**THE STATE ELECTRICITY OMBUDSMAN**
D.H. Road & Foreshore Road Junction, Near Gandhi Square,
Ernakulam, Kerala-682 016
Ph: 0484 2346488, Mob: 8714356488
www.keralaeo.org Email: ombudsman.electricity@gmail.com

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**Appeal Petition No. P/017/2024**
**(Present A. Chandrakumaran Nair)**
**Dated: June-019-2024**

Appellant : M/s Bharat Petroleum Corporation Ltd, Cochin-Coimbatore-Karur-Pipeline-Irimpanam installation, Ernakulam Dist., Pin-682309

Respondent : Special Officer Revenue, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram.

The Chief Engineer, Distribution Circle, KSE Board Limited, Ernakulam, Ernakulam District.

The Deputy Chief Engineer, Transmission Circle, KSE Board Limited, Kalamassery, Ernakulam.

# ORDER

## Background of the case

The appellant M/s Bharat Petroleum Corporation Ltd is an Extra High Tension Consumer of the Licensee, KSEBL. This connection was availed for their fuel pumping station situated at Irumpananm, Ernakulam. M/s Bharat Petroleum Corporation Ltd. is a public sector undertaking engaged in Refining and marketing of petroleum products. The Irumpanam facility is for storing the fuel which is pumping from Kochi Refinery which is also a unit of M/s BPCL. There are separate tanks for petrol, diesel and kerosene. The EHT connection with connected load 2634 kW and contract demand 2.6 MVA with consumer no. LCN-15/3809. There are different high capacity HT pumpsets for pumping the petroleum products to their storage facility at Coimbatore and Karur. This is pumped through the Cochin- Coimbatore-Karur Pipeline which was commissioned on 2002. This service connection was charged under EHT industrial tariff. On inspecting the premises by the officials of the licensee, it is noticed that there is no manufacturing/allied activities are happening and hence the tariff applied is not correct and the applicable tariff would be EHT commercial. The short assessment on the basis of tariff change for a period from 01/05/2013 to 31/07/2023 is worked to Rs. 34,09,90,839. The demand notice for this short assessment was issued to the appellant on 27/12/2023. The appellant has filed the

petition to CGRF contenting the action of licensee and CGRF issued order on completing the procedures which states that the appellant is liable to pay the short assessment amount and the tariff applicable is EHT commercial. The aggrieved appellant has filed the appeal petition to this authority.

## Arguments of the Appellant

Briefly stated, Bharat Petroleum Corporation Ltd. ('BPCL/ Appellant') is engaged in refining and marketing of petroleum products across the country. It has a 15 million metric ton per annum (MMTPA) refinery ('Kochi Refinery') located in Ernakulam, Kerala. BPCL's Kochi Refinery (BPCL-KRL/ Kochi Refinery') plays a major part as a refiner of finished petroleum products such as petrol, diesel, kerosene, LPG, ATF etc. In order to ensure optimum utilization of space within the refinery premises, the storage facility has been constructed separately at 'Irimpanam Installation', about 4 Kms from the Kochi Refinery. At Irimpanam, BPCL has two installations/ units (collectively Irimpanam Installation), viz.,

A. First unit comprising storage tanks commissioned in 1992 which receives finished products from Kochi Refinery (bearing consumer no. LCN 16/1666) ('First Unit'). At the First Unit, BPCL is engaged in receipt, storage, blending (altering), making, and distribution of petroleum products. The storage facility is also responsible for evacuation of finished products from the crude oil processed at the Kochi Refinery, namely, petrol, diesel and kerosene.

B. Second unit which pumps/ evacuates the petroleum products processed at Kochi Refinery which are stored at the first unit (bearing consumer no. LCN 15/3809) ('Second Unit/ Pumping Station'). At the Second Unit, CCKPL operates HT motor driven pumps in order to ensure pumping/ evacuation of petroleum products namely diesel, Kerosene & Petrol produced at Kochi refinery to upcountry locations at Coimbatore & Karur BPCL Terminals. The products from Kochi Refinery are pumped at the Irimpanam installation through the Cochin Coimbatore - Karur Pipeline (CCKPL'), as pipelines are the safest and most efficient way for transport of petroleum products inland.

The Second Unit was originally commissioned in 2002 in the name of Petronet CCK Ltd. In 2018 BPCL took over the unit and accordingly, an agreement was entered into between BPCL and KSEB in 2018 for purchasing electricity at the Irimpanam. Originally, as per the agreement, the Irimpanam Installation was categorized as EHT II (110 kv) industrial and the corresponding tariff was made applicable to them. The Pumping Station pipeline and the energy consumption therein, is owned and operated by BPCL. It is an integral part of refinery & with which only Kochi Refinery production augmented to 15 MMTPA. Most of the finished products of Kochi Refinery viz., Petrol (MS), Diesel (HSD), Superior Kerosene Oil (SKO), Aviation Fuel (ATF) etc. are transported further from the Pumping Station. Without the Pumping Station, the operations of the Kochi Refinery in a sustained manner would be a logistical challenge and refinery would be effectively inoperable.

While so, KSEB initiated proceedings under Regulation 97 of the Kerala Electricity Supply Code 2014 (Supply Code') for suo moto reclassification of consumer category. On 25.04.2023 formal notice was issued under Regulation 97 of the Supply Code stating that no manufacturing process was being undergone at the Irimpanam Installation. Relying upon the orders of the Kerala State Electricity Regulatory Commission ('KSERC'), in OA 18/2007 filed by HPCL, the Special Officer (Revenue) noted that the tariff has to be changed to EHT 110kv Commercial with effect from 01.08.2018. The Appellant responded to this by way of letter dated 10.05.2023 clarifying and reiterating that the work done at Irimpanam Installation was integral part of the Kochi Refinery operations and that the production at the Refinery would be severely hampered in case the storage facilities were not functioning. It was further clarified that there were no similarities in the activities undertaken by BPCL at Irimpanam Installation and the LPG bottling plant that was the subject matter of the proceedings before the KSERC in OA 18/2007. Eventually, a joint inspection was then conducted on 20.07.2023 by the Distribution and Transmission wings regarding re-categorisation of tariff as was decided in the meeting on 23.06.2023. The copy of the report was communicated along with letter dated 22.07.2023 from the Deputy Chief Engineer, KSEB. Thereafter, by way of Annex I communication dated 04.08.2023 (incorrectly noted as 04.07.2023) by then sent by the Chief Engineer (Distribution Central), KSEB directed that both units, i.e., First Unit and the Second Unit/ Pumping Station, "may be recategorised to commercial tariff".

