



THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION

**(Constituted under Section 82(1) of the Electricity Act, 2003)
(Central Act 36 of 2003)**

PRESENT :

Thiru S. Kabilan - **Chairman**

Thiru B. Jeyaraman - **Member**

And

Thiru R. Rajupandi - **Member**

M.P.No. 13 of 2008

Indian Oil Corporation Ltd.,
LPG Bottling Plant
Periyakalandhai, Kattampatty (P.O)
Pollachi T.K - 642 202.

..... Petitioner

Vs

1. The Chairman,
Tamil Nadu Electricity Board,
No.144, Anna Salai, Chennai-600002.

2. The Superintendent Engineer
Udumalpet Electricity Distribution Circle,
TNEB, Udumalpet.

..... Respondents

The above petition viz., M.P.No. 13 of 2008 came up for final hearing before the Commission on 04.06.2008. The Commission upon perusing the above petition and the counter affidavit filed by Respondent Board and the connected records relating to the case and upon hearing the arguments of counsels for both sides passes the following

ORDER DATED 15th July 2008

1. Prayer of the Petitioner

The prayer of the petitioner in M.P.No. 13 of 2008 is to change of tariff from HT III – Commercial to HT 1A – Industrial and to refund the excess amounts paid with due interest in line with section 62 (6) of the Electricity Act, 2003 (Central Act 36 of 2003).

2. Summary of the Case

The Petitioner Indane Bottling Plant (IBP) at periyakalandhai is owned by IOCL and it has been registered under Factories Act and having license upto 31.12.2008. The power supply was sanctioned on 31.07.2003 under HT III (commercial). But the electricity bills for consumption charges were raised only under HT 1A (industrial) till June 2004. As per audit report of the respondent board, the petitioner tariff was changed from HT 1A to HT III from November 2003 to June 2004 and an amount of Rs. 2,37,893/- as short levy was paid by the petitioner company under protest which was received by the respondent board and issued a receipt mentioning under protest. The petitioner company was making payment from July 2004 to March 2006 under HT III under protest. The difference between tariff HT III to HT 1A as excess payment under protest for the period July 2004 to March 2006 comes to about Rs. 15, 89,129/-. Following the judgment of the Commission dated 23.08.2005 passed in M.P.No.24 of 2005 (IBP Athipattu) the tariff of the petitioner company was changed to HT 1A from April 2006 onwards. In letter dated 23.8.2007, the tariff was again changed to HT III in the month of August 2006 with a direction to remit all the arrears from April 2006 to July 2007 amounting to Rs. 12,48,495/-. The said arrears along with consumption charge bills for August 2007 and March 2008 in tariff III (Rs. 6,83,646/-) was also paid under protest. The total relief prayed for comes to Rs. 37,59,163/-.

3. Clarification sought for from the petitioner company

During the arguments on the above petition held on 4th June 2008, the Commission has ordered the petitioner company to furnish details in regard to the following

- a) Whether the petitioner company replied to the letter dated 07.08.2004 issued by the respondent board and whether protest has been made every time ?.
- b) Whether Rs.2,37,893/- claimed under HT III (commercial) from November 2003 to June 2004 has been paid under protest?.
- c) Order copy of the Tamil Nadu Electricity Ombudsman.

4. Reply furnished by the petitioner company to the above clarification

In regard to the question raised in item (a) in paragraph 3 above, the petitioner company has in their letter ref: LPG / PJT / CBE / 16 dated 18th August 2004 in last paragraph stated as follows:

“It clearly proved with suitable evidences that this is an industry / factory and eligible to bill under tariff 1A only. Hence, we request you to bill under “Industrial Tariff” i.e. Tariff 1A and adjust the amount already paid under protest against forth coming bills, till then the CC charges will be paid under protest only.

From the above statement, it is seen that the petitioner company has been paying CC charges only under protest. In regard to the question raised in item “b” at paragraph 3 above, the petitioner company have stated that the short levy claimed by the respondent board in their letter dated 7th August 2004 for the period from November 2003 to June 2004 amounting to Rs. 2,37,893/- along with July 2004 CC bill totalling to Rs. 5,27,926/- was paid under protest. It is seen from the letter ref: LPG / PJT / CBE / 16 dated 07.08.2004 that the petitioner company has paid the said amount of Rs.2,37,893/- under protest by cheque no. 277 dated 07.08.2004 pending approval of their request for billing under industrial tariff. In regard to item “c” in paragraph 3 above, it is seen that the petitioner company has filed a copy of letter no. 1209 dated 5.12.2007 issued by the Tamil Nadu Electricity Ombudsman. In the said letter the Tamil Nadu Electricity Ombudsman inter alia stated as follows:

“..... neither the Consumer Grievance Forum nor the Electricity Ombudsman has the authority to extend the benefits to similarly placed persons in this regard when the order of the Tamil Nadu Electricity Regulatory Commission is very specific on this issue. However, you are at liberty to file a petition before the Tamil Nadu Electricity Regulatory Commission under the Conduct of Business Regulations 2004 with requisite fees as per the Fees and Fines Regulations 2004 in this regard.”

