



**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. 29 of 2008**

Indian Oil Corporation Ltd.,  
LPG Bottling Plant  
SIPCOT Industrial Growth Centre  
Perundurai – 638 052. .... Petitioner

**Vs**

1. The Chairman,  
Tamil Nadu Electricity Board,  
No.144, Anna Salai, Chennai-600002.
2. The Superintendent Engineer  
Erode Electricity Distribution Circle,  
TNEB, Erode. .... Respondents

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The above petition viz., M.P.No. 29 of 2008 came up for final hearing before the Commission on 13.08.2008. The Commission upon perusing the petition and the counter affidavit filed by Respondent Board and the connected records relating to the case and upon hearing the arguments of both sides passes the following

## **ORDER DATED 19<sup>th</sup> SEPTEMBER 2008**

### **1. Prayer of the petitioner**

The prayer of the petitioner is to change the Tariff to HT 1A (Industrial) and to direct the respondents to refund the excess payments made by the petitioner.

### **2. Summary of the case**

The Indane Bottling Plant (IBP) of perundurai owned by the IOCL the petitioner herein, is a registered factory having a valid factory license valid upto 31.12.2010. The power supply to the IBP was sanctioned on 18.09.2000. Since commencement of supply, CC bill was charged under HT III (commercial). On representation made by the petitioner the tariff was changed to Industrial Tariff w.e.f. March 2006. The CC bill was changed under HT Tariff 1A (Industrial) from March 2006 to August 2007. In September 2007 CC bill it was found that the Tariff was changed again from Tariff 1A (Industrial) to Tariff III (commercial) by the Respondent Board. The payment was made under protest. The total relief prayed for is Rs. 83,24,133/-. The petitioner represented to Consumer Grievances Redressal Forum, Erode (CGRF) and it came to know that the CGRF has no jurisdiction.

### **3. Contentions of the Respondent Board**

- a) In orders dated 23.08.2005, the Tamil Nadu Electricity Regulatory Commission has not passed any general order applicable to all consumers.
- b) The orders dated 23.08.2005 is applicable only to the petitioner in M.P.No. 24 of 2005.
- c) The orders passed in M.P.No.24 of 2005 would apply to Indane Bottling Plant and it will not have general application to all classes of consumers.
- d) During 08 / 2007, the tariff of HT SC No. 132, Perundurai, Erode EDC of the petitioners herein 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. (i.e. from 03 / 2006 ).

#### **4. Issues**

The following issues arises for consideration namely

- i) Whether the change of tariff from HT 1A to HT III from September 2007 by the Respondent is correct?.
- ii) Whether the pendency of the petition before the CGRF Erode is a bar to the Commission for entertaining this petition?.
- iii) Whether there is any acquiescence on the part of the petitioner company?.

#### **5. Findings of the Commission with reference to the first 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 tariff items indicating different categories of consumers. The petitioner company being a registered factory has to be classified under HT Tariff 1A. The change of tariff from HT 1A to HT III by the Respondent Board is contrary to the Tariff Order dated 15.03.2003 and also to the principles of natural justice.

#### **6. Findings of the Commission with reference to the second issue**

The pendency of petition filed by the petitioner company before CGRF Erode is no bar for the Commission to take cognizance of this petition as the CGRF has no jurisdiction to entertain the grievance petition filed by the petitioner company and it is only the Commission which has got the jurisdiction to decide the dispute in this petition.

#### **7. Findings of the Commission with reference to third issue**

In regard to the refund of an amount of Rs. 57,24,214/- for the period from 10 / 2001 to 02 / 2006 as referred to in para 5.2 (a) it is to be noted that there is

acquiescence on the part of the petitioner company since they have paid the said amount without any protest. In this connection the following portion at page 30 of the commentary of the Constitution of India (9<sup>th</sup> Edition by Durgadas Basu) would be relevant. "In Nainsukh Vs. State of UP (1953 SCR 1184) the Supreme Court observed that a person who had acquiesced in an election being conducted on the basis of separate electorates formed on communal lines could not seek his remedy under Article 32 after the election was over." At page 538 of the said commentary it has been observed as follows: "Acquiescence (1) Relief under Article 32 or 226 has also been refused on the ground of acquiescence".

In view of the above position, the claim for refund of excess payment for the period October 2001 to February 2006 has to be rejected on the ground of acquiescence. The claim for refund of excess payment for the period March 2006 to June 2008 is to be allowed as the payment was made under protest.

## **8. 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 refund of an amount of Rs.57,24,214/- being excess payment paid for the period from October 2001 to February 2006 is disallowed as there is an acquiescence on the part of the petitioner company in paying the said amount without any protest. The claim for the refund of an amount of Rs. 15,47,884/- for the period from March 2006 to August 2007 and an amount of Rs.10,52,035 for the period from September 2007 to June 2008 as prayed for in paragraph 5.2 (b) and (c) is allowed since the said amounts were paid under protest. The Respondent Board is directed to refund the said amounts of Rs.15,47,884/- and Rs.10,52,035/- with interest as prescribed by Commission after verification of the correctness of the above claim.

With the above observations M.P.No. 29 of 2008 is finally disposed off. There is no order as to costs.

Pronounced in the Open Court by this Commission on 19<sup>th</sup> September 2008.

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

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

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

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission