was incompetent to settle dispute regarding the applicability of a particular tariff classification in view of the provisions of the Electricity Act, 2003, and in turn, the Board was incompetent to issue the Circular in question. The respondent stated that graded kernels from various factories run by the respondent were brought to the centralized packing unit and purchase of kernels from other manufacturers was occasional for making good the shortage in meeting the shipment requirement. The petitioner stated that separate meters for power load and lighting load and static capacitors installed as enjoined in the relevant tariff category as important aspects of the case. The respondent stated that none of the classes under different category of LT consumers in the Board's Tariff order were by themselves exhaustive and the Board might have applied the principle of ejusdem generis to reckon identical consumers in the same classification. The respondent explained the various activities of the process of packing from receipt of kernels to sealing and submitted that the packing activity by itself is an industrial activity. The respondent explained the basics of trade, commerce and business, and referred to the Sections 2(k)(a)(a), 3(k)(b) and 2(j) of the Industrial Dispute Act, Section 2(k) of the Factory Act and stated that in the absence of any definition of Industry, Commerce, Factory etc. in the Electricity Act, 2003, rules or circulars it would be worth to seek help from other enactments where such terms are defined and stated that the respondent had been registered by District Industries Center as Small Scale Industry from 1963.

## **2. Hearing of the Matter**

2.1 The parties to the petition were heard in the proceedings of the Commission held on 24.06.2006 and 20.7.2006 in Commission's Office.

2.2 The Board reiterated its stand and grounds given in the petition. The Board stated that following the direction of the Honourable High Court in disposing the OP No 31706/02, the Deputy Chief Engineer, Kottarakara Circle of KSEB issued a note on tariff category applicable to "packing units of cashew kernels" and based upon this note the Board issued its circular dated 19.04.2003 stating "packing units of cashew kernels" might be charged under Commercial Tariff. The Board stated that the Circular dated 19.4.03 was issued as a clarification with respect to the applicability of tariff to premises where electricity/power was used exclusively for "packing units of cashew kernels". The Board stated that "nature" of Electricity Supply and "purpose" of utilization of Electricity Supply was the main criteria adopted by the Board for categorization of its consumers

and accordingly, electricity /power consumed in the premises used for packing of cashew kernels were considered to be commercial in nature; and premises where power/electricity was used exclusively for packing were only be charged at LT VII and the same was done on material verification only. The Board argued that it's decision to clarify by a circular that stated the packaging activity for sale could be regarded as part of commercial activity and to charge the cashew packaging units under commercial tariff were valid and sustainable. The Board stated that till the constitution of Kerala State Electricity Regulatory Commission, the Board was empowered to determine or revise tariff which had already been admitted by the Commission and the Board was competent to issue clarification as regards categorization in the light of notification existed with effect from 1.08.2001. The Board stated that more or less the same classification of consumers were followed in the tariff revision effected from 1.10.2002, which was notified on 1.11.2002. The Board pointed out that the Commission's Order on the ARR and ERC for 2003-04 permitted to continue the tariff existed as on date and in turn the Board presumed that there was nothing in the tariff contrary to the provisions of the Electricity Regulatory Commissions Act, 1998 or the Electricity Act, 2003 and thus Board was well within its purview and has not violated any of the regulations/statute.

2.3 The counsel of St Marys Cashew Factory, Puthoor, Kollam stated that the Commission alone has the jurisdiction under Section 61, 62 (1)(d) read with Section 86(1)(a) of Electricity Act, 2003 to deal with the matters regarding tariff and the Board was absolutely incompetent to issue the circular dated 19.4.2003 in question. The respondent objected the logic of the statement in the Board's Circular that the packing of articles for sale was part of commercial activity and hence cashew packing units might be charged under commercial tariff and stated that the Board had neither conducted nor collected any statistics in this regard and therefore the circular was bereft of factual support. The respondent argued that the entire process from sieving to sealing were done using electricity powered machinery like vibrators, vita pack machine etc. and even if goods were purchased from outside, the process of packing come within the scope of manufacturing process. Therefore the respondent pleaded to categorize them under Industrial LT-IV Tariff.

