

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 29-04-2010

Appeal No. 33 of 2009

Between

MYTAYS
NCC JV, Gandikota Dam Project,
Near BSNL Tower,
Sri Ramachandra Nagar,
R.S. Kondapuram – 516444
Kadapa Dist

... Appellant

And

The Senior Accounts Officer / Opt / Central Office / APSPDCL /Kadapa
Superintending Engineer / Op / APSPDCL / Central office /Kadapa

....Respondents

The appeal / representation received on 24.07.2009 of the appellant has come for final hearing before the Vidyut Ombudsman at Tirupathi on 23.04.2010 in the presence of Sri K.K.Sastry, General Manager, Sri G.S.Reddy of the appellant present, Sri S.Subba Rao, SAO/O/Kadapa, present for respondents and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following:

AWARD

The appellant filed a complaint before the Forum that they are utilizing through HT SC No.CDP-126 M/s. Maytas, Gandikota Dam GNSS Project originally the HT SC No. was released under HT Cat-I and subsequently,

respondents issued a notice reclassifying the service from HT Cat-I to HT Cat-II and a short billing for Rs.25.89 lakhs .The complainant also further stated that the supply was being utilized for production of chips mixing concrete and the same is being sold to irrigation department of A.P.Govt. for which the utilization is made for Jalayagnam project and he did not deviate the actual usage and finally appealed to do justice.

2. The respondent Nos. 1 and 2 submitted their remarks as hereunder:

(i) the HT SC No.126 released to the consumer of M/s. Maytas – NCC(JC) Gandikota on 15.09.2006 with a CMD of 500 kVA under HT Cat-I for the purpose of gate lighting and operating of batching plant as per agreement and test report.

(ii) Based on the AG's audit comment, a short billing notice for 25.89 lakhs was issued to the complainant due to wrong categorisation as the service should have been categorized under HT Cat-II instead of HT Cat-I since the complainant was dealing with construction only and the has also confirmed by the corporate office in Lr.No.CGM(Fin)/GM(R&E)/SAO/AAO/JAO/HT/641/09, dt.24.06.09

3. After reviewing the remarks submitted by the respondents and after hearing the complainant's representative of the company, the Forum held that it was used for construction purpose. It shall be categorized as HT Cat-II and confirmed notice of the short billing for Rs.25.89lakhs due to change of category and advised the complainant to pay the amount and ultimately disallowed the complaint without costs.

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same that supply was utilized for industrial purpose only and it shall be liable to be billed under HT Cat-I tariff but not under HT Cat-II. It is also urged in the grounds of appeal, that the service was being given for gate lifting and operating of batching plant and were declared as HT Cat-II and asked the appellant to pay the amount of Rs.25.89lakhs. Having left with no option, the

respondents are raising the bills accumulating in lakhs of rupees, the appellant submitted another representation dt.10.06.2009, for which the CGM(Fin), APSPDCL addressed a letter to the appellant that the request made by it could not be considered and the service will be continued to be billed under HT Cat-II only, apart from demanding payment of the alleged shortfall amount from 15.09.2006 to March, 2009. The bills paid by the Executive Engineer after deducting TDS and VAT which would clearly reveal that it was for business purpose. Taking advantage of the impugned order, the respondents are making efforts to disconnect the supply which would cause huge financial loss not only to the appellant but also to the Government and the general public at large and the impugned order passed by the Forum is liable to be set aside.

5. Now, the point for consideration is, “whether the impugned order dt.09.07.2009, is liable to be set aside? If so, on what grounds?”

6. It is clear that the service connection was released under HT Cat-I but subsequently billing was made under HT Cat-II and demanded Rs.25.89lakhs towards arrears. It is the contention of the appellant who is represented by Sri K.K.Sastry, General Manager that their unit was commenced in the year 2006 itself. The notice issued dated 24.03.2009 about the billing under HT Cat-II is not applicable to him as it is on-going project unlike Raghuram Cements, Brahmani Cements, Dalmia Cements, Juvari Cements, as they would commence the production after 2-3 years from the date of installation. The power is being used for batching plant, crusher, chilling plant, ice-plant, de-watering pumps and general lighting with more than 50 labourers squarely falls under the definition of ‘industry’ where the manufacturing activity is being taken place at the site. They have also paid VAT (Value Added Tax) receipts which were paid by the Government authorities towards sale and that the Forum has failed to appreciate the said aspects and the impugned order passed by the Forum is liable to be set aside.

7. On behalf of the respondents Sri S.Subba Rao, SAO submitted that the impugned order passed by the Forum is on correct lines and the appeal is liable to be dismissed.

8. The very contention of the appellant is that it is an industry and comes within the purview of the HT Cat-I as it is manufacturing stone chips and mixing the same with cement and other articles in the processing of concrete through batching plant for the purpose of sale. The Tariff Order 2006 under HT Cat-I reads as follows:

“This tariff is applicable for supply to all H.T. Industrial Consumers. Industrial purpose shall mean manufacturing, processing and/or preserving goods for sale, but shall not include shops, Business Houses, Offices, Public Buildings, Hospitals, Hotels, Hostels, Choultries, Restaurants, Clubs, Theatres, Cinemas, Railway Stations and other similar premises notwithstanding any manufacturing, processing or preserving goods for sale. The Water Works of Municipalities and Corporations and any other Government organizations come under this category. The Information Technology units identified and approved by the Consultative Committee on IT industry (CCITI) constituted by Govt. of AP also fall under this category.”

9. It is HT Cat-I if the industrial consumer is using power for the purpose of manufacturing, processing or preserving goods for sale. If it is any one of the forms it is covered by the above said definition and comes within the definition of HT Cat-I. Here the work identified and established by the appellant that it is a manufacturing unit in producing the chips, preparing concrete material by adding some other items like sand, cement, etc and it comes within the definition of processing and they are meant for sale since the bills produced by him have clearly disclosed that there is deduction of VAT paid to the Commercial Tax Department. If it is not sale, there is no need to pay any VAT. When it clearly discloses that it is a batching plant for manufacturing and the same is also being used for processing and the goods for sale, there is no point in holding that the petitioner is liable to pay HT Cat-II charges and there is no need to pay the short billing of Rs.25.89 lakhs, as the very manufacturing unit comes within the definition of HT Cat-I but not HT Cat-II. The very reclassification made by the department unilaterally from HT Cat-I to HT Cat-II is not sustainable and the

same is liable to be set aside. Therefore, the impugned order is liable to be set aside.

10. In the result, the appeal is allowed by setting aside the demand of Rs.25.89lakhs under HT Cat-II. No order as to costs.

This order is corrected and signed on this day of 28th April 2010

VIDYUT OMBUDSMAN