

VIDYUT OMBUDSMAN
O/o: ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad – 500 004

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated 17 – 12 - 2011

Appeal No. 60 of 2011

Between

M/s.Jaya Lakshmi Ferro Alloys (P) Ltd
9-1-2224/2, CBM Compound,
Rama Talkies Road,
Visakhapatnam – 530 003.

... Appellant

And

1. Asst. Divisional Engineer / Operation / Lines/EPDCL/ Vizianagaram
2. Divisional Engineer / operation / EPDCL / Vizianagaram
3. Superintending Engineer / operation / EPDCL /Vizianagaram.
4. Senior Accounts Officer / operation / EPDCL / Vizianagaram

....Respondents

The appeal / representation dt.04.09.2011 (received on 8.09.2011) against the CGRF order of APEPDCL (in CG No.77/2011-12 dt.04.08.2011). The same has come up for hearing before the Vidyut Ombudsman on 30.11.2011. Sri.R.V.Krishnamachari, AGM/Electrical on behalf of the appellant present and Sri G.Chiranjeevi Rao, DE/O/Vizianagaram, Sri G.Yegneswara Rao ADE/Lines/Vizianagaram, Sri M.Srinivas, SAO//c and Sri D.Satya Rao, JAO/HT/Vizianagaram on behalf of respondents present, heard and having stood over for consideration till this day, the Vidyut Ombudsman passed/issued the following:

AWARD

The petitioner filed a complaint against the Respondents for Redressal of his Grievances and stated as hereunder:

“Department had taken deemed consumption period from 11-12-2010 to 31-03-2011, the Company M/s. Jaya Lakshmi Ferro Alloys requested the Forum to consider the deemed consumption period as from 11-12-2010 to 11-12-2012.

2. The 3rd Respondent has filed his written submission as hereunder:

“The Service was released on 10-12-2010 in the name of M/S Jayalaxmi Ferro Alloys Pvt. Limited, Pedabantupalli village bearing HT.SC.NOVZM237 having CMD 6000in the first phase at 132 KV potential under category 1B and 2nd phase additional CMD for 3000 KVA, and total comes to 9000 KVA With effect 11-01.2011.

The APERC in the order dated 26.09.2002 against O.P.NO.29-33 of 2002 has stipulated that the Ferro Alloys Units comes under HT category 1B (BST) tariff should maintain on annual basis load factor of 85%. In case annual load factor is less than 85%, the deemed consumption charges amounting to short fall shall be paid to DISCOM. The same was stipulated in the tariff orders also as Guaranteed energy off-take of 6701 units per KVA per annum on average Contract Maximum Demand or average actual demand whichever is higher is to be billed. The energy falling short of 6701 units per KVA per annum will be billed as deemed consumption charges.

In the Lr.no.E.205/DD-DIST/2007 DATED. 23.05.2007 the APERC has directed that the DISCOM shall calculate deemed energy charges for the financial year only. If the service is restored or released in between financial year the deemed energy charges shall be calculated till end of the financial year.

Accordingly the deemed consumption charges were calculated for the financial year ending 31.03.2011 and arrived shortfall of Rs.47,93,161/-as against said service on the load of 6000 KVA and 9000 KVA as the case may be and issued notice for arranging payment vide Lr.NO. SE/O/VZM/SAO/JAO/HT/F.DKT/SF/D.NO. 128/2011 DATED 23.05.2011 along with calculation sheet.

In view of the above facts ,the billing of deemed consumption charges of above service under category 1B is correct and the consumer has paid the above said amount of Rs. 47,93,161/- dated 14.06.2011 as per the notice issued.”

3. After hearing both sides and after considering the material placed before the Forum, the Forum passed the impugned order as here under:

- “The request of complainant for annual minimum consumption for One full year for the date of release of power supply for arriving deemed consumption charges can not be considered ut supra.*
- The Notice issued by the 3rd Respondent towards deemed consumption charges from the date of supply to ending of financial year i.e. 31.03.2011 is in order.*

With the above directions the CG.No.77/11-12 is disposed off accordingly.”

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same that the annual consumption charges is calculated for only a very short

period of three and half months instead of one full year. The very purpose of considering the minimum load factor of 85% on annual basis is to see that the industry must be able to achieve the said load factor during a period of one full year. Only because of one full year is not considered and a little portion of the year is taken into consideration, they are forced to pay such huge amount which is a very big burden to their industry in its infant stage. The industry is facing lot of competition. For a plant of their size, it is very difficult to absorb such additional huge expenditure, especially in its infant stage. Therefore, this authority may please to disallow the order passed by the Forum and direct the concerned to oblige their plea.

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

6. On behalf of the appellant Sri.R.V.Krishnamachari, AGM/Electrical attended before this authority on 30.11.2011 and represented that the imposition of deemed consumption is against to the principles of natural justice since the industry is used the power for a period of three and half months. The Forum has failed to consider all these aspects and dismissed the request made by the appellant and the appeal preferred by the appellant is to be allowed by setting aside the impugned order.

7. Whereas, the respondents are represented by Sri G.Chiranjeevi Rao, DE/O/Vizianagaram, Sri G.Yegneswara Rao ADE/Lines/Vizianagaram, Sri M.Srinivas, SAO//c and Sri D.Satya Rao, JAO/HT/Vizianagaram appeared before this authority and submitted that the imposition is made basing on the instructions issued by APERC and guidelines in the Tariff order and the Forum has rightly considered the said aspect and dismissed the claim made by the appellant.

8. The respondent has also submitted the written submissions on the same lines by the SE/O/Vizianagaram. The APERC passed an order on 26.09.2002 in which it has categorically mentioned that

“the Discom shall calculate deemed energy charges for the financial year only. If the service is restored or released in between the financial year, the deemed energy shall be calculated till the end of financial year, considering the supply period.”

The said circular was issued basing on the order passed by APERC in OP 29 to 33 of 2002 wherein, it was held that the Ferro alloy units

“shall maintain on an annual basis a load factor of 85%. In case the annual load factor is less than 85%, the deemed consumption charges amounting to the shortfall shall be paid to the Discoms.

In the Tariff conditions, it is clearly mentioned

- (i) Guaranteed energy off-take at 6701 kVAh per kVA per annum on average contracted maximum demand or average actual demand whichever is higher. The energy falling short of 6701 kVAh per kVA per annum will be billed a deemed consumption.
- (ii) The consumer shall draw his entire power requirement from Discoms only.

The service was released on 10.12.2010 in the name of M/s. Jayalaxmi Ferro Alloys Pvt. Limited. The ferro alloys comes under HT Cat-1B (BST) tariff should maintain on annual basis load factor of 85%. In case annual load factor is less than 85%, the deemed consumption charges amounting to the short fall shall be paid to the Discoms.

9. The request of the appellant is that his annual consumption shall be calculated for full year ie. December to December but not financial year. The request made by the appellant cannot be considered in view of the above said Commission's order and circulars issued by the Commission and the tariff conditions imposed in the Tariff order. So there is no possibility for this authority to look into the request made by the appellant.

10. It is an admitted fact that there is a shortfall of 85% and when there is a shortfall they are liable to pay deemed consumption charges even if it is started in the middle of the financial year. Therefore, the request for deleting three and half months is not sustainable. In view of the above said circulars, the appeal preferred by the appellant is liable to be dismissed.

11. In the result, the appeal is dismissed.

This order is corrected and signed on this day of 17th December 2011

VIDYUT OMBUDSMAN