2.4 The counsel of Kailas Cashew Exports stated that their unit comprised of tin packing and flexi pouch packing system with accessories, air compressor, carton processing machine, Carton sealing /taping machine, vacuum pump and vacuum cleaner, Filling machine, metal detector, and machinery for grading and air curtains and their packing process form an integral part of the manufacturing process. The respondent added that Cashew being universally accepted as food, packing of the same should be done in a highly hygienic manner in accordance with the specifications laid down by foreign buyers. He stated that the cashew kernels produced from imported raw cashew nuts and from their own factories were being packed in Kailas Cashew packing. The

respondent stated that the Licence to Kailas Cashews packing Center had been issued under the provisions of the Factories Act, 1948 and in view of the above, the respondent stated that their packing center could not be treated as commercial. The respondent stated that Cashew being a perishable food the packing procedure followed in the Cashew Packing Units were essential in order to ensure its shelf life and edible quality.

2.5 Representative of South Kerala Exports endorsed the views expressed by the above two firms.

### **3. Commissions Findings**

3.1 On the basis of the hearing conducted on 24.06.2006, the Dy Director of the Commission was ordered to inspect M/s St Mary's Cashew Factory, Puthoor, M/s Kailas Cashew Exports, Cheerankavu and M/s Bismi and to report the Commission with detailed note on the request of the firms. The site inspection was conducted on 7.7.2006 in the presence of representatives of respective consumers and the Board. The site inspection report regarding the details of connected electrical load was prepared at site and copy was served to the representatives of the Consumer and the Board.

3.2 The site inspection appraised about the electrical energy utilization of these units as below.

*"The cashew kernels received in these "packing units of cashew kernels" are weighed manually. There are two separate packing schemes in all the factories, viz. the TIN packing and flexible polythene POUCH packing.*

*As far as the TIN packing is concerned the kernels are manually fed to vibratory sieves. The electrical load at this stage comprise of vibrator motor and the motor of the vacuum suction. The vacuum sucks off the dust particles. The output of the sieving machines is filled by vibratory filling machines in the tins followed by gas flushing and tin sealing. The electrical load at this stage comprises of motive loads of vibratory filling machines, gas filling system and sealing machine.*

*In the case of POUCH packing, the output of the sieving machine is passed through metallic particle separator on its way to the filling machine. The filled pouches are vacuum packed and sealed. Pouches so sealed are manually placed into cases and strapped. The strapped boxes are put in the cardboard cartons and the cardboard cartons are strapped. The electrical load in this section consists of motive loads of magnetic separator, filing machine, vacuum suction, sealing, strapping and cartoon strapping.*

*In some of the Packing Units, if any incoming (kernels) "lot" is sensed as having excess moisture the same is manually taken to dryer units*

*(normally called as “Borma” Unit). The motor of hot air blower, in the case of fuel fired hot air system and electrical heater element and the blower motors in the case of electrical heaters, are the electrical load in the dryer system. This process of drying is felt as an optional process, not being practiced in all the Packing Units.*

*Air Compressors and Water Pumps are found to be the common equipments consuming electricity in these units. Other electrical loads commonly found in these units include factory and office lighting, ceiling fans, exhaust fans (normal as well as industrial type), window and split air conditioners in offices, computers, office equipments such as printers and fax machines.*

*The significance of proper quality packing is to avoid microbial infestation and hygienic shelf life as well as to meet the acceptance of the product by buyers of the cashew kernels, especially for export market.”*

3.3 The historical tariff was fixed primarily, based on the nature and purpose of electrical energy utilization in the end use equipments/systems, wherein the Board and State Government used to closely interact; and exceptions in categorization in isolated cases could be attributable to reasons such as social responsibilities, public interest and matters related to Government Policies and therefore strict definitions of Commerce, Industry, Manufacturing etc. might not apply in exceptional cases for certain consumers under various categories, and the discussion of these terms recited below further reveals the same.

