



**IN THE HON'BLE TAMIL NADU ELECTRICITY REGULATORY
COMMISSION
CHENNAI**

23rd DAY OF AUGUST 2005

PRESENT:

The Hon'ble Chairman Mr. A. Balraj, IAS., Retd. - Chairperson

The Hon'ble Member Mr. S. Thangarathnam - Member

and

The Hon'ble Member Mr. B. Jeyaraman - Member

M.P. No.24 of 2005

S. Jeyapalan,
Sr. Plant Manager,
Indane Bottling Plant
(Indian Oil Corporation Limited)
D143 Athippattu Village,
NCTPS Main Road,
Chennai 600 120.

: PETITIONER

Vs.

The Chairman
Tamil Nadu Electricity Board,
Anna Salai,
Chennai 600 002.

This petition coming on for final hearing before us on 26th day of July 2005 in the presence of the petitioner appearing in person and Thiru G.Vasudevan, Advocate for the respondent, having heard the arguments of both sides and having perused the petition, affidavit, counter affidavit and reply to the counter affidavit and other connected documents and having stood over for consideration till this day, this Commission deliver the following

ORDER

1. Prayer of the Petitioner

The prayer in MP No. 24 of 2005 is that the Commission may be pleased to direct the TNEB to collect the electricity charges for the Petitioner (HT Consumer No. 1699) under HT Industrial Tariff I – A instead of HT Commercial Tariff III.

2. Facts of the Case as set out in the Petition and Counter Affidavit

(a) The Petitioner has stated as follows:

- (i) M/s. Indian Oil Corporation Limited (IOC) has established at Athippattu, near North Chennai Thermal Power Station, an Indane Bottling Plant (IBP) of annual capacity of 72 TMT, which is marketed in Chennai only through distribution networks by the Marketing Division of IOC.
- (ii) The IBP has been issued with a factory licence, declaring it as an industry.
- (iii) The receipt of Liquefied Petroleum Gas (LPG) from bullet tankers, storing in large storage bullets, pumping LPG from the storage bullets for refilling in three different small mild steel cylinders for retail sales are the main activities of the plant and these activities constitute manufacturing process as defined in Section 2(k) of Factories Act 1948.
- (iv) The Central Government has registered the IBP as a scheduled industrial undertaking.
- (v) The plant is recognized as industrial plant by the Tamil Nadu State Factory Authorities and also Tamil Nadu Pollution Control Board.
- (vi) The detailed operational procedures adopted for bottling LPG into the retail cylinders, the LPG has to be handled very carefully and at correct pressures and temperatures and this requires extensive use of electrical, electronic and mechanical equipments like motors, pumps, high speed electronic weighers, compressors and efficient controlling devices.

- (vii) The technology, science and economics are the predominant features of the process of bottling LPG, after which commercial interest ensues.
 - (viii) The Tamil Nadu Electricity Board (TNEB) has provided 11 KV power supply to the plant and for levying power and energy consumption charges, categorized the plant under HT – Tariff III, which meant that the IBP has been categorized a HT commercial consumer and as such commercial tariff applicable to HT consumer is being levied.
 - (ix) The Petitioner have brought to the notice of SE / CEDC / North under whose jurisdiction the plant has been provided with power supply that the activities in the IBP have to be seen only as a set of industrial activities taking place in a registered factory as approved and licensed by the State and Central Government authorities and hence the electricity tariff must be covered under HT Industrial Tariff – HT I – A and not under the HT – III Commercial category and requested the change in tariff category to HT – I A.
 - (x) TNEB, in April, 2004 has curtly stated that there is no industrial activity being carried on in the Athipattu IBP and hence **the request for change of tariff from HT – III – Commercial to HT I A – Industrial is not feasible.** Neither they have stated categorically that the activities in the plant are commercial in nature.
- (b) The contentions as put forth by the Respondent Board in their Counter Affidavit are as follows:
- (i) The Petitioner being agreement holders are bound by the terms and conditions of supply and as such estopped from disputing the tariff, since it has been paid all along for several years. Hence there is no merit in the above Miscellaneous Petitions and as such the Miscellaneous Petitions are liable to be dismissed.
 - (ii) In the LPG Bottling Plant, the bulk LPG received from refinery locations or import terminal through bullet trucks and unloaded in the storage vessels.

The stored LPG is filled into cylinders and loaded into truck for dispatch. The main purpose of the plant is filling of LPG into cylinders only. For filling operation only they are reducing (or) increasing pressure in the storage vessel. There is no manufacturing activities carried out. Packing and pumping of LPG may be part of industrial activity. But these activities alone do not justify to treat the establishment as an industry.

- (iii) Adoption of HT Tariff III to the LPG Bottling Plant is correct. Hence change of tariff from HT Commercial to HT Industrial is not warranted.
- (iv) Since no different product is manufactured, this service may continue to be charged under HT Tariff III.

3. Points at issue

From the pleadings of the case referred to in paragraph 2 above, the following points at issue arise for the consideration of this Commission, viz.:-

- (i). Whether the operations carried out in the Petitioner's premises involve manufacturing process?
- (ii). Whether the Petitioner's operations can be said to be industrial activity?
- (iii). Whether the Petitioner is entitled to the relief claimed by it?