On 25.08.2023 the Appellant submitted representation to the Chairman, KSEB reiterating its stand that the reliance placed on the orders of the KSERC in OA 18/2007 was entirely misplaced as there was no comparison between the activity of bottling of LPG and that activities undertaken at the Second Unit which are integral to the functioning of Kochi Refinery. KSERC has in its order dated 25.06.2022 in OP 11/2022 classified LPG bottling plants as LT- VII-Commercial (A). It was reiterated that the activities were near identical to those being undertaken by KWA which is classified as industrial. KSERC has classified pumping activities undertaken by KWA as LT- IV (A) - Industry. It was also highlighted that even assuming recategorisation was justifiable, it cannot be made retrospective as sought to be done by KSEB. Reference in this regard may be had to Regulation 97(4) of the Supply Code which states that arrears or excess charges shall be determined on the actual period of reclassification or a period of 12 months, whichever is lesser. Further, as per Section 62(4) of the Electricity Act 2003, tariff for consumers cannot be determined or modified more than once in any financial year.

While the above representation/ communication was pending consideration before the KSEB, the Appellant was issued the electricity bills under commercial category which eventually included an amount of Rs. 34,12,38,762/- as arrears. The Appellant has been making the payment of

energy charges under protest as per Regulation 130 and 131 of the Supply Code. The Appellant also specifically objected to the arrears shown as Rs. 34,12,38,762/- on the grounds no explanation was provided nor any clarification given on how the above figure was arrived at.

The Appellant also submitted letter to the Chairman, KSEB reiterating the contentions and submissions on 11.09.2023 and the Executive Director (I/C), Kochi Refinery, General Manager, HR, Kochi Refinery, General Manager (Ops.), Retail-Irimpanam Installation & (Ops.), Retail-Kerala & Head, Pipelines-South had a meeting with Chairman, KSEB on 04.10.2023 wherein he reiterated the contentions and submissions made by the Appellant following which letter was submitted. Since no action was taken by KSEB, the Appellant was constrained to file Complaint No. 71/23-24 before the Hon'ble Consumer Grievance Redressal Forum, Central Region ('CGRF'). A day after filing the complaint before the CGRF on 26.12.2023, the Respondent issued letter no. SOR/HTB 15/ 3809-2023- 24/143 dated 27.12.2023 directing the Appellant to remit an amount of Rs. 34,09,90,859/- on or before 27.01.2024. It is pertinent to note that even though, admittedly, the procedure was initiated against the Complaint under Regulation 97, the demand raised by way of letter no. SOR/HTB 15/ 3809-2023-24/143 dated dated 27.12.2023 was under
Regulation 134(1) of the Supply Code.

The Appellant responded to the said letter by sending letter on 04.01.2024 stating that the proceedings initiated against the Appellant under Regulation 97 of the Kerala Supply Code 2014, which formed the basis of the demand notice, had before the CGRF. Apart from the above, letter was issued by the Respondent on 27.12.2023, being letter no. SOR/HTB 15/ 3809-2023-24/142 dated 27.12.2023 revising re-categorization of tariff category from 01.05.2013. By way of letter dated 23.01.2024, the Appellant informed the Respondent that (a) proceedings were pending before this Forum, and (b) it is completely against notices issued to BPCL under Regulation 97 of the Supply Code and is blatantly violative of the principles of natural justice.

Even though two complaints were filed separately by the First Unit and the Second Unit/ Pumping Station, because their activities, though integral to the functioning of the Kochi Refinery, were completely distinct and separate. However, the CGRF has failed to take note of this clear and obvious distinction and has proceeded to address both the complaints together.

Unfortunately, after recording the Appellant's contentions that 'without the installations at Irimpanam *(i.e., the First Unit and the Second Unit/ Pumping Station), operations at their Kochi Refinery would face logistical challenges and be effectively inoperable' and further that the provisions of the Regulation 97, the sub-regulation 4 of the same regulation allows the licensee to charge the arrear from a consumer for a maximum period of one year only', the CGRF has summarily rejected the arguments with a simple statement that 'as per*

*prevailing tariff orders, activities like petrol /diesel/ LPG/ CNG bunks and filtering, packing, and other associated activities of oil brought from outside fall under the commercial tariff).* Placed in such a situation, the Appellant has preferred this Appeal before the Hon'ble State Electricity Ombudsman.

The CGRF has not appreciated the contentions raised by the Appellant and the judicial precedents and the law applicable to the case conscientiously. The CGRF has grossly erred in simply disregarding the contentions of the Appellant without analyzing them and without giving findings on them and without indicating any reasons why the contentions did not merit consideration. The CGRF has failed to consider that the nature of activities undertaken by the Appellant. It has also failed to consider that across the country pumping stations/ activities are undertaken as part of the refinery's activities and premises. BPCL Manmad pumping station has been categorized as industrial by Maharashtra State Electricity Distribution Co. Ltd (Consumer No. 077569023230). BPCL Washala pumping station has been categorized as industrial by Maharashtra State Electricity Distribution Co. Ltd (Consumer No. 015559020149). Unfortunately, due to the peculiar geography of Kerala, specifically the area near BPCL- KRL which has a lot of marshy land, wetlands and water bodies, there was no space to establish a pumping facility within the BPCL-KRL premises. It is for this reason that the Appellant's pumping unit is situated about four kms from BPCL-KRL. The Appellant herein only pumps/ evacuates the petrol, diesel and kerosene processed at Kochi Refinery. The Appellant operates HT motor driven pumps in order to ensure pumping/ evacuation of diesel, kerosene & petrol produced at Kochi Refinery to upcountry locations at Coimbatore and Karur BPCL Terminals.

The CGRF has failed to consider the activities of the Pumping Station cannot be considered as "activities of oil brought from outside in as much as they are integral to the activities of the Kochi Refinery. The CGRF has not at all consider the importance of the activities of the Appellant to the Kochi Refinery. The CGRF has ignored the real test, that is, whether the Appellant's activities are integral to the activities of BPCL-KRL or not. The answer can only be in the affirmative. The CGRF has not considered the that the activities undertaken at the Irimpanam Installation is essentially pumping the explosives (i.e., finished products) which entails dividing into parts or otherwise splitting up or unmarking the explosives. The CGRF has not considered the various precedents including decision of the the Bombay High Court in *Laxmibai Atmaram v. Chairman and Trustees, Bombay Port Trust reported at AIR 1954 Bom 180, State of Maharashtra v. Sarva Shramik Sangh, Sangli reported at (2013) 16 SCC 16, and Qazi Noorul, HHH Petrol Pump v. Deputy Director, ESIC*, reported at (2009) 15 SCC 30, all of which hold that a process employed for the purpose of pumping water and pumping oil is a manufacturing process.

The CGRF has also ignored the specific contention of the Appellant that activities undertaken by at the CCKPL at Irimpanam Installation are identical to those undertaken by KWA in pumping water. However, KWA's activities are classified as industrial. KSERC has classified pumping activities undertaken by KWA as LT- IV (A) - Industry. Not only that, all pumping activities are classified as industrial in terms of 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 26.06.2022 to 31.03.2023 (vide order dated 25.06.2022 in OP No. 11/2022). Categorizing the Appellant as 'commercial' while categorizing KWA as 'industrial' is discriminatory and contrary to Respondent's own stand. The CGRF has also miserable failed to consider the fact that the judgment of the Hon'ble Supreme Court in civil appeal no. 7235 of 2009 (M/s PremCottex Vs. Uttar Haryana Bijli Nigam Limited and others) has no applicability to the present fact situation. Insofar as Prem Cottex is concerned, the said case dealt with an order of the National Consumer Disputes Redressal Commission dealing with an issue of whether there was 'deficiency in service'. The case was challenging the short assessment notice issued for wrongly recorded bills as a result of incorrect multiply factor (MF). It has nothing to do with suo moto reclassification of tariff which is the subject matter of the present case. The CGRF has conveniently ignored the applicability of Regulation 97(4) of the Supply Code. The amended Regulation 97(4) of the Supply Code states that arrears or excess charges shall be determined on the the actual period of reclassification or a period of 12 months, whichever is lesser. The CGRF has disregarded the fact that Regulation 97 of the Supply Code is a self- contained code and deals with the procedure and consequences of suo moto classification by the licensee. No reasons have been recorded by the CGRF on this point.

The CGRF ought to have considered that demand under Regulation 134(1) of the Supply Code can only be made if there is 'undercharging' in the billing. This is evident from a reference to the Chapter under which the Regulation 134 has been placed. The Respondent cannot initiated proceedings for reclassification under Regulation 97 of the Supply Code and then raise a demand for undercharging under Regulation 134. Any arrears to be paid following the procedure stipulated under Regulation 97 can only be claimed under Regulation 97(4) of the Supply Code. Any other interpretation is not only incorrect, it will also render Regulations 97(4) and 97(5) irrelevant. These aspects, thought recorded as submissions of the Appellant, have not been considered at all by the CGRF.

It is prayed that this Hon'ble Ombudsman set aside the order of the CGRF dated 06.03.2024 in Complaint No. 71/2023-24. Set aside the proceedings initiated against the Appellant under Regulation 97 of the Kerala Electricity Supply Code 2014. Set aside the change of tariff of the Appellant from EHT (110 kV) Industrial to EHT Commercial. Set aside report of the joint inspection conducted on 20.07.2023 at the premises of the Appellant by the

distribution and transmission wings regarding the re-categorisation of tariff under EHT Commercial. Direct the Licensee to re-calculate the bills issued to the Appellant categorising the Appellant's tariff as EHT 110KV Industrial. Direct the Licensee not to disconnect the electric connection to the Appellant till orders are issued. Grants or such other reliefs as are just and proper in the circumstances of the case.

## Arguments of the Respondent

M/s Bharat Petroleum Corporation Limited (LCN 15/3809) is a live Extra High Tension Consumer under Colony Maintenance Section. At present, this consumer has a connected load of 2634 KW and contract demand of 2600 KVA. At the time of availing EHT connection and furnishing EHT agreement, EHT-110 KV industrial tariff was fixed for the firm. But later on while inspecting the premises of the consumer by Deputy Chief Engineer, Transmission Circle Kalamassery to ascertain the activity in the premises, it was noticed that no manufacturing/ allied activities were carried out there. Hence clarification was requested from the Chief Engineer (Commercial & Tariff) by the Deputy Chief Engineer Kalamassery regarding the tariff of EHT connection bearing LCN 15/3809. In reply, the Chief Engineer (Commercial & Tariff) reported that no manufacturing activities were undergone in the premise of BPCL Irimpanam bearing consumer number 15/3809. The premises of the consumer with this connection was storage cum dispatch unit of BPCL - KR. Hence tariff has been changed retrospectively from EHT-Industrial to EHT Commercial and the matter was informed the consumer vide letter dated 25.04.2023. Against this, the consumer filed objection before the Chief Engineer (Distribution Central).

Consequent on the hearing conducted on 23.06.2023 by the Chief Engineer (Distribution Central) with M/s BPCL representatives, a joint inspection was conducted in the premises of the consumer bearing Consumer No. 15/3809 by the Distribution and Transmission wing to investigate the nature of activities performing inside the premises. The Chief Engineer (Distribution Central) vide letter dated 04.08.2023 informed this office that this consumer may be re-categorized to to Commercial Tariff. Then the tariff of the consumer has been changed from EHT110 KV Industrial to EHT 110 KV Commercial from 01.05.2013. Thus, the invoices issued to the consumer from 01.05.2013 to 31.07.2023 were revised accordingly and a demand notice was issued to the consumer on 27.12.2023 amounting to Rs.34,09,90,859/-. Against this, the consumer filed a petition, OP No. 71/2023-24 before the Chair Person, Consumer Grievance Redressal Forum Central Region Ernakulam seeking direction to set aside the proceedings initiated against the consumer to change the tariff to EHT 110 KV commercial with effect from 01.05.2013 and realize the tariff difference. As per order dated 06.03.2024, the Hon'ble CGRF ordered that the tariff change made by the licensee from EHT Industrial to EHT Commercial for both the

premises is deemed appropriate. The forum also ordered that the petitioner is liable to pay the short assessment bill issued by the licensee. Against this order, the consumer has filed a representation, P/017/2024 before the State Electricity Ombudsman.

M/s Bharat Petroleum Corporation Limited (LCN - 15/3809) is a live Extra High Tension consumer of the Kerala State Electricity Board Limited, which comes under the jurisdiction of Transmission Circle Kalamassery. Date of connection of the consumer is 9th October 2000. The connected load (power) of the consumer is 2594 KW and light load at present is 40 KW. The present contract demand is 2600 KVA. The tariff category of the consumer is EHT Commercial. The Deputy Chief Engineer, Transmission Circle Kalamassery sent a letter to the consumer and requested to clarify the actual nature of activity take place in the premise at Irimpanam. In reply, the consumer opined that M/s BPCL is engaged primarily in refining and marketing of petroleum products across the country. The consumer also states that pipeline and energy consumption for its operation is an integral part of Kochi Refinery and it was not used for any commercial activities and only used for evacuation of manufactured finished products of kochi refinery. On 25.04.2023, this office sent an intimation notice as prescribed in Kerala Electricity Supply Code 2014 for hearing the consumer regarding the re-categorization of tariff under EHT 110 KV Commercial.