*“An ‘industry’ is generally any grouping of businesses that share a common method of generating profits, such as the ‘music industry’, the ‘automobile industry’, ‘film industry’, ‘tourism industry’, ‘IT industry’ or the ‘cattle industry’,. It is also used specifically to refer to an area of economic production focused on manufacturing which involves large amounts of capital investment before any profit can be realized, also called ‘heavy industry’*

*‘Manufacturing’ is the transformation of raw materials into finished goods for sale by means of tools and a processing medium, and including all intermediate processes involving the production or finishing of component parts (‘semi-manufactures’).It is a large branch of industry and of secondary production. Some industries, like semiconductor and steel manufacturers use the term ‘fabrication’.*

*Commerce is the trading of something of economic value such as goods, services, information or money between two or more entities. Commerce is the central mechanism which drives capitalism and other economic systems. Commercialization is the process of transforming*

*something into a product, service or activity which may be used in commerce”*

3.4 It may be noted that the existing tariff category, as approved by the Commission in the Order on ARR&ERC of the Board for the previous years, form the basis of the Expected Revenue from Charges (ERC) of the Board. Therefore, any re-categorization of consumers to lower category would offer considerable financial strain, which in turn might add upto the revenue loss/gap calling for a tariff rise. Also, the Commission does not normally revise tariffs with retrospective effect. And, the Commission was unable to find in the course of proceedings on the Board’s petition on ARR&ERC for FY 2003-04 any inadvertent and unintended tariff shock in continuing the prevailing tariff and charges.

3.5 Reference is made the Sections 185(b) and 185 (1) and 185 (2) (a) of the Electricity Act, 2003, extracts as shown below.

*“Section 172. Notwithstanding anything to the contrary contained in this Act,-(b) all licences, authorizations approvals, clearances and permissions granted under the provisions of the repealed laws may, for a period not exceeding one year from the appointed date or such earlier period; as may be notified by the Appropriate Government, continue to operate as if the repealed laws were in force with respect to such licence, authorizations, approvals, clearances and permissions, as the case may be, and thereafter such licences, clearances and permissions, as the case may be, and thereafter such licences, authorizations, approvals, clearances and permissions shall be deemed to be licences, authorization, approvals, clearances and permission under this Act and all provisions of this Act shall apply accordingly to such licences authorizations approvals, clearances and permissions.*

*Section 185. (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed.*

*(2) Notwithstanding such repeal, -*

*(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.”*

From the above, it is evident that in accordance with the Commission's directive in the Order on the Board's ARR&ERC to continue the existing Tariff and Other Charges the Board shall not deviate from the existing Tariff categorization and classification.

3.6 Considering the above, the issue before the Commission is narrowed down as to whether the electricity supply to these Cashew Packing Units be billed under LT-IV, Industrial Tariff or LT-VII (A) Commercial Tariff, in the prevailing Tariff Categorization of the Board.

3.7 The electricity usage in these "packing units of cashew kernels" could have been categorized under LT-IV General Purpose Industrial load, but the activity being carried in "the packing units of cashew kernels" cannot be termed as Industrial or manufacturing activity. The activity carried out in these "packing units of cashew kernels" is distinct and independent of production of cashew kernels. However, the grading and rework is carried out in "the packing units of cashew kernels"; one of the respondents stated that the ratio of raw kernels received at the "the packing units of cashew kernels" to finished export quality in terms of weight is 5:1, with more than 20 grades of export quality, which exemplifies that the activity being carried out at these separate centralized "packing units of cashew kernels" are not an inseparably integrated continuous process of manufacturing the kernels.