4. Point at issue No.(i) in para 3 above viz. Whether the operations carried out in the Petitioner's premises involve manufacturing process?

The Petitioner in their Petition at p 4 has stated that it has been issued with a factory licence and that it has been registered as a Factory under the Factories Act, 1948 as their activities constitute manufacturing process as defined in section 2 (k) of the said Act. The contention of Respondent Board in their Counter at para 6 is that since no different product is manufactured the service may continue to be charged under HT Tariff III. The legal meaning of the word '**Factory**' has been considered in the Law Lexicon 2001 Second Edition of P. Ramanatha Aiyer with reference to case law. The following portion at p 697 of the Law Lexicon would be relevant.

"The essential requisites of a factory under the Act are (1) a premises, a geographical area within a certain boundary (2) in a part of which atleast

manufacturing process should be carried on with the aid of power and (3) twenty or more persons should be working in the premises. It is not necessary that all the twenty persons should be working in the same section or department. Employees State Insurance Corporation v. S.M. Sriramule Naidu AIR 1960 Mad 248,251. [Employees State Insurance Act 1`948 S. 2 (12)]"

From the above it would be seen that one of the essential requisites of factory is that manufacturing process should have been carried out with the aid of power. The fact that the Petitioner's IBP is a registered factory under the Factories Act would indicate that there is a manufacturing process in the Petitioner's premises. There is no dispute with reference to the fact that the Petitioner's IBP is a registered factory registered under the Factories Act. Under the Tariff Schedule to the Tariff Order dated 15.3.2003 under Item I A, which relates to Industrial Tariff, **Registered Factories** is mentioned as separate item, apart from industrial establishments. The Petitioner's IBP being a registered factory can be said to fall under expression "Registered Factories" occurring in the said item I A irrespective of the fact whether it is an Industry or not. In order to classify a category as an Industrial consumer category under Item I A of the Tariff Schedule of the Tariff Order referred to above, it would be sufficient if the category is a registered factory as the said item I A is automatically applicable to all registered factories. Under the Factories Act, it is not necessary that a different product is to be manufactured and it would be sufficient that some manufacturing process is carried on with the aid of power. In view of the above position, it can be said that there is a manufacturing process in the Petitioner's premises as it is a registered factory.

5. Point at issue No.(ii) in para 3 above viz. Whether the Petitioner's operations can be said to be industrial activity?

In the Petition at p 5, the Petitioner has averred that the Central Government has registered the IBP as a scheduled industrial undertaking. At para 4 of the Counter Affidavit of Respondent Board, it has been stated that packing and pumping of LPG may be a part of industrial activity and that these activities alone do not justify to treat

the establishment as an industry. During the course of the arguments, the Respondent Board has not substantiated their contentions with sufficient proof or material. The Counsel for the Petitioner has while furnishing a copy of the Tariff Order of Karnataka Electricity Regulatory Commission, stated that LPG has been treated as Industry by the Tariff Order of Karnataka Electricity Regulatory Commission. In the paper under the caption **"National Industrial Classification (All Economic Activities) 1998"** as furnished by the Counsel for the Petitioner, it would be seen that **Bottling of LPG** has been classified under sub-class 23 203 under Division 23 – Manufacture of Coke Refined Petroleum products and Nuclear Fuel. The above documents furnished by the Petitioner's Counsel sufficiently prove that the Petitioner's activity is an industrial activity. Further it is seen that the Central Government has declared the IBP of the Petitioner as an industrial undertaking. The above fact cannot be disputed by the Respondent Board. In view of the above position, it can be said that the activity of the Petitioner's IBP is an industrial activity. As such point at issue No. (ii) is held in favour of the Petitioner.

5. Point at issue No.(iii) in para 3 above viz. Whether the Petitioner is entitled to the relief claimed by it?

As both the points at issue No. (i) and (ii) at para 3 above are held in favour of the Petitioner, the Commission is of the view that the Petitioner is rightly entitled to the relief claimed for by it.

7. Conclusion

As the Petitioner's IBP is a registered factory registered under the Factories Act 1948, Tariff I – A which relates to Industrial Tariff is automatically applicable to the Petitioner's service and as such the Petitioner's Service (HT Service NO.1699) has to be treated as an industrial service falling under Tariff I – A instead of Commercial Tariff III. The IBP of the Petitioner can also be said to be an industrial undertaking as declared by the Central Government.

The Respondent Board is directed to change the tariff classification of the IBP of the Petitioner from the present tariff classification HT III to HT I – A with effect from the date of issue of this order.

It is clarified that this order would take effect prospectively from the date of issue of this order and that the Petitioner is not entitled to claim any refund of the tariff paid prior to the date of issue of this order.

With the above observations, the said MP No. 24 of 2005 is finally disposed off by this Commission. There would be no costs.

Pronounced in the Open Court by this Commission on 23rd August 2005

Sd.....
(B. JEYARAMAN)
Member

Sd.....
(S. THANGARATHNAM)
Member

Sd.....
(A. BALRAJ)
Chairman

List of Witnesses examined

NIL

List of Documents

NIL

Sd.....
(B. JEYARAMAN)
Member

Sd.....
(S. THANGARATHNAM)
Member

Sd.....
(A. BALRAJ)
Chairman

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SECRETARY