A hearing was conducted before the Chief Engineer (Distribution Central) regarding the dispute over the change in the tariff of the consumer. Following the decision taken at the hearing, a joint inspection at the consumer premises (LCN - 15/3809) by the Distribution and Transmission wing was conducted on 20.07.2023. The activities happening in the consumer premises is product evacuation (derivatives of crude oil) through wagons, tankers and long distance interstate pipe lines. 24X7 operations are going on inside the premises. The parent industry M/s BPCL KRL and this pumping unit are around 8 km apart. Huge pipeline connects the parent industry to this unit. As per the inspection report, two units are working in the premises of BPCL at Irimpanam. First unit (LCN-16/1666) is engaged in the process of storing the finished products from M/s BPCL KRL in 43 large floating tanks and pumping the same to wagons and tankers. Second unit is engaged in the process of pumping of crude oil derivatives stored in the storage tanks of first unit through long distance interstate pipe lines to Coimbatore and Karur. The first unit was commissioned in the year 1992 and the second unit was commissioned during 2002. The second connection was effected in the name of M/s Petronet CCKL. Later during 2018 M/s BPCL has taken over the same from M/s Petronet CCKL.

As per the report of the Chief Engineer (Commercial & Tariff), no manufacturing activities are undergone in the premise of BPCL Irimpanam bearing consumer number 15/3809, the tariff has been changed retrospectively from EHT- Industrial to EHT Commercial and the matter was

informed to the consumer vide letter dated 25.04.2023. Against this, consumer filed objection before the Chief Engineer (Distribution Central). Then a hearing was conducted on 23.06.2023 on the issue of re-categorization of tariff of BPCL. During hearing, Deputy Chief Engineer Transmission Circle opined that activity to be categorized under industrial is not seen at both the premises of BPCL. It does not involve any manufacturing process or production of new item from raw materials or any transformation of input raw materials into a new product. Hence the activity does not come under manufacturing. Also, the Senior Manager of BPCL Irimpanam installation confirmed that sale of product is there at Irimpanam installation (LCN - 15/3809).

Consequent to the hearing conducted on 23.06.2023 by the Chief Engineer (Distribution Central) with M/s BPCL representatives, a joint inspection was conducted at the premise of the consumer bearing Consumer No. 15/3809 by the Distribution and Transmission wing to investigate the nature of activities performing inside the premise. In the inspection report, it is clearly stated that evacuation of final products received from BPCL - KRL through huge pipe line, its storage, delivery and sales are the activities in the premises. As no industrial activities are seen, the inspection team recommended that both the units need to be categorized under commercial tariff. Also from the tariff order dated 14.08.2014 demands all LPG bottling plants and units carrying out filtering, packing and other associated activities using extracted oil brought from outside are to be categorized under commercial tariff.

In general "Industry" refers to any business dealing with manufacturing of goods and "Commercial" refers to any business done with the sole motive of gaining profit. Here the parent industry M/s. BPCL .KRL and these pumping units are around 8KM apart and huge pipelines connect the parent industry to these units. Evacuation of final products from M/s BPCL, its storage, delivery and sales are done in these two units and no specific industrial activities are seen. Hence both the units of BPCL were categorized to commercial tariff. Based on this, the bills from September 2023 onwards were issued to the consumer after changing the tariff to EHT 110KV commercial. Also, the bills issued to the consumer from 01.05.2013 to 15.08.2014 were revised in non-industrial tariff and the bills from 16.08.2014 to 31.07.2023 were revised in commercial tariff. The bill for the month of November 2023 and December 2023 were given to the consumer including the arrear amount due to revision. The petitioner claims that the functioning of BPCL's establishment at Irimpanam is similar to the functioning of pumping stations under the Kerala Water Authority. But the operation of pumping stations of Kerala Water Authority is related to public service. There is no profit motive in the operation of the organization similar to K.S.E.B. Limited. And the most important factor is that industrial tariff has been allowed to the pumping stations of Kerala Water Authority only after getting approval from Hon'ble KSERC.

On examining various Tariff Revision orders it is evident that Non-industrial tariff is applicable to the petitioner's service connection with effect from 01.05.2013. Hence the monthly regular bills for the period from 05/2013 to 07/2023 were revised and accordingly bills from 01.05.2013 to 15.08.2014 were billed in EHT - Non Industrial Tariff and from 16.08.2014 to 31.07.2023 were billed in EHT 110 KV Commercial Tariff. Then a demand notice dated 27.12.2023 was issued to the consumer as per Regulation 134(1) of Kerala Electricity Supply Code 2014 for Rs.34,09,90,859/- and requested the petitioner to remit the arrear amount after revision (Exbt. R1) on or before 27.01.2024. Regulation 134 (1) of the supply code is reproduced below:

134. Under charged bills and over charged bills. - (1) If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days time shall be given to the consumer for making payment of the bill.

As per Regulation 97(1) of Kerala Electricity Supply Code 2014, " if it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed, the licensee may suo moto reclassify the consumer under the appropriate category". Accordingly notice was issued to the consumer and reclassified from EHT Industrial to EHT Commercial. As per Regulation 134(1) the licensee can issue an arrear bill for undercharged bills pertaining to any period, if it can be proved. In this context, the Order in Petition No. RP 3/2021 dated 15.11.2021 (K.S.E.B. Limited V/s Bennet Coleman & Co. Ltd.) of the Hon'ble Kerala State Electricity Regulatory Commission may be perused. In this, the Hon'ble Commission had revised their order, wherein, the period of assessment which was limited to two years was revised to 66 months (full period). This was based on the orders issued by the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 (M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd) in the case of short assessment due to wrongly recorded multiplication factor (MF recorded as 5 instead of 10) in the bills issued from 08.06.2006 to 08/2009 and in Civil Appeal No. 1672 of 2020 (Assistant Engineer, Ajmer Vidyut Vitran Nigam Limted V/s Rahamatullah Khan alias Rahamjulla) in the case of short assessment due to wrong tariff code (from 07/2009 to 09/2011) where in, it was clearly stated that escaped amount can be billed for the full period during which it had become due. There is no condition that, a bill can be issued only under Sec. 97. Section 97(1) is a condition for changing the tariff as per the tariff order of the Commission suo moto and inform the consumer of the proposed reclassification. Hence, here the tariff was changed by the licensee informing the consumer as per Sec. 97(1). The subsequent sections 97(4) & (5) have no relevance in this case since the period of billing in such cases has been clearly specified by the Hon'ble Supreme Court and Hon'ble KSERC in the above mentioned cases. In the light of the order of the Hon'ble Supreme

Court and KSERC, the consumer is liable to pay the arrear bill amount issued by KSEB Ltd.

Here in the instant case, the licensee wrongly classified the consumer under EHT Industrial tariff at the time of connection. Later, on detailed analysis of the activities in the premise, the agreement authority had come in to a conclusion that the activities carried out in the premise is commercial in nature rather than industry and hence reclassified under EHT Commercial tariff. A close reading of sub regulation(1) of Regulation 97 of the code revealed that the regulation is mainly applicable for wrongly classified consumers and the same is also applicable to the petitioner. Also Regulation 97 of the Supply code empowers the licensee to suo-motu re classify the consumer category in accordance with the activities carried out in the premise and as per the tariff order in force. In the Tariff Revision Order dated 01.05.2013, two categories namely EHT Industrial and EHT Non-Industrial are included. Tariff revision orders from 16.08.2014 have included Commercial tariff instead of Non-Industrial tariff. Based on this type of classification, the consumer's tariff, which was wrongly classified as industrial is changed in to commercial with effect from 01.05.2013. This was clarified as per the order dated 01.08.2018 of the Hon'ble Kerala State Electricity Regulatory Commission in OA No. 18/2017 between Hindustan Petroleum Corporation Limited and K.S.E.B Limited.

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 the case of HPCL in OA No. 18/2017, the State Commission has differentiated between the units which use electricity for manufacturing activity and those units which are only engaged in packing of oil brought from outside which has been considered as commercial activity. Similarly, BPCL's parent unit, where petroleum is refined to produce new products, is eligible for the industrial tariff, and the two units at Irimpanam, where the units are engaged in storage and distribution of these products, are eligible for commercial tariff. 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. APTEL has already upheld that the categorization under Factories Act or any other Acts does not mandate the Commission to categorize the tariff. Further, classification made by other State / Central Govt has no relevance in tariff categorization by the Commission. Thus it is very clear that the State Commissions are empowered to categorize the consumers of the state which it deems fit considering the circumstances in each state.

The State Electricity Regulatory Commission is a quasi- judicial body functioning as per the provisions of the Electricity Act -2003 (Central Act 36 of 2003). As per the Section 62 and Section 86(1)(a) of the Electricity Act 2003, the tariff determination is one of the statutory functions of the SERCS. The subsection (3) of Section 62 of the EA -2003 which is extracted hereunder provides the various factors to be considered while categorising the consumers while determining the tariff. (3)*"The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but 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".*

KSERC has already clarified the position in its order dated 18.03.2009 in TP 59/2008. The relevant portion of the order is extracted below.
Electricity consumer classification and categorization for the purpose of electricity charges are made on the basis of the purpose of use of electricity and are not related to the classification made by different departments or State Government or Central Government for other purpose. Thus, the classification followed either in the State Government or in other state is not a guiding principle for fixation of tariff for any particular class of consumers. The Commission, however recognizes the cardinal principle that any reasonable classification should have a rationale that has nexus to the objective sought to be achieved by such classification'. Considering the settled position, the contention of the petitioner to quote the other statutes for the purpose classifying the petitioners plant as industrial cannot be acceptable. Here in this case, the end objective of supply is to deliver petroleum products in to pipelines to customers as per the contract for offtake with them, ie the marketing of petroleum products. Thus, for marketing a commodity, the most appropriate category is commercial. As a distribution licensee, KSEB Limited has every right to claim such escape assessment as per Regulation 134 (1) of Kerala Electricity Supply Code 2014. The legal right of the distribution licensee has categorically emphasized by the Hon'ble Supreme Court of India in its judgment in Civil Appeal No. 7235 of 2009 ( M/s Prem Cottex Vs Uttar Haryana Bijli Nigam Limited and others), wherein the Hon'ble Apex Court has upheld the rights of the supply licensee to raise and recover the genuinely due amounts. After due consideration of the said Apex Court judgment in this regard, the Kerala State Electricity Regulatory Commission passed its order in the complaint filed by M/s Bennet & Coleman Company Ltd against the short assessment bill issued by KSEB Ltd that the bill issued to the consumer is in order and the same is to be paid by the consumer within 30 days. Moreover the Kerala State Electricity Regulatory Commission in its order dated 01.08.2018 in OA No. 18/2017 filed by M/s HPCL ordered that LPG bottling/filling plants, petroleum terminals of the petitioner and similarly placed consumers falls under 'commercial category' for the purpose of levy of electricity charges.

Aggrieved by the KSEB Ltd decision of changing the tariff to commercial category, M/s HPCL has filed a writ petition W.P.(C) No. 1866/2012 before the Hon'ble High Court of Kerala. The Hon'ble Court in its order dated 03.04.2012 referred the matter to Kerala State Electricity Regulatory Commission directing to take decision in the matter of fixing the tariff. KSERC vide order dated 25.07.2012 has maintained the categorization of tariff as commercial. Aggrieved by this order,M/s HPCL filed a writ petition before the Hon'ble High Court of Kerala. The Hon'ble Court vide order dated 13.12.2012 dismissed petition holding that the statutory remedy by way of appeal lies with the Appellate Tribunal for Electricity.

The appeal filed by M/s HPCL before the Appellate Tribunal was dismissed due to delay in filing, with the liberty to take up the matter in future tariff determination process. M/s HPCL on 02.07.2014 had filed a written submission (including the process in the plant) before the Hon'ble Kerala State Electricity Regulatory Commission. KSERC vide order dated 14.08.2014 categorized M/s HPCL under Commercial category. The consumer filed Appeal No. 265/2014 before the Appellate Tribunal. Appellate Tribunal dismissed the appeal and upholds the KSERC order dated 14.08.2014. The consumer filed a Civil Appeal No. 11150/2016 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 09.12.2016 disposed of the appeal asking Hon'ble Kerala State Electricity Regulatory Commission to reconsider the matter. The Hon'ble KSERC vide its order 01.08.2018 has concluded that the LPG bottling /filling plants, petroleum terminals and depots of M/s HPCL and similarly placed consumers falls under commercial category for the purpose of levy of electricity charges as the activity performed in the LPG bottling plants is the process of refilling of LPG cylinders and it does not involve any manufacturing process or production of any new item from raw materials or any transformation of input raw materials in to a new product and no physical or chemical change of any commodity is taking place at any stage in the above process.

As per the Tariff Revision order dated 14.08.2014 onwrds, all LPG bottling plants and units carrying out filtering, packing and other associated activities using extracted oil brought from outside are categorized under LT - VII (A) commercial tariff. All classes of commercial consumers listed in LT-VII (A) and LT VII (C) categories availing supply of electricity at high tension are included in HT IV commercial tariff and the commercial institutions availing power at EHT are included in EHT commercial tariff in the same tariff revision order. Also the Hon'ble Kerala State Electricity Regulatory Commission in its present Tariff order (w.e.f. 01.11.2023 to 30.06.2024) demands all LPG bottling plants and units carrying out filtering, packing and other associated activities of oil brought from outside are to be categorized under commercial tariff. In the above circumstances, it is necessitated to re-categorize the unit LCN 15/3809 in commercial tariff i.e., EHT commercial from 01.05.2013 i.e., from the Tariff Revision order dated.

01.05.2013 as per Regulation 134(1) of the Kerala Electricity Supply Code 2014. In the light of the judgment of the Hon'ble Supreme Court and the order of the Kerala State Electricity Regulatory Commission, the petitioner is liable to pay the balance arrear amount (tariff difference, Rs.34,09,90,859/-) to the Board.

## Counter Arguments Filed by the Appellant

The Appellant does not wish deal to with each and every averment in the Statement of Facts unless called upon to do so by the Hon'ble State Electricity Ombudsman. The Respondent has repeatedly referred to Annex D notice dated 25.04.2023 to allege that the Appellant was informed of the change in tariff by way of the same. This is not only contrary to facts but also to Respondent's own assertions elsewhere in the Statement of Facts. It bears repeating that on 25.04.2023 only a formal notice was issued under Regulation 97 of the Kerala Supply Code 2014 ('Supply Code') to change the Appellant's tariff to EHT 110kv Commercial with effect from 01.08.2018.

The Respondent has repeatedly stated that the Appellant's premises is the "storage-cum-dispatch' unit of BPCL-KRL and that the Appellant undertakes "product (derivatives of crude oil) evacuation through wagons, tankers". This is absolutely incorrect and contrary to actual facts for the following reasons: (a)The Respondent has repeatedly conflating the activities of both the First Unit and Second Unit (as referred to in the Appeal) in an attempt to confuse this Hon'ble Tribunal about the Appellant's actual activities.(b)The Appellant only pumps/ evacuates the petrol, diesel and kerosene processed at Kochi Refinery as opposed to 'derivatives of crude oil' as stated in the Statement of Facts. The Respondents have also baselessly alleged that the sale of product and has attributed profit motive to Appellant's unit. This is contrary to the submissions of the Appellant as recorded in Annex G minutes of the meeting held on 23.06.2023 which clearly notes the Appellant herein only undertakes pumping activities that are integral to the BPCL-KRL. Indeed, across the country pumping stations/ activities are undertaken as part of the refinery's activities and premises. Unfortunately, due to the peculiar geography of Kerala, specifically the area near BPCL-KRL which has a lot of marshy land, wetlands and water bodies, there was no space to establish a pumping facility within the BPCL-KRL premises. It is for this reason that the Appellant's pumping unit is situated about four kms from BPCL-KRL, not 8 kms away as incorrectly stated in the Statement of Facts.

It is reiterated that the Appellant herein only pumps/ evacuates the petrol, diesel and kerosene processed at Kochi Refinery. The Appellant operates HT motor driven pumps in order to ensure pumping/ evacuation of diesel, kerosene & petrol produced at Kochi Refinery to upcountry locations at Coimbatore and Karur BPCL Terminals. The assertion that the end objective of the pumping activities is to deliver petroleum products to customers as

per 'the contract for off-take is completely' baseless and is not based on any document, evidence or any material. Such a contention is neither part of the notice issued to the Appellant, nor is it reflected in the orders issued by the Respondent under Regulation 97 of the Supply Code. As repeatedly stated, the pumping station of the Appellant is integral part of refinery at Kochi Refinery and its purpose is to ensure pumping/ evacuation of diesel, kerosene & petrol to upcountry locations at Coimbatore and Karur BPCL Terminals. It was not used for any commercial activity whatsoever, but only for pumping/ evacuation of the manufactured finished product.

The Respondent has finally concluded the Statement of Facts, incorrectly, by stating that the Appellant is "marketing a commodity" and for that commercial category would be appropriate. The said statement is not only incorrect but also reflects an incorrect understanding of the activities of the Appellant. The Appellant does not undertake any marketing of any commodity/product in the first unit as well as second unit. The Appellant submits that the Respondent is repeatedly relying upon bald and baseless assertions without any iota of proof or substantiation and accordingly, its statements including on the nature of activities undertaken by the Appellant are liable to be rejected. The Respondent has ignored the real test, that is, whether the Appellant's activities are integral to the activities of BPCL-KRL or not. The answer can only be in the affirmative.

The Respondent has stated in the Statement of Facts that KWA only provides 'public service by providing quality water and waste water service in an environmentally friendly and sustainable manner' and hence has been categorized as industrial as opposed to commercial. In this regard, it is clarified that:
(a) Appellant also only transports petrol, diesel and kerosene which are essential commodities for the general public and therefore, it cannot be said that the Appellant is *'running a profit motive operation'*.
(b) The Respondent does not deny that the only activity undertaken by KWA is 'pumping' and ergo, it admits that there is no manufacturing activity undertaken by KWA. The Respondent cannot therefore insist that merely because there is no manufacturing activity being undertaken at the Appellant's premises it cannot be treated as industrial.
(c) Thus by categorizing the Appellant as 'commercial' while categorizing KWA as 'industrial' is discriminatory and contrary to Respondent's own stand.

It is also incorrect to state that the Appellant is driven by profit motive as it is not undertaking any commercial activity whatsoever. Indeed, even KWA charges tariffs at Domestic/ Non-Domestic/ Industrial. There are Govt. of Kerala notifications fixing the charges for the water supplied by KWA. Therefore, it is incorrect to state that KWA is providing public service without any profit motive. It is further important to note that the Hon'ble Kerala State Electricity Regulatory Commission, Thiruvananthapuram in its

order dated 23.11.2023 in RP No. 02/2023 has accepted the above contentions and has held that appropriate tariff of 'Despatch Terminals' whose purpose is 'pumping' of LPG gas would be industrial.

The Respondent has for reasons best known to it, ignored Regulation 97(4) of the Supply Code. The amended Regulation 97(4) of the Supply Code states that arrears or excess charges shall be determined on the actual period of reclassification or a period of 12 months, whichever is lesser. This part has been omitted by the Respondent. Before 2020, Regulation 97(4) of the Supply Code read as quoted by the Respondent in the Statement of Facts. However, after amendment in 2020, Regulation 97(4) saw a huge shift. The amended Regulation 97(4) is quoted herein below for ease of reference:
97. Suo motu reclassification of consumer category by the licensee.-
(1) If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may suo motu reclassify the consumer under appropriate category.
(2) The consumer shall be informed of the proposed reclassification through a notice with a notice period of thirty days to file objections, if any.
(3) The licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer appropriately.
(4)Arrear or excess charges shall be determined based on the actual period of re classification or a period of twelve months whichever is lesser.
(5)Twelve monthly installments for the payment of the arrear charges determined under sub regulation (4) above may be allowed on the request of the consumer without interest.

It is submitted that Regulation 97 of the Supply Code is a self-contained code and deals with the procedure and consequences of suo moto classification by the licensee. The Respondent has contended that the Regulations 97(4) and 97(5) are irrelevant in view of the judgments of the Hon'ble Supreme Court which have been cited in the Statement of Facts. The said judgments have no relevance in the present case inasmuch as they do not discuss the import and scope of the Regulation 97(4) of the Supply Code post the 2020 amendment. The interpretation that the clauses can be made applicable for subsequent billing period is not only incorrect but also illogical inasmuch as the amended Regulation 97(4) does not say so. It is pertinent to note that even though, admittedly, the procedure was initiated against the Complaint under Regulation 97, the demand was under Regulation 134(1) of the Supply Code. Demand under Regulation 134(1) of the Supply Code can only be made if there is 'undercharging' in the billing. This is evident from a reference to the Chapter under which the Regulation 134 has been placed. The Respondent cannot initiated proceedings for reclassification under Regulation 97 of the Supply Code and then raise a demand for undercharging under Regulation 134. Any arrears to be paid

following the procedure stipulated under Regulation 97 can only be claimed under Regulation 97(4) of the Supply Code. Any other interpretation is not only incorrect, it will also render Regulations 97(4) and 97(5) irrelevant.

The Respondent had not made any such demand and re-classification for the last 10 years and unilaterally demanding now from the petitioner's unit, even when the same is not made applicable by other electricity board/commission itself shows that the decision of the respondent is arbitrary by nature and without sufficient reasoning. Moreover, the Electricity Act /Supply Code do not give any power or authority to the Respondent to decide the same unilaterally based on any socio-economic condition. The Respondent's reference to the KSERC Order dated 01.08.2018 in OA 18/2017 has no bearing on the present case and is in no way binding on the Appellant's activities of pumping petrol, diesel and kerosene. OA 18/2017 dealt with LPG bottling plant and is irrelevant insofar as the Appellant is considered. And in any event, the said order is under challenge before the Appellate Tribunal for Electricity (APTEL).

The Respondent has also referred to two judgments of the Hon'ble Supreme Court, being Prem Cottex v. Uttar Haryaba Bijli Nigam Ltd. & Ors., Civil Appeal No. 7235 of 209 and M/s Bennet & Coleman Company Ltd. Insofar as Prem Cottex is concerned, the said case dealt with an order of the National Consumer Disputes Redressal Commission dealing with an issue of whether there was 'deficiency in service'. The case was challenging the short assessment notice issued for wrongly recorded bills as a result of incorrect multiply factor (MF). It has nothing to do with suo moto reclassification of tariff which is the subject matter of the present case. Similarly, in Bennet, Coleman & Co. Ltd., Order dated 15.11.2021 in RP No. 3/2021, KSERC did not deal with re- classification of tariff under Regulation 97 or the implications of Regulation 97(4) on demand for arrears in respect of proceedings instituted therein. Therefore, neither of the said orders are applicable in the present case. In light of the above, the submissions made by the Respondent in the Statement of Facts are liable to be rejected and the prayers sought by the Appellant has to be allowed.

## Analysis and findings

The hearing of this appeal petition was conducted on 22/05/2024 at 11:00 a.m. in the office of State Electricity Ombudsman, D.H. Road & Foreshore Road Junction, Near Gandhi Square, Ernakulam. The appellant’s representative Sr. Adv. Sri. E.K. Nandakumar, Adv. Sri. Jai Mohan, Sri. S. Krishnakumar, Head (Pipelines)-South, Smt. Fakira Kasau, Sr. Manager and the respondents Sri. Asokan S., Sr. Superintendent, O/o SOR, Sri. Vijayakumar V., Superintendent, O/o SOR Sri. Sudharman P.K., The Deputy Chief Engineer, Distribution Circle, Ernakulam and Sri. Boban C.P., The Deputy Chief Engineer, Transmission Circle, Kalamassery, Ernakulam were attended the hearing.

The appellant M/s Bharat Petroleum Corporation Ltd., a Public Sector Undertaking (PSU) and operates in the petroleum industry in India. The corporation is engaged in the business of refining crude oil and marketing of petroleum products. The Kochi Refinery one of the largest refinery in India is owned by M/s BPCL. The appellant company is refining the crude oil in KRL and also they are responsible for marketing these products. In 2002, a major fuel pipe line was established to pump the petroleum products from Cochin to Coimbatore and Karur. This pipe line is thus known CCKPL. The appellant company has established their major storage facilities at Coimbatore and Karur, and this pipe line is built to pump the products from Kochi to these destinations. This facility is for shifting the product from the production centre to their marketing centres. The pipeline initially set up by M/s Petronet CCKL the wholly owned subsidiary of M/s BPCL and later during 2018 it has been amalgamated with M/s BPCL and hence the CCKL pipeline also owned by M/s BPCL.

The EHT service connection availed for the operation of heavy duty HT pump sets which pumps the petroleum products to long distances. The respondant on inspection noticed that the tariff applied for the appellant was EHT-industrial tariff, but there is no manufacturing or production activities happening. The pumping of the petroleum products is commercial activity, hence the EHT- commercial tariff is only applicable. The question before the Authority is to examine the change of tariff applied by the licensee is correct or not. If it is correct what period they can charge retrospectively. First point to be examined is the action of licensee on tariff change.

Then it is very pertinent to examine the definition of Industrial activity. The definition from an International Journal of Council Approval Group states as *"manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, clearing, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of any goods, substances, food, products or articles for commercial purposes and includes any storage or transportation associated with any such activity"* .

Then the definition as per Law Insider is *"Industrial activities means material handling, transportation or storage, manufacturing, maintenance, treatment or disposal. Areas with industrial activities include plant yards, access roads and rail lines used by carriers of raw materials, manufactured products, waste material or by products, material handling sites, SGT etc".*

Both the above definitions clearly states that the storage and transportation of the finished products are also industrial activity. Here in this case, the finished products of the Refinery is stored in the premises and pumping to their own storage facilities at different places. The marketing and commercial activities are happening from the storage at Coimbatore & Karur only. This is the shifting/stock transfer activity of products for the commercial purpose considering the above definitions. Then, the activity happening in the premises of Irumpanam of M/s BPCL is an Industrial activity.

The licensee stated about the regulation 97 which describes about the Suo moto reclassification of consumer category.

97(1) *"If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may suo motu reclassify the consumer under appropriate category".*

Here the consumer has not made any change in the purpose of supply than that mentioned in the agreement.

Though the authority is given to the licensee, the purpose of use is to be properly ascertained before reclassification. Licensee also mentioned that as per the Petroleum & Natural gas Regulatory Board, this CCK pipeline treated as a carrier pipeline under Section 20 of PNGRB Act 2006 favouring other utilities also to use the line. Hence, pumping utilising this common carrier line can only be treated as a commercial activity. The supply is availed for the said pipe line pumping unit which situated away from the parent industry. The scheme of Amalgamation of Petronet CCK Ltd. with BPCL and their respective share holders it is mentioned that PNGRB has declared the transferor company's pipelines (Petronet CCK Limited) as a "dedicated pipeline" and not as a common carrier. Then the argument of the licensee is not correct and hence rejected. This pipeline is not used as a common carrier and is only to pump the products of BPCL alone. The premises is set up at Irumpanam considering the safety aspects and other logistics than that of the Refinery premises.

It is very important to refer the orders of Kerala State Electricity Regulatory Commission in the petition OP No. 07/23(order dated 16/05/2023) and its review petition RP No. 02/2023 (order dated 23/11/2023). The parties to these petition are Kerala State Electricity Board on one side and M/s Kochi Salem Pipe line Pvt Ltd (KSPPL) and M/s Bharat Petroleum Corporation Ltd (M/s BPCL) in other side. *"M/s KSPPL is having pipe line connecting Kochi Refinery and Puthuvypeen Import Terminal for supply of LPG to their bottling plants at Udayamperoor, Palakkad, Coimbatore, Erode and Salem. The KSPPL despatch Terminal is located with the BPCL premises at Kochi Refineries. The KSPPL is a joint venture of M/s BPCL and M/s IOCL. Their power requirement is 2.2 MVA at 6.6 kV. Commission observed that the electricity used by the KSPPL is for pumping the LPG gas at its Despatch Terminal locating Kochi Refinery premises. The pumping is not for any commercial activity. Further, considering the social benefit of the transportation of the LPG gas through KSPPL pipelines instead of transportation of LPG through bullet tanker movements. The Commission is of the considered view that the appropriate tariff for the Despatch Terminals of the KSPPL at Kochi Refinery in Industrial Tariff. Commission has also examined the argument of KSEBL that there is no manufacturing activity at the premises of KSPPL Despatch Terminal, hence they are not eligible to get the industrial tariff. According to KSEBL, industrial tariff is applicable to the units engaged in manufacturing activities only. There*

*is no merit in the argument of KSEBL. As per the prevailing tariff orders, electricity used for public water works, drinking water pumping for public by KWA, Corporations, Municipalities and Panchayat's, telemetry pumping station of KWA, pumping water for non- agricultural purposes, sewage pumping etc are categorized under industrial tariff. Here the KSPPL is using the electricity for the purpose of pumping of LPG gas at its Dispatch terminal for the smooth transportation of LPG gas through its pipelines. The pumping is not for any commercial activity. Further considering the social benefit of the transportation of LPG gas through the KSPPL pipelines instead of transportation of LPG through bullet tanker movement, the commission is of the considered view that the appropriate tariff for the Dispatch terminals of KSPPL at Kochi Refinery is the Industrial Tariff".*

The respondent has referred the order of KSERC in the petition filed by M/s HPCL for their LPG bottling plants. The bottling plants are for bottling the LPG gas for distribution to the distributors and dealers for the sale of gas cylinders. This is a sale activity which is purely a commercial activity. As such this is not in any way similar to this case in hand.

As the reclassification itself is not in order then the other point that the period for which the arrears is to be calculated is not having any relevance and hence the same is not examined. The activities of M/s BPCL in this case is also very similar or more stronger than that of M/s KSPPL. M/s KSPPL is transferring the product produced by M/s BPCL to the bottling plants of M/s BPCL & M/s IOCL. In the case in hand, the M/s BPCL is the producer and the transporter. Only the transportation of the product is from another premises that of the production centre. The social benefit of pumping through pipeline instead of transporting the fuel through pipeline is very pertinent to consider. The congession on the road traffic, environmental pollution created etc are the social benefit of this activity. Considering the above facts also, the tariff applicable for the appellant is Industrial Tariff only.

## Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The tariff applicable for the appellant is EHT- industrial tariff and licensee is directed to take action accordingly.

2. The short assessment bill issued by the licensee is quashed herewith.

3. No order on cost.

**ELECTRICITY OMBUDSMAN**

No. P/017/2024/ dated: 19/06/2024.

**Delivered to:**

1. M/s Bharat Petroleum Corporation Ltd, Cochin-Coimbatore-Karur-Pipeline-Irimpanam installation, Ernakulam Dist., Pin-682309.

2. Special Officer Revenue, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram.

3. The Chief Engineer, Distribution Circle, KSE Board Limited, Ernakulam, Ernakulam District.

4. The Deputy Chief Engineer, Transmission Circle, KSE Board Limited, Kalamassery, Ernakulam.

**Copy to:**

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.

2. The Secretary, KSE Board Limited, Vydhyuthi bhavanam, Pattom, Thiruvananthapuram-4.

3. The Chairperson, Consumer Grievance Redressal Forum, 220 kV Substation Compound, HMT Colony P.O., Kalamassery, Pin- 683503.