



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**

Tuesday the Sixth Day of March 2018

Appeal No. 27 of 2017

Preferred against Order Dt.29.06.2017 of CGRF in
C.G.No.68/2017-18/Hyderabad North Circle

Between

M/s. Ambika Industries, Beneficiary Lotus Polypack (I) Pvt.Ltd., represented by
Sri. Sanjay Kanodia, # 9-27/1, Plot No.5, Kukatpally, Hyderabad - 500 037.
Cell : 93910 33606.

... Appellant

AND

1. The ADE/OP/RR Nagar/TSSPDCL/Hyderabad.
2. The AAO/ERO/Bowenpally/TSSPDCL/Hyderabad.
3. The DE/OP/Bowenpally/TSSPDCL/Hyderabad.
4. The SE/OP/Hyd.North Circle/TSSPDCL/Hyderabad.

... Respondents

The above appeal filed on 24.08.2017, coming up for final hearing before the Vidyut Ombudsman, Telangana State on 02.11.2017 at Hyderabad in the presence of Sri. Ch. Vinod - on behalf of the Appellant and Sri. P. Sudarshan - AAO/ERO/XII, Ch. Rajalingam - ADE/OP/RR Nagar 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 consumer with SC No. S6006143. He filed a complaint on 01.05.2017 aggrieved by the reclassification of the service category from LT-IIIA(Industrial) to LT-II(Commercial) on the ground that the 1st Respondent/ADE/O/Balanagar issued a demand notice dt.10.02.2017 for an amount of Rs 7,51,382/- towards the back billing for the period from 01.04.2011 to 31.03.2015. The Appellant claimed that it has been manufacturing plastic articles/PVC NEC till date and the Respondents had unilaterally reclassified the category and back billed the service without assigning any reasons. The Appellant further claimed that the claim of the Respondents that the Appellant had changed its activity to printing and lamination

is not correct. As per Clause 213.1.3.3 of the Tariff Order FY 2012-13, Category IIIB (Industrial) is applicable to the SSI units licensed by the Industries Department with registration number. As per Clause 9.18 of Tariff Order 2016-17, the term industrial purpose means manufacturing, processing and or preserving goods for sale. The Appellant unit is a manufacturing one right from the start.

2. The Appellant preferred WP No. 6493 of 2016 aggrieved by the classification of the service from Industrial to Commercial. The Hon'ble High Court by orders dt.29.02.2016 has set aside the action of the Respondents, directing issue of notice, calling for objections from the Appellant for changing the category of the service of the consumer. The Appellant has filed objections on the demand notice for reclassification of the category issued by the ADE/O/Balanagar through letter dt.04.01.2017. The Appellant thus pleaded for a direction to the Respondents not to disconnect the service and set aside the claim for Rs 7,51,382/- towards back billing.

3. The 1st Respondent/ADE/O/RR Nagar through letter dt.06.06.2017 stated that the premises was inspected by AAE/O/IDPL and he found that the power supply was released in the name of M/s. Ambika Industries with a load of 45 HP under LT Category VIII(A)(Industrial) for manufacturing activity and whereas, in the unit, the power supply was being used for lamination and printing works, which comes under LT category II(Commercial). The service was also inspected by the DPE wing and a demand notice for back billing was served on the Appellant, who then approached the Hon'ble High Court by way of a WP No. 6493 of 2016 which set aside the notice for non following of the procedure laid down. Thereafter, the ADE/O/Balanagar then issued a fresh 15 days notice for reclassification of LT Category from IIIA to L.T.Category II on 04.01.2017.

4. The 2nd Respondent/AAO/ERO/Bowenpally through a letter dt.06.06.2017 stated that a back billing case was booked for Rs 7,51,482/- against the Appellant service by DPE wing on the ground that the service was being utilised for commercial activities instead of industrial purpose and the back billing amount remained unpaid so far.

5. Since the back billing amount Rs 7,51,382/- has already been set aside by the Hon'ble High Court, the CGRF felt that there is no need for the forum to pass any further orders since the matter has been pending before the DE/OP/Bowenpally for passing speaking orders and dismissed the complaint through the impugned orders.

6. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal claiming that the Clause 8 of Regulation 7 of 2000 dt.4.9.2000 contemplates the following for reclassification of category:

- i. The Licensee shall notify any consumer it intends to reclassify that the consumer must execute a fresh agreement on the basis of the altered classification.
- ii. The notice shall state that the Licensee may disconnect the supply of power if the consumer does not take the required steps within the period specified by the notice.

The Appellant claimed that Clause 8 has not been complied with while seeking to change category from Industrial to Commercial and further, the Appellant is a manufacturer of articles of Plastic/PVC NEC and it is an industrial activity.

7. The Appellant filed a copy of the Final Assessment Order dt.01.07.2017 of DE/Electrical/Operation/Bowenpally which states that the Service Connection was originally released in the name of the Appellant and later M/s. Lotus Polypack India Pvt. Ltd has taken over the premises on lease from February,2010 (from the date of release of supply), took up the printing and lamination work, whose nature of activity is different from the nature of activity of M/s. Ambika Industries and this change of hands and the nature of activity has not been informed to the DISCOM and therefore, the activity in the premises is only commercial in nature as no manufacturing of films reported by the 1st Respondent/ADE/O/RR Nagar and thus, he has back billed the service from 1.4.2011 to 31.3.2015 for Rs 7,51,382/- plus Rs 100/- towards incidental charges.

