

**THE STATE ELECTRICITY OMBUDSMAN**

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**APPEAL PETITION NO. P/077/2015**

(Present: V.V. Sathyarajan)

Dated: 20<sup>th</sup> July 2015

Appellant : The Director  
M/s Mar Augustine Golden  
Jubilee Hospital,  
Mookkannoor P.O.  
Ernakulam 683 577.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
Angamaly, KSE Board Ltd,  
Ernakulam

**ORDER****Background of the case:**

The appellant is the Director of Mar Augustine Golden Jubilee Hospital (MAGJ Hospital) having an electric connection with consumer no. 286 of the Electrical Section, Mookkannoor under VI A tariff. On 23/05/2014, the appellant was issued with a short assessment bill amounting to Rs. 14,11,259/- for wrong classification of tariff for the period from 12/2007 to 04/2014. Aggrieved by this, the appellant approached the CGRF, Ernakulam by filing a Complaint No. 48/2014-15. The CGRF disposed the complaint directing the respondent to revise the short assessment (bill dated 23/05/14 amounting to Rs. 14,11,259/-) by limiting the period of assessment for 2 years preceding 23/05/2014 i.e. the date of issuance of the bill and the reclassification of tariff as LT VIII with effect from 05/2013 is in order. Aggrieved by the above decisions of CGRF the appellant has submitted this appeal petition before this Authority.

**Arguments of the appellant:**

MAGJ Hospital, Mookkannoor comes under the control and management of the Charitable Trust, Balanagar Technical Institute Association, having Certificate of Registration vide S. No. ER 59 of 1972 dated 24th of July 1972. This Association has been granted Income Tax exemption vide No. CIT/CHN/12A/Tech-83/2004-05 under Section 12 AA of the I.T. Act 1961 by the Commissioner of Income Tax. All the assets and activities of MAGJ Hospital come under this Charitable Trust and the auditing of the accounts of MAGJ Hospital also come under the Association.

The Hospital had got an electric connection under VI A tariff as applicable to private hospitals registered under the Cultural Scientific and Charitable Societies Act and exempted from payment of income tax. Accordingly, the appellant has been paying the electricity charges regularly and there are no arrears of any electricity charges.

The appellant was issued a letter by the Assistant Engineer directing to submit a mandatory certificate from the Income Tax Department, to the effect that it is exempted from payment of Income Tax. The appellant has submitted a representation stating that the MAGJ Hospital, Mookkannoor is one coming under the control and management of the Charitable Trust, Balanagar Technical Institute Association and it has been granted income tax exemption vide file no. CIT/CHN/12A/Tech-83/2004-05 under Section 12AA of the IT Act.

Again the appellant was issued another letter by the Deputy Chief Engineer stating that the documents produced are not adequate to prove the claim for tariff under VI A. However without considering the documents produced in its correct perspective, the appellant was issued an order by the Assistant Engineer changing the tariff of the hospital from LT VI A to LT VI B from 12/2007 and to LT VIII from 05/2013 and short assessment bill dated 23/05/2014 for Rs. 14,11,250/-.

Being aggrieved, the appellant approached the CGRF by filing a complaint No. 48/2014-15. The CGRF has disposed the petition on the following terms. 1) the respondents are directed to revise the issued short assessment (bill dated 23/05/14 amounting to Rs. 14,11,259) by limiting the period of assessment for 2 years preceding 23/05/2014 i.e. the date of issuance of the bill. 2) The reclassification of tariff as Lt VIII with effect from 05/2013 is in order.

The order of the CGRF to the extent it rejects the claim of the appellant that it is a charitable hospital entitled for concessional tariff under VI A is illegal, arbitrary and unsustainable. Though the appellant had produced all the documents in support of its claim that it is charitable hospital that was not considered by the Forum. The appellant's contention is that the hospital had been categorized under VI A category from the commencement of the same by a competent officer after satisfying with all documents produced for concessional tariff. In such a circumstance the Assistant Engineer has no authority or jurisdiction to change the tariff and to issue additional bill for 7 years period. There is no provision in the Electricity Act 2003 for re-assessment of a bill by the Assessing Officer. Moreover the issued assessment is barred by limitation as per Section 56(2) of the Electricity Act 2003. As per Section 126(5) of the Act, unauthorized use of the electricity can be penalized for a maximum of 12 months.