5. Contentions of the Respondent Board

The contentions of the Respondent Board in their counter affidavit are briefly as follows:

- (a) The HT service connection 242 / Udumalpet EDC was effected to the petitioner on 22.09.03 under HT Tariff III (commercial) for the month of 09 / 2003 and 10 / 2003 and change of tariff from HT Tariff III to HT Tariff 1A was done from 11 / 2003 and was changed under HT Tariff 1A till 06 / 2004. Then based on audit slip, change of tariff from HT Tariff 1A to HT Tariff III was done from 11 / 2003 to 06 / 2004 and arrear of amount of Rs. 2,37,893/- was collected under protest and this HT service was charged HT Tariff III till 04 / 2006.
- (b) The Tariff of HT SC No. 242, Udumalpet EDC was changed during 04 / 2006 based on Tamil Nadu Electricity Regulatory Commission's Order dated 23.08.2005 and the consumer representation dated 26.04.2006. Then the same was reverted back to HT Tariff III from HT Tariff 1A from the date of change of Tariff from HT Tariff III to HT Tariff 1A based on the orders passed in M.P.No.3 / 2007 of Tamil Nadu Electricity Regulatory Commission and arrears amount of Rs.12,48,495/- (for 04 / 2006 to 07 / 2007) has been collected on 06.10.2007 under protest and this HT service is continued to be charged under HT Tariff III till date.

6. Issues

The following issues arise for consideration namely:-

- (i) Whether the change of tariff of the petitioner company from HT 1A (industrial) to HT III (commercial) in letter dated 21.07.2004 issued by Superintending Engineer, Udumalpet Electricity Distribution Circle, Tamil Nadu Electricity Board on the basis of audit slip is correct?.
- (ii) Whether the subsequent change of tariff from HT 1A to HT III by Superintending Engineer, Udumalpet Electricity Distribution Circle, Tamil Nadu Electricity Board in letter dated 23.08.2007 is correct?.
- (iii) Whether there is any acquiescence on the part of the petitioner company in regard to the claim for refund of excess amount paid by them?.

7. Findings of the Commission with reference to the first point in issue

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 and they have been paying the CC bills under the said HT 1A till June 2004. In para 2.6 of the petition, the petitioner company has stated as follows:-

"..... the electricity bills for consumption charges were raised only on the basis of HT Tariff 1A (industrial) till June 2004. It is due to the fact that the TNEB recognized rightly that the IBP is a registered factory and in accordance with the Tariff notification of TNERC dated 15.03.2003, effective from the next day and also standing instructions of the Board."

The above averment of the petitioner company has not been specifically met by the Respondent Board in their counter affidavit. In paragraph 8 of the counter affidavit the Respondent Board has stated that based on audit slip change of tariff from HT Tariff 1A to HT Tariff III was done from 11 / 2003 to 06 /

2004 and an arrear amount of Rs. 2,37,893/- was collected under protest. The Respondent Board did not dispute the contention of the petitioner company that the raising of CC bills under HT 1A is in accordance with the Tariff Order dated 15.03.2003. The change of tariff from HT 1A to HT III by the Respondent Board is contrary to the Tariff Order dated 15.03.2003.

8. Findings of the Commission with reference to the second point in issue

The subsequent change from HT 1A to HT III in letter dated 23.08.2007 (page 46 of the petition) issued by the Superintending Engineer, Udumalpet Electricity Distribution Circle, Tamil Nadu Electricity Board is based on the instructions of Chief Financial Controller, Revenue. The above change is not only contrary to the Tariff Order dated 15.03.2003 but also against the principles of natural justice as no opportunity was given to the petitioner company to explain themselves before making the change of tariff.

9. Findings of the Commission with reference to third point in issue

The petitioner company in their letter dated 18th August 2004 (relevant portion extracted in para 4 above) has intimated to the respondent board that the current consumption charges were paid under protest. In letter dated 07.08.2004 the petitioner company has stated that they have paid the amount of Rs. 2,37,893/- under protest. In the said letter the petitioner company has also stated that they paid the said amount by cheque no.277 dated 07.08.2004 pending approval of their genuine request for billing under industrial tariff. The Respondent Board did not give any reply to the said letter dated 07.08.2004. In regard to IBP at Athipattu village, the petitioner company has filed M.P.No.24 of 2005 before this Commission claiming the same relief as prayed for in this petition which was granted to them by the Commission in its orders dated 23.08.2005. There is no limitation which has been prescribed in the Act for filing the petition. If the petitioner company had made the payment of bills under HT Tariff III without any protest, then there would be acquiescence on the part of the petitioner company. Since the petitioner has been paying the CC bills under protest and since the respondent board did not reject the request of the petitioner

for billing under HT 1A, there is no acquiescence on the part of the petitioner company.

10. Conclusion

The petitioner company being a registered factory holding a valid license issued under the Factories Act, has to be classified under HT Tariff 1A. The relief prayed for in paragraph 5.2 of M.P.No.13 of 2008 is allowed subject to verification of the correctness of the amount claimed therein by the respondent board. The respondent board is directed to refund the excess payment made by the petitioner company after verification with interest equivalent to bank rate as stipulated under section 62(6) of the Electricity Act, 2003.

With the above observations M.P.No.13 of 2008 is finally disposed off. There is no order as to costs.

Pronounced in the open court by this Commission on 15th July 2008.

(Sd.....)
(R. RAJUPANDI)
Member

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

(Sd.....)
(S.KABILAN)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission