

# STATE ELECTRICITY OMBUDSMAN

THAANATH BUILDING CLUB JUNCTION POOKKATTUPADI ROAD  
EDAPPALLY TOLL KOCHI 682024

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## REPRESENTATION No: 10/2008

*Appellant:* M/s Indian Oil Corporation Limited

Represented by  
Senior Plant Manager  
LPG Bottling Plant  
Parippally, Kollam 691574

*Respondent:* Kerala State Electricity Board

Represented by  
Deputy Chief Engineer  
Electrical Circle  
Kollam

## ORDER

M/s Indian Oil Corporation Limited submitted a Representation on 8<sup>th</sup> April 2008 requesting for the following relief:

To direct KSEB to levy/collect electricity charges only as per tariff applicable to HT Industrial (HT I) and to refund the excess amount collected for the period from June 1999 till date of reversion to HT Industrial

The counterstatements of Respondent was received on 6.8.2008 but the appellant submitted all the related documents ,declaration, exhibits etc only on 29.10.2008 .Both sides could be heard only on 29.10.2008 resulting in the delay in pronouncing this order. The LPG Bottling Plant of IOC at Parippally, Kollam is an HT consumer of KSEB .The activities in the Factory include receipt and storage of LPG in storage vessels and filling the same into containers and also the washing of LPG cylinders, cleaning of cylinder valves by blowing air, treating LPG by application of pressure, repairing of cylinders by replacing defective valves, filling and packing LPG in cylinders etc carried out by engaging more than ten workers and with the aid of power.

As per the exhibits produced by the appellant they have executed the following agreements with KSEB:

Agreement dated 25.7.97: Contract Demand 315KV A : Category :HT Industrial  
Agreement dated 8.2.2000: Contract Demand 125KV A : Category :HT Industrial  
Agreement dated 12.1.2004: Contract Demand 425KV A : Category :HT IV Commercial  
Agreement dated 15.2.2005 : Contract Demand 300KV A : Category (Not Mentioned)

In June 1999 consequent to the Tariff revision order dated 14.5.1999 the Respondent changed the Tariff of the Service to HT IV Commercial which was very much higher than HT I Industrial.

I . The Appellant put up the following arguments /points against the action of the Respondent and in support of their plea:

1. The Appellant is a Factory registered under Factories Act. The manufacturing process defined in Factories act 1948 is applicable to the Petitioner. The Appellant premises can not be categorized as commercial establishment under the Kerala Shopping Establishment Act 1960. Kerala State Pollution Control Board has given consent to the industry. National Industrial Classification 1998 notification issued by Central Statistical Organization, Government of India, has specifically categorized LPG Bottling plants as industry. Hence the appellant is eligible to be categorized under HT I Industrial tariff.
2. In the original agreement dated 25.7.1997 and the subsequent agreement dated 8.2.2000 the category of service has been noted as HT Industrial. Even in the agreement dated 8.2.2000, entered after the Tariff Revision Order 1999, the category is shown as HT Industrial.
3. The dispute on the categorization had been raised by the Appellant on several occasions from 3/02 onwards . But the Respondent made the complainant execute the agreement dated 12.1.2004 wherein they had subsequently inserted the word HT IV Commercial in the Schedule. But since the dispute was open the item was left blank in the agreement dated 15.2.2005.
4. LPG Bottling is neither explicitly nor implicitly mentioned in the HT IV Commercial tariff in the Tariff Revision Order 1999. Being an industrial establishment the Appellant plant should be categorized under HT Industrial.
5. The respondents have no right or authority to change the category from HT Industrial to HT Commercial in violation of the clauses of agreement. The respondents can amend the Conditions of Supply of Electrical Energy provided they are not contradictory to the provisions made in the agreement.
6. The decision of the Appellate Tribunal for Electricity (APTEL) New Delhi in the Appeal no 50 and 80 of 2007 dated 16.8.2007 has become final with the Hon: Supreme Court of India dismissing appeals against it. The APTEL has categorically held that there need not be different input components and output components for an activity to be categorized as manufacturing.
7. So long and so far as the respondent has not and does not categorize the Appellant under any other head in the Tariff Order 1999 they are estopped from unilaterally categorizing their plant under HT IV Commercial. The word industry or commercial is not defined in the Tariff Order 1999 and hence the words are to be understood by generic meaning.
8. In Karnataka and Tamilnadu the LPG Bottling plants are categorized under HT Industrial by the respective ERCs.

## II . The Respondent KSEB submitted the following arguments against the contentions of the Appellant

1. The relations between the Appellant and KSEB is regulated by the Agreement between the parties, Act, Rules and Regulations governing electricity. The KSEB revised the Tariff and Terms and Conditions of supply vide Extra Ordinary Gazette dated 14.5.99. In clause VI of Part II of the order it was stated that *“consumers have been categorized and/or classified according to their load requirements, nature of load, the benefits, social or otherwise that may accrue to the State and/or power system”*. Further as per Clause VII(C) the Board shall be at liberty to re-classify/regroup/restructure the categories and /or revise /refix the rates applicable to any categories of consumers at any time. The tariff order 1999 has been upheld by the Apex courts .
2. A new category of HT tariff named HT IV Commercial was introduced as per the above Notification. It was meant to cover service sector of the economy. The classification and categorization made by the Board is a broad one. Inclusion of public drinking water pumping under Industrial category is an example of this. The Oil companies themselves charge different rates for the same LPG Cylinders for domestic, non domestic and commercial purposes.
3. Activity in LPG Bottling plants cannot be termed as manufacturing since there is no change in input and output components. Only packing or filling of natural gas is involved. Even though the tariff written in the schedule is HT Industrial the purpose and process is described as LPG Bottling in the Schedule. Hence billed under HT IV Commercial.
4. The Tariff Notification supersedes the agreements executed. The Tariff notifications issued from time to time shall form part of the agreement and the agreement shall stand modified to that extent. With the erection of a new tariff category HT IV Commercial in 1999, the agreement and the schedule is modified accordingly.

## III. Discussion and Findings

1. It has generally been accepted by the regulatory authorities that the electricity consumer classification and categorization for the purpose of levy of electricity charges shall be made on the basis of the purpose of the use of the electricity, and are not related to the classification made in the various statutes designed and put in place by various Governments for some specific purpose. The cardinal principle to be followed is that any reasonable classification should have a rationale that has nexus to the objective sought to be achieved by such classification. For example the Factories Act is meant for regulation of labour employed in workplaces. It will not be proper to apply the definitions and concepts laid down in this Act for determining the Tariff for electricity. The National Industrial Classification is done for coordination of statistical activities in the country by Central Statistical Organization. Hence the contention that, if an activity is classified by the above organization under industrial category, it should be applicable for pricing of electricity supplied also, do not stand the test of logic.

Hence I have come to the conclusion that these and similar contentions of the Appellant do not make them eligible for the relief sought for.

2. On a plain reading of the various Tariff Notifications issued by the Respondents, including the latest Tariff Notification issued by the State Electricity Regulatory Commission on November 27, 2007, some interesting and relevant facts come to attention: The Plantations, Dairy Farms, Hatcheries, non-agricultural pumping, public drinking water pumping etc as well as Floriculture, Electric Crematoria, Pyrolators, Mushroom farming, Shrimp farming etc are classified under Industrial Tariff under HT or LT as applicable. This shows that neither the KSEB nor the KSERC have based the Industrial Tariff categorization on the definitions of Industry/factory/Manufacturing in any statutes. These are examples of the general acceptance of the view expressed in the Para 1 above.
3. The new category of HT IV Commercial tariff was introduced in 1999 only. The respondents have stated that it was meant to cover the service sector of the economy. The Appellant plant clearly fits into this group. It has been pointed out that the activities in the LPG Bottling plant is more like a packing unit where one commodity is received in bulk and put into smaller packets and sent out. The fact that the activities like washing of LPG cylinders, cleaning of cylinder valves by blowing air, repairing of cylinders by replacing defective valves, etc are also going on in the plant do not alter the basic nature of the plant. Hence conceiving the unit as service sector and categorizing under HT IV seems to be justifiable.
4. The contention of the Appellant on the Agreements executed by the parties should also be examined. The appellant had executed revised agreements on several occasions due to the changes they had made in contract demand. This is clear from the details of agreements noted earlier. The appellant has a case in the fact that the category of service is shown as *HT I Industrial* in the agreement dated 8.2.2000 executed after the publication of Tariff Notification 1999. The respondents had no effective explanation on the matter except that the tariff notification will supersede the agreement. The Appellant has stated that the word HT IV Commercial was "*subsequently inserted*" by the respondents in the agreement dated 12.1.2004 (Argument Note Page 3). The category is left blank in the agreement dated 15.2.2005. It also follows that the Appellant had signed the agreements leaving some items blank in such a way that respondents can fill them up as they want in future. That a large corporate entity like Indian Oil Corporation takes the execution of Power Supply Agreements so lightly looks naïve. Under these circumstances the discussion on the legal sanctity of the entries in the Schedule of the agreements becomes irrelevant.
5. The Appellant has contended that since LPG Bottling Plants are not included in any category in the Tariff Order 1999 the Respondents can not unilaterally categorize their plant under HT IV Commercial. The word industry or commercial is not defined in the Tariff Order 1999 and hence the words are to be understood by generic meaning. The tariff Orders issued by the Licensees as well as by KSERC are not expected to define terms like Industry, commerce etc. These orders broadly state the types of consumers coming under various Tariff groups. However the term Industry is generally understood as economic activity concerned with the processing of raw materials and manufacture of goods in

factories or the production of goods from raw materials, especially in factories. The Appellant claim that LPG bottling come under these domains do not seem to be correct. It is also to be recorded that the Gazette Notification on Tariff Order 1999 had empowered the respondent KSEB to re-classify/regroup/restructure the categories and /or revise /refix the rates applicable to any categories of the consumers under them.

6. The Appellant has claimed that the Order of APTEL on Appeal No 50/07&IA 90/07& Appeal 80/07 produced as Exhibit P27 is relevant here and supports the claim of the Appellant on the grounds that the activities in the Factory involves washing of LPG cylinders, cleaning of cylinder valves by blowing air, treating LPG by application of pressure, repairing of cylinders by replacing defective valves, filling and packing LPG in cylinders etc and these activities are carried out by different machines working with the aid of power. The case before the APTEL under reference was relating to the tariff applicable to Cashew Kernel Processing. The relevant portion of the judgment is extracted below:

*It is clear ....that there are more than a dozen machines performing several functions for various purposes including quality control. Some machines may be exclusively run for simple sealing of containers / packets. But there are several other machines performing functions like sealing, roasting, oil suction, lamination, gas filling etc. These functions are some thing more than a simple function of packaging as we normally understand. It has been explained before us ... that in order to control the quality of the product – cashew kernels – and to standardize the product, the appellant has to dry the cashews at a particular level so that every grain of cashew contains the same level of moisture. Roasting is also a process that cashew kernels have to undergo. There are several stages of sieving as to remove foreign particles. Garnishing is done by adding spices. Extraction of oil is also necessary to maintain the required level of oil content in the cashews. The appellant’s activity is in fact manufacturing, processing activity and similar to those falling in LT IV category. (Extracts from Para 9&10)*

In the instant case the Appellant has failed to establish that LPG undergo such transformations while coming out of the plant , other than *a simple function of packaging as we normally understand*, to attract the application of the same norms as explained by the APTEL above.

7. Another contention raised by the Appellant is that the TNERC in their order dated 15<sup>th</sup> July 2008 on MP 13/08 filed by IOC LPG Plant Pollachi has ordered for categorizing the plant under HT IA Industrial and they have produced a copy of the order. In the copy of the order itself under Para 7 it is stated that : “ *There are several categories of consumers which are mentioned in the tariff schedule relating to HT Tariff 1A(Industrial). ‘Registered Factories’ is a separate category mentioned in HT Tariff 1A. ‘Industrial Establishment’ is another separate category mentioned in the said HT Tariff 1A.Both are different indicating different categories of consumers. The petitioner company being a registered factory has to be classified under HT Tariff 1A*”. In the case of Karnataka also the tariff schedule HT 2(a) Industrial approved by Karnataka ERC specifically includes factories as well as LPG Bottling plants under the Industrial Tariff. But in the case of Kerala neither the KSEB nor the KSERC have made such classification of Factories/LPG Plants in the Industrial Tariff. In the tariff order

1999 of KSEB or even in the Tariff Order 2007 issued by KSERC the term Registered Factories do not appear in the HT Industrial Tariff .As such it will be unfair if the Licensee is directed to include the Appellant under HT I Industrial tariff based upon the TamilNadu and Karnataka ERC orders.

8. It would be appropriate if the Appellant move the KSERC during the next Tariff Revision/Tariff Rationalization exercise to seek to include either the LPG Bottling Plants or the Registered Factories under the HT Industrial tariff for Redressal of their grievances.

#### IV . Orders:

1. *Under the circum stances explained above and after carefully going through all the documents/records/arguments presented by both the parties the undersigned is constrained to dismiss the representation submitted by the Appellant*
2. *No order on costs.*

Dated this the 17th day of November 2008,

P.Parameswaran  
Electricity Ombudsman

**No P 10/08 / 96 / dated 18.11.2008**

Forwarded to:

1. The Senior Plant Manager  
LPG Bottling Plant  
Indian Oil Corporation Ltd  
Parippally, Kollam 691574

2. Deputy Chief Engineer  
Electrical Circle, KSE Board  
Kollam

Copy to :

1. The Secretary,  
Kerala State Electricity Regulatory Commission  
KPFC Bhavanam , Vellayambalam, Thiruvananthapuram 695010

2. The Secretary ,KSE Board,  
VaidyuthiBhavanam ,Thiruvananthapuram 695004

3. The Chairman  
Consumer Grievance Redressal Forum

KSE Board, Vaidyuthi Bhavanam  
Gandhi Road Kozhikode

4. The Chairman  
Consumer Grievance Redressal Forum  
KSE Board, Vaidyuthi Bhavanam  
KOTTARAKKARA

5. The Chairman  
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