**Reliefs sought for:**

To set aside the order of the CGRF dated 22/11/2014 in complaint no. 48/2014-15 to the extent it rejects the claim of the hospital that it is a charitable hospital entitled for concessional tariff under LT VI A, and allow the complaint as prayed for by quashing the short assessment bill dated 23/05/2014 and also the order reclassifying tariff as LT VIII with effect from 05/2013.

**Arguments of the respondent:**

The respondent has submitted the following points in his counter statement for consideration.

The impugned short assessment bill was served on the appellant to make good the loss sustained by the licensee on account of misclassification of tariff for the period from 12/07 to 04/14. The appellant institution was bound to satisfy the stipulated conditions in the tariff notification orders in force from time to time for availing the concessional tariff of LT VI A, being enjoyed by the service connection i.e. it should have been a private hospital, registered under Cultural, Scientific and Charitable Societies Act and exempted from payment of income tax. The internal audit exercised by the licensee revealed that the consumer had not produced valid and up-to-date certificates from competent authorities in support of the institutions claim for concessional tariff in

satisfaction of the aforesaid conditions. Although upon directions from the respondent, the appellant submitted a certificate issued by the Registrar of Societies dated 24/07/1972 to the effect of acknowledging the institution, as registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, the institutions failure to substantiate its claim for exemption from income tax liability by producing the certificate to this effect from the income tax dept culminated in the issuance of the short assessment bill.

It is evidently clear that the appellant's institution, though being registered as a trust as early as 22/12/87, filed application before the Income Tax Department for registration as a public charitable trust as belatedly as on 04/02/15, i.e., even after filing of the representation before the Hon'ble Authority and got registration under Section 12 AA of the Income Tax Act, 1961, vide proceedings dated 27/02/15. The returns income for the assessment years 2007-08 to 2011-12 were certified to have been filed before the Income Tax Department by the institution as belatedly as on 30/01/15. This definitely underlines the fact that the appellant's institution did not qualify any of the conditions, set by rules for claiming concessional energy tariff during the time of issue of short assessment bill.

From the assessment orders issued from the Income Tax Dept., it is clear that the appellant institution is fully exempted from income tax liability, corresponding to the assessment years 2007-08 to 2011-12, thereby satisfying its eligibility for the tariff concession for the above period. The impugned bill covered the period from 12/07 to 04/14, necessitating nil assessment orders of the Income Tax Department for the relevant assessment years from 2008-09 to 2014-15. The appellants claim for getting the disputed bill quashed, may not therefore be admitted for want of nil assessment orders, corresponding to the assessment years 2012-13, 2013-14, and 2014-15.

### **Analysis and findings**

A hearing of the Case was conducted in my chamber at Edappally, Ernakulam, on 17/04/2015 and 08/07/2015. The counsel of the appellant, Sri Wilson Urmese, Bro. Thomas Karondukadavil, Director, MAGJ Hospital, and Sri Abraham Thomas was present for the appellant's side and Sri N.S. Indrasenan, Assistant Executive Engineer, Electrical Sub Division, Angamaly and Sri N. Manilal, Senior Superintendent, Electrical Section, Mookkannoor

represented the respondent's side. Both sides have presented their arguments on the lines as stated above. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

**The only question to be decided in this case is as to whether the appellant's institution is a charitable hospital and is exempted from payment of Income Tax, thereby entitled for concessional tariff under LT VI A.**

The respondent does not dispute the fact that the appellant's institution is registered under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act. A certificate dated 24/07/1972 issued by the Registrar of Societies has been produced by the appellant to prove argument in this regard and the respondent has accepted this. Hence the only point to be decided is whether the institution is exempted from payment of income tax.

The respondent argued that the appellant's failure to substantiate its claim for exemption from income tax liability by producing the certificate to this effect from the Income Tax Department, despite being allowed liberal time extensions by the respondent, finally culminated in the issuance of the short assessment bill under challenge for Rs. 14,11,259/- upon re-working the service connection's current charge liability under LT VI B tariff for the period from 12/07 to 04/13 and under LT VIII tariff from 05/13 to 04/14, as applicable to ordinary private hospitals.

