



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: R. DAMODAR

Wednesday, the Twenty Third day of September 2015

Appeal No. 42 of 2015

(Old Appeal No. 85 of 2014)

Preferred against Order Dt. 22.11.2014 of CGRF In

CG.No: 104/2014 of Mahaboobnagar Circle

Between,

M/s Heemankshi Bakers Pvt Ltd,
Represented by its Director, Sri Sravan Kumar Agarwal,
Mekaguda, Kothur mandal,
Mahaboobnagar dist.
Cell 8498090105

..... Appellant

AND

1. The ADE/OP/Shadnagar/TSSPDCL/Mahaboobanagar Dist.
2. The SAO/OP/Mahaboobanagar/TSSPDCL/Mahaboobnagar Dist.
3. The DE/OP/Jedcherla/TSSPDCL/Mahaboobanagar Dist.
4. The SE/OP/MBNR Circle/TSSDCL/Mahaboobnagar Dist.

..... Respondents

The above appeal filed on 17.12.2014 came up for final hearing before the Vidyut Ombudsman, Telangana State on 02.09.2015 at Hyderabad in the presence of Sri. Shraavan - Appellant and Sri. K.V. Narasimha Reddy - For DE/OP/Jadcherla, Sri. B. Sanjeeva Reddy - DE/OP/Jadcherla, Sri. S Bala Chandrudu - SAO(I/C)/OP/ MBNR, Sri. D. Chandramouli - ADE/OP/Shadnagar for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant is a manufacturer of Biscuits, Wafers and Snacks and claim to be a food processing industry and claims that it has purchased expensive power from February, 2013 to June, 2013 during the subsistence of

Restriction and Control Period applicable from September, 2012 to July, 2013. The Appellant claims that the proceedings of APERC/SECY/08/2013 Dt. 17.4.2013, showing R&C measures were not applicable from April, 2013 onwards. R&C bills were issued to the Appellant starting from December, 2013 onwards imposing heavy penalties up to 6 times of the cost. The Appellant further claims that since it is a food processing unit, it is specifically exempt from the R&C measures effective from September, 2012 to July, 2013 and sought adjustment of excess amount paid for the expensive power purchased from April, 2013 to June, 2013 amounting to Rs 20,97,253/- during the R&C measures.

2. The 2nd Respondent filed a reply stating that due to continuous dry spell in the state, increasing demand for power, combined outages of thermal units, delay in monsoon, insufficient inflows into Hydel Reservoirs, the Thermal and Hydel Power stations were not in a position to operate at full capacity. The DISCOMS then made a request to APERC to permit them to impose restrictions on power supply under Section 23 of Electricity Act, 2003 and Clause 16 of GTCS. As requested, APERC examined the issue and issued R&C restrictions to be implemented from 12.9.2012 to 31.7.2013 in exercise of powers conferred by section 23 read with clause(k) of subsection(1) of Section 86 of the Electricity act, 2003.

3. The 2nd Respondent further claimed that the consumers subject to R&C measures were allowed to purchase power under Expensive Power Supply Scheme(EPSS) for 40% MD and energy and energy at specified load factor at respective voltage level by paying extra charges for the units in advance at a tentative rate approved by APERC from time to time, from the month of February, 2013 to July, 2013. The Appellant has purchased under EPSS from March, 2013 to June, 2013 and was issued R&C bills from September, 2012 to July, 2013 for an amount of Rs 56,44,414/- against which the Appellant paid Rs 28,22,207/-. An amount of Rs 29,17,868 was withdrawn towards 50% of penalties as per the instructions of CGM(Finance)/GM(REV)/SAO(REV)/AO(HT)/D.No. 01/2014, dt. 4.4.2013.

4. The 2nd Respondent further claimed that EPSS charges collected in excess amounting Rs 4,99,334/- vide Journal entry No. 15 dt. 19.2014 was adjusted and the EPSS charges collected at tentative rates were finalised and the amounts

were adjusted to the consumer account.

5. The 2nd Respondent stated that only Dairies and Milk chilling plants, Feed mixing plants, Cold storage plants and Food processing and Food preservation plants are exempt from R&C measures and not the Appellant.

6. After hearing arguments and on consideration of material on record, the CGRF dismissed the complaint holding that the Appellant is not exempted from R&C measures and therefore, it is not entitled to any adjustment of amount paid through the Impugned orders.

7. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal claiming that the Appellant is a food processing Industry and is exempt from R&C measures and it is entitled to adjustment/refund of excess amount of Rs 20,97,253/- paid towards Expensive Power. The Appellant claimed that the Union Ministry Of Food Processing Industries clarified that “ Henceforth this ministry will include under food processing industries, items pertaining to these two processes viz a) Manufactured Processes: If any raw product of Agriculture, Animal Husbandry or Fisheries is transformed through a process (involving employees, power, machines or money) in such a way that its original physical properties undergo a change and if the transformed product is edible and has commercial value, then it comes within the domain of food processing industries and b) Other value added processes: Hence, if there is a significant value addition(increased shelf life and ready for consumption etc.) such produce also comes under food processing, even if does not undergo manufacturing processes”. The Appellant further claims that the NIC groups of the ministry Group 154, class 1541 and subclass 15412 clearly determined manufacturer of biscuits, cakes and pastries as food manufacturing industry. The Appellant on the basis of his industry being a food processing industry, under this clarification claims exemption from R&C measures and refund of the excess amounts paid.

8. The Respondent No. 4 submitted a reply stating that he had addressed a letter to CGM/O&M seeking clarification on the following two points:

- a. Whether the service (in question) is exempted from R&C Measures under the food processing industry (category) and withdrawal of R&C penalties for the period from April, 2013 to June, 2013 as the nature of production is biscuits, wafers, confectionery and snacks?

- b. If the Consumer is exempted from the R&C measures for the period from April, 2013 to July 2013, whether the difference of rates of expensive power and normal tariff can be refunded or not?
9. The 4th Respondent secured clarification from CGM/O&M stating that the DISCOM decided that the units which have both food processing and food preservation are eligible for exemption from the purview of R&C measures and since the Appellant is not a food processing and a food preservation industry, it is not exempted from R&C measures.
10. In view of extreme positions of both parties, the mediation efforts to settle the matter failed. Hence the matter is being disposed off on merits.
11. On the basis of the material on record, the following points arise for determination.
 1. Whether the impugned orders are liable to be set aside?
 2. Whether the Appellant comes within food processing and food preservation industry category and thus exempt from R&C measures?

POINTS 1&2

12. The following facts are admitted:

The Restriction and Control measures were prevalent during the period from 12.9.2012 to 31.7.2013. The Appellant purchased expensive power from February, 2013 to June, 2013 (during R&C period). The Appellant purchased power under EPSS for the months from February, 2013 to June, 2013. 50% of the R&C penalties amount was withdrawn by the DISCOM as per the advice of ERC.

13. Now to the disputed facts.

The Appellant claims that it is an exempted category unit as per the R&C measures under the caption FOOD PROCESSING AND FOOD PRESERVATION INDUSTRY and whereas, the Respondents claim that the Appellant unit is not a food processing and food preservation Industry. ERC issued revised order on Restriction and Control (R&C) measures vide proceedings

No. APERC/SECY/08/2013 Dt. 17.4.2013 exempting certain consumer categories under clause 21(h) including Dairies and Milk chilling plants, Feed mixing plants, Cold storage plants, and Food Processing and Food preservation plants. The Appellant claims that it is a manufacturer of Biscuits, Wafers and Snacks and it is a food processing and food preservation industry and therefore, as per clause 21(h) of the revised Order on Restriction and Control (R&C) measures, it is not liable to pay penalties and on the other hand, it is entitled to refund of the excess amount paid to the DISCOM by way of adjustment in future bills.

14. The Appellant is relying on the Annual Report 2014-2015 of the Union Ministry of Food Processing Industries under the caption "Definition Of Food Processing" in the groups at Sl.Nos. 1541 and 1542, where manufacture of biscuits, cakes and pastries are described as coming within the purview of food processing industries, and is claiming that it is not liable to R&C measures and its consequences.

15. The Respondents were served with the documents relied on by the Appellant. The Respondents were specifically directed by this Forum to get clarification from the ERC because the R&C measure have not elaborated the term "food processing and food preservation plant" and whether bakery products, biscuit and wafer manufacturing units would fall within the term food processing and food preservation? The Respondents could manage to get only a response from the CGM/O&M to the following effect:

"M/s Heemankshi Bakers Pvt. Ltd (MBN -722) cannot be exempted from R&C measures as the industry is a manufacturer of Biscuits, Wafers and Snacks and are not clarified under food processing and food preservation plants.

Hence the service cannot be exempted from R&C measures."

16. In spite of specific direction from this forum, the Respondents could not get clarification from the ERC regarding whether M/s Heemankshi Bakers Pvt. Ltd, a manufacturer of Biscuits, Wafers and Snacks would fall under the category of Food Processing and Food Preservation INDUSTRY as mentioned in clause 21 (h) of the revised R&C measures dt. 17.4.2013. As the competent authority under the Electricity Act, 2003 to determine tariff under Section 62 and when needed to

issue Restriction and Control measures U/s 23 of the Electricity Act is the ERC, when the question of clarification of revised orders on R&C measures dt.17.4.2013 issued by the ERC is needed, the only competent authority to clarify the point in question is the ERC and in the present case, it is TSERC and none else. Neither the DISCOM, nor the CGM/O&M have any power to clarify the orders of the ERC in the present fashion as has been done by the CGM of SPDCL.

17. In the absence of any clarification from the TSERC and absence of any material placed before this forum by the Respondents, an important source which could be taken note of is the domain of the Union Ministry of Food processing Industries. The Annual Report 2014-2015 of the Ministry of Food Processing Industries in chapter 1 under the heading VALUE CHAIN - FOOD PROCESSING INDUSTRY under sub caption KEY ACTIVITIES, in the column related to processing, mentions three items and they are:

1. Primary processing, workshops,
2. Secondary value added items(oil,cakes,flour and powder)
3. Tertiary value added items(Jams, Biscuits, Tea bags and ready to eat meals).

18. The operational guidelines of NABARD (National Bank For Agricultural and Rural Development) under the caption Food Processing Fund 2014-15, mentions that the Government of India (GOI) has accorded top priority for the development of the food processing industry. In the salient features, the objective is noted as “to provide impetus to development of food processing sector on cluster basis, consumer food products, such as bakery items, confectionery snacks etc any other ready to eat food/ convenience foods as a type of processing activity.” This being so, the Respondents contended that as per the revised R&C measures dt. 17.4.2013, the units which are into food processing and food preservation plants alone are entitled to this exemption and since the Appellant claims to be a food processing unit and not claiming to be a food preservation plant, is not entitled to this exemption.

19. The fine distinction made by the Respondents for denying the benefit of exemption under revised R&C orders dt. 17.4.2013 is untenable because, there is no specific mention about exemption being accorded only to the units which are both food processing and food preservation plants. Even according to the domain

of the Union Ministry of Food Processing and also NABARD, Biscuits and Snacks manufacturing is food processing industry. The other food processing industries can also be taken into consideration like sea food processing and preservation etc, Food processing also includes a sort of food preservation with long shelf life and therefore, the Appellant cannot be denied the benefit on the ground that it may be food processing unit, but not a food preservation plant. The stand taken by the Respondents on this aspect to deny exemption under revised R&C measures dt. 17.4.2013 cannot be accepted as tenable, in the absence of a clear clarification from the TSERC, a successor to APERC which issued a revised orders on R&C measures dt. 17.4.2013. In the absence of such clarification, the Appellant has to be held as a food processing unit coming within the purview of clause 21 (h) of the revised R&C measures order dt. 17.4.2013.

20. The CGRF, through the impugned orders, failed to consider any of the contentions raised by the Appellant and disposed the Appeal without application of mind to the facts and the record.

21. In the result, the Appeal is allowed. The impugned orders dt. 22.11.2014 of the CGRF 1 of TSSPDCL are set aside. The Appellant is found to be a food processing unit coming under the purview of the benefits under clause 21(h) of the revised orders on R&C measures dt. 17.4.2013. The Appellant should be accorded all the benefits arising out of the revised R&C orders. The excess amount collected shall be adjusted in the future CC bills. Both the points are answered accordingly.

Corrected, Signed and Pronounced on this 23rd day of September 2015.

Sd/-

VIDYUT OMBUDSMAN

1. M/s Heemankshi Bakers pvt Ltd,
Represented by its Director, Sri. Shravan Kumar Agarwal,
Mekaguda, Kothur mandal,
Mahaboobnagar dist.
Cell 8498090105
2. The ADE/OP/Shadnagar/TSSPDCL/Mahaboobanagar Dist.
3. The SAO/OP/Mahaboobanagar/TSSPDCL/Mahaboobnagar Dist.

4. The DE/OP/Jedcherla/TSSPDCL/Mahaboobanagar Dist.
5. The SE/OP/MBNR Circle/TSSDCL/Mahaboobnagar Dist.

Copy to:

6. The Chairperson, Consumer Grievance Redressal Forum-1 TSSPDCL,
Vengal Rao Nagar, Erragadda, Hyderabad-500 045.
7. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapool, Hyd.