3.8 Reference is made to the following extracts from the United Nations International Industrial Classification (UN ISIC)

*"Manufacturing comprises units engaged in the physical or chemical transformation of materials, substances, 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.*

*The units in the manufacturing section are often described as plants, factories or mills and characteristically use power-driven machines and materials-handling equipment. However, units that transform materials or substances into new products by hand or in the worker's home and those engaged in selling to the general public products made on the same premises from which they are sold, such as bakeries and custom tailors, are also included in this section. Manufacturing units may process materials or may contract with other units to process their materials for them. Both types of units are included in manufacturing.*

*Remark: The boundaries of manufacturing and the other sectors of the classification system can be somewhat blurry. As a general rule, the units in the manufacturing sector are engaged in the transformation of materials into new products. Their output is a new product. However, the*

definition of what constitutes a new product can be somewhat subjective.

**Explanatory note:**

The food industry processes the products of agriculture, animal husbandry and fishing into food and drink for humans or animals, and includes the production of various intermediate products that are not directly food products. The activity often generates associated products of greater or lesser value (for example, hides from slaughtering, or oilcake from oil production). This division is organized by activities dealing with different kinds of products: meat, fish, fruit and vegetables, fats and oils, milk products, grain mill products, animal feeds, other food products and beverages. Production can be carried out for own account, as well as for third parties, as in custom slaughtering.

Some activities are considered manufacturing (for example, those performed in bakeries, pastry shops, and prepared meat shops etc. which sell their own production) even though there is retail sale of the products in the producers' own shop. **However, where the processing is minimal and does not lead to a real transformation (as is the case, for example, for butchers, fishmongers etc.), the unit is classified to Wholesale and retail trade (section G).**

Production of animal feeds from slaughter waste or by-products is classified in 1533, while processing food and beverage waste into secondary raw material is classified to 3720, and disposal of food and beverage waste in 9000.”

**Hierarchy**

- **Section: G - Wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods**

**Breakdown:**

This Section is divided into the following Divisions:

- 50 - Sale, maintenance and repair of motor vehicles and motorcycles; retail sale of automotive fuel
- 51 - Wholesale trade and commission trade, except of motor vehicles and motorcycles
- 52 - Retail trade, except of motor vehicles and motorcycles; repair of personal and household goods

### **Explanatory note**

*This section includes wholesale and retail sale (sale without transformation) of any type of goods, **and rendering services incidental to the sale of merchandise. Wholesaling and retailing are the final steps in the distribution of merchandise.** Also included in this section are the repair of motor vehicles and the installation and repair of personal and household goods.*

***Sale without transformation is considered to include the usual operations (or manipulations) associated with trade, for example sorting, grading and assembling of goods, mixing (blending) of goods (for example wine or sand), bottling (with or without preceding bottle cleaning), packing, breaking bulk and repacking for distribution in smaller lots, storage (whether or not frozen or chilled), cleaning and drying of agricultural products, cutting out of wood fibreboards or metal sheets on own account.***

*Wholesale is the resale (sale without transformation) of new and used goods to retailers, to industrial, commercial, institutional or professional users, or to other wholesalers, or involves acting as an agent or broker in buying merchandise for, or selling merchandise to, such persons or companies. The principal types of businesses included are merchant wholesalers, i.e. wholesalers who take title to the goods they sell, such as wholesale merchants or jobbers, industrial distributors, exporters, importers, and cooperative buying associations, sales branches and sales offices (but not retail stores) that are maintained by manufacturing or mining units apart from their plants or mines for the purpose of marketing their products and that do not merely take orders to be filled by direct shipments from the plants or mines. Also included are merchandise and commodity brokers, commission merchants and agents and assemblers, buyers and cooperative associations engaged in the marketing of farm products. Wholesalers frequently physically assemble, sort and grade goods in large lots, break bulk, repack and redistribute in smaller lots, for example pharmaceuticals; store, refrigerate, deliver and install goods, engage in sales promotion for their customers and label design.*

*Retailing is the resale (sale without transformation) of new and used goods mainly to the general public for personal or household consumption or utilization, by shops, department stores, stalls, mail-order houses, hawkers and peddlers, consumer cooperatives, auction houses etc. Most retailers take title to the goods they sell, but some act as agents for a principal and sell either on consignment or on a commission basis.”*

3.9 The Extracts from UNISIC is referenced because the Ministry of Statistics and Programme Implementation, Government of India had developed the Standard Industrial and Occupation Classification 1962, on the basis of the UN International Standard Industrial Classification (ISIC) of all Economic Activities

1958 (Rev. 1) in its first survey in 1960. With effect from ASI 1973-74, the National Industrial Classification (NIC) 1970 developed subsequently on the basis of UNISIC 1968(Rev.2) has been adopted. The NIC 1987 that strictly followed UNISIC 1968 was adapted from ASI 1989-90 to ASI 1997-98. The latest classification, i.e. NIC 1998, developed on the basis of UNISIC, 1990 (Rev. 3) has been adopted from ASI 1998-99.

3.10 Based on the arguments in the written submissions, site inspection report, personal hearing and materials on record, the electrical energy utilization of the “packing units of cashew kernels”, wherein the kernels undergo grading and hygienic packing, where the processing is minimal and does not lead to a real transformation, could only fall under the Commercial category in the prevailing historical tariff categorization.

#### 4. Commissions Decision

***4.1 In view of the foregoing, the Commission orders that the Cashew Packing Units shall pay electricity charges applicable to the LT-VII (A) tariff category, as per the bills raised on these Units by the Board in line with the tariff Orders in force from time to time, from 1.4.2003 onwards, the effective date of the Commission’s Order on ARR&ERC of the Board for FY 2003-04.***

***4.2 Considering the right of the Board prior to the inception of the Commission in determining the tariff and Terms and Conditions for Supply as per Section 49, 59 and subsection (j) of Section 79 and other enabling provisions under repealed statute, viz., The Electricity (Supply) Act, 1948, the Board is entitled to collect the charges as per the tariff revisions and orders applicable before 1.4.2003 also.***

The petition No: DP19 (2) from the Kerala State Electricity Board is disposed of accordingly.

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

Sd/-  
C.ABDULLA  
MEMBER(E)

Sd/-  
C.BALAKRISHNAN  
CHAIRMAN

Authenticated copy for issue

Ajitha.S  
Secretary

## **List of Participants during the Hearing,**

### Hearing dated 24-06-2006

1. Shri. K.Y. Johnson, Advocate for St.Mary's Cashew Factory, Puthur, Kollam
2. Shri. M.R.Anison, Counsel for Kailas Cashew Exports, Kollam
3. Shri. Johnson Jacob, CE(C&T), KSEB, Vydyuthi Bhavanam, Thiruvananthapuram
4. Shri. V. Ramesh Babu, Dy.CE (TRAC), KSEB, Vydyuthi Bhavanam, Thiruvananthapuram
5. Shri. S. Prasad, AEE, (TRAC), KSEB, Vydyuthi Bhavanam, Thiruvananthapuram

### Hearing dated 20.07.2006

1. Shri. N. Goplakrishnan, Southern Kerala Exports (Bismi)
2. Shri. K.Y. Johnson, Advocate, Kollam
3. Shri. M.R.Anison, Counsel for Kailas Cashew Exports, Kollam
4. Shri. Santhosh. J, Kailas Cashew Exports, Kollam
5. Shri. Johnson Jacob, CE(C&T), KSEB, Vydyuthi Bhavanam, Thiruvananthapuram
6. Shri. V. Ramesh Babu, Dy.CE (TRAC), KSEB, Vydyuthi Bhavanam, Thiruvananthapuram
7. Shri. S. Prasad, AEE, (TRAC), KSEB, Vydyuthi Bhavanam, Thiruvananthapuram