On going through the connected documents submitted by the appellant, it is revealed that on receiving the short assessment bill, the appellant has filed an application on 04/02/2015 before the Commissioner of Income Tax (Exemptions) , Kochi for registration under Section 12 AA (I) (b) (i) for income tax exemption. Accordingly, the MAGJ Hospital has taken a registration under Section 12 AA the Income Tax Act as a charitable institution, vide Certificate No. CIT(E)/CHN/12A/220/2014-15. On 30/01/2015, the appellant has filed returns of income for the assessment years 2007-08 to 2011-12 declaring income as Rs. NIL. The appellant has fully exempted income tax liability for the above periods. It is noted that the present demand of the respondent is that the appellant's claim for getting the disputed bill quashed, may not therefore be

admitted for want of nil assessment orders, corresponding to the assessment years 2012-13, 2013-14 and 2014-15.

The only conclusion one can arrive from the above discussions is that though the appellant has obtained a registration for tax exemption as a charitable institution in 2015, his returns for tax exemptions of income has been allowed by the department of Income Tax for the years from 2007-08 to 2011-12. The plea of the appellant during the hearing is that the returns filed for the subsequent periods are under verification with the income tax department and therefore the appellant hospital is entitled to concessional tariff under LT VI A, as applicable to private hospitals registered under the Cultural, Scientific and Charitable Societies Act and exempted from payment of tax.

On going through the documents of the Assessment Orders issued by the Income Tax Department, it is clear that the appellant's institution is fully exempted from Income Tax liability corresponding to the Assessment Year 2007-08 to 2011-12, thereby satisfying the eligibility of tariff concession for the above period. The respondent objected that the Income Tax Department has not issued any Assessment Order corresponding to the Assessment Year 2012-13 to 2014-15. Against this argument, the appellant stated that the MAGJ Hospital has taken a registration under Section 12 AA of Income Tax Act as a charitable institution and this certificate issued is a permanent one and is valid till it cancelled. The procedure for cancellation of certificate is very elaborate and time consuming and that too only in special cases.

As per tariff notification issued by the Hon'ble KSERC, the eligibility for concessional tariff under LT VI A is applicable to private hospitals and charitable institutions registered under Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955, the donations to which are exempted from payment of Income Tax. In the case on hand, the short assessment bill amounting to Rs. 14,11,259.00 issued on 23-05-2014 by the Assistant Engineer, Electrical Section, Mookkannoor consequent on change of tariff with retrospective effect from 01-12-2007. Before issuing the said bill, the appellant was directed to produce mandatory certificate from Income Tax Department in this regard within one month so as to establish the concessional tariff claim by the Assistant Engineer, Electrical Section, Mookkannoor vide letter dated: 24-10-2013. But the appellant filed application before the Income Tax Department for registration as a Charitable Trust as belatedly as on 04-02-

2015 i.e. even after filing of this appeal before this Authority and got registration under Section 12 AA of the Income Tax Act, 1961 vide proceedings of Commissioner of Income Tax (Exemptions) Kochi dated: 27-02-2015. Hence it is evidently clear that the appellant is not in possession of registration under Section 12 AA of the Income Tax Act, 1961 as on 23-05-2014. Though the appellant produced the above certificate with retrospective effect, the appellant is not eligible to be considered for exemption of concessional tariff as per tariff notification issued by KSEERC. The Hon'ble KSEERC issued tariff notification vide order dated: 27<sup>th</sup> November, 2007 which came into force on 01-12-2007. But the respondent failed to issue timely bills to the appellant as per the above notification. The delay in issuing timely bills will cause financial burden on the appellant and there is no justification for issuing such a consolidated bill for a previous period of 7 years.

### **DECISION**

In view of the above discussions it can be seen that the order of CGRF to issue revised bill for a period of 2 years as per Section 56 (2) of Electricity Act, 2003 is found in order. Hence the respondent is directed to revise the bill by limiting the assessment for a period of 2 years at any rate within a period of 15 days from the date of receipt of this order. Any amount remitted in excess shall be adjusted in the future bills. Since the appellant got registration under Section 12 AA of the Income Tax Act, 1961 vide proceedings of Commissioner of Income Tax (Exemptions) Kochi dated: 27-02-2015, the respondent shall issue bills under LT VI A (concessional tariff) with effect from the date of registration. The order of CGRF is modified and appeal is allowed to the above extent. No order as to costs.

**ELECTRICITY OMBUDSMAN**

NO. P/077/2015/\_\_\_\_\_ /Dated:\_\_\_\_\_

Forwarded to:

1. The Director, M/s Mar Augustine Golden Jubilee Hospital, Mookkannoor P.O., Ernakulam 683 577.
2. The Assistant Executive Engineer, KSE Board Ltd, Electrical Sub Division, Angamaly, Ernakulam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, KSE Board Ltd. Thiruvananthapuram.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018