8. The 1st Respondent/ADE/O/RR Nagar submitted a reply on 05.09.2017 regarding the Appellant filing Writ Petition and the directions in the Writ petition and about the issue of notice for change of category by him and about the Appellant preferring a complaint before the CGRF.

9. The efforts at mediation failed to succeed. Hence, the matter is being disposed of on merits. The matter, after being reserved for orders on 2.11.2017, got mixed up with disposal files and it was picked up with a delay of more than 3 months and that is how the delay occurred in disposal of this matter.

10. On the basis of material on record, the following issues arise for determination:

1. Whether the reclassification of the consumer service from LT Category IIIA (Industrial) to LT category II (Commercial) is legal?
2. Whether the back billing assessed by the DISCOM for Rs 7,51,482/- is legal and binding on the Appellant?
3. Whether the impugned orders are liable to be set aside?

Issues 1 to 3

11. The Appellant is a consumer with SC No. S6006143 issued in the name of M/s. Ambika Industries, with the beneficiary M/s. Lotus Polypack Pvt. Ltd, Kukatpally, Hyderabad has pleaded for withdrawal of the back billed amount for Rs 7,58,382/- demanded by the Respondents by changing the Category of the service from Commercial to Industrial.

12. The Respondents proposed back billing under the Commercial Category-II from the existing Industrial Category -IIIA service vide letter dt.10.02.2017. The brief incriminating points found are stated as follows:

At the time of inspection on 31.03.2015 at 12.30 PM by AE/DPE/North it is observed that the consumer with S.C.No.S6006143 has been utilising the supply for laminating and printing purpose and whereas the service was released in Category-III. As per GTCS from April-2011 Lamination and Printing works come under Category-II for LT Services. The consumer gave a statement that the processing unit is for Lamination and printing purpose and hence back billing case was booked from April,2011 as per TSSPDCL rules.

The revenue loss was assessed at Rs 7,51,382/-.

13. The Respondents calculated the assessed amount as shown below:

Contracted load	33570 W	Connected load	333570 W
Assessment period from	01-April-2011	Assessment to period	31-Mar-2015
Misused Load	33570 W		
Units recorded	286349 Units	Units Assessed	286349 Units
Units lost	286349 Units		
Amount	Rs 734201.00		
Incidental charges	Rs 100		
Reconnection charges	Rs 0		
Electricity Duty Charges	Rs 17181		
Total Amount	Rs 751482.00		

14. The Appellant relied on the following grounds in support of his claim that the activity of the unit falls under the Category of Manufacturing/Industry;

- a. The Appellant M/s. Ambika Industries bearing service connection No.S6006143 is the consumer with M/s. Lotus Polypacks (India) Pvt.Ltd. as a tenant and beneficiary. They are the manufacturers of articles of plastic/Pvc N.E.C.and basically it is a plastic packing material manufacturing unit. They have various consumers who require this packaging material, as they have to sell their own product on their own brand, design, logo pattern printed on the plastic films, which are manufactured by the Appellant. Hence the main activity of the Appellant is manufacturing of plastic packaging material and not printing. The reclassification made by the Respondents on the ground that the consumer has changed the activity to printing and lamination is incorrect, arbitrary and un-sustainable.
- b. The Appellant relied on the certificate issued by the District Industries Centre, Balanagar, R.R.District dt.17.04.2010 for the manufacture of Articles of Plastic/PVC, N.E.C in support of his case that the unit has been manufacturing articles and his activity is industrial entitling him to industrial category of power supply.
- c. As per the Clause 3.3 of GTCS “the classification of consumers under different categories shall be as specified by the Commission in the Tariff Orders issued from time to time or by any other order of the commission.” In this regard it is submitted that as per Clause 213.1.3.3 of Tariff Order of FY-2012-13(PAGE No.156), the LT Category III(B)- Industrial is applicable to Small Scale Industrial units which have been licensed by the industries department as bonafide small scale industries and given registration number under SSI registration scheme etc.
- d. As per Clause 9.18 of the Tariff Order dt.23.6.2016 of FY 2016-17(Page No.208)Industrial Purpose shall mean , supply for the purpose of manufacturing, processing and /or preserving goods for sale etc., as his unit falls under the category of the manufacturing process, processing and /or preserving goods for sale and hence his supply falls under LT Industrial III Category, which is at present in the same category.

e. As per Clause 3.4.1 of General Terms and Conditions of supply, if any deviation is found in classification of category based on the purpose of usage, only then reclassification is required. In the present case, there is no deviation in the purpose of usage and hence the reclassification is not attracted. It is submitted that if reclassification is done, the bills can be revised suitably if necessary, even with retrospective effect for 3 months only in the case of the domestic and agricultural categories and 6 months only in case of other categories.

f. It is submitted that the Appellant company right from the time of inception has been into the activity of manufacturing of Articles of Plastic/Pvc N.E.C and is still continuing the same manufacturing activity. There is no change in the manufacturing activity of the Appellant till date. The action of the Respondents in reclassification of the category is unilateral, without basis or material and it is bad. The Respondents have not assigned any reasons or material for reclassification of the Category.

g. The claim of back billing assessed amount for the period from 01.04.2011 to 31.03.2015 made vide Lr.No. ADE/OP/BLNR/D-XVI/D.No.2916/17 dt.10.02.2017 is barred by Section 56(2) of Electricity Act,2003.

h. It is also to be noted as per Clause 8 of Regulation 7 of 2000 dt.04.09.2000 the Licensee shall notify for reclassification of the consumer before the change of category. The relevant portion is extracted for ready reference.

“8. Reclassification of Consumers.

1. *The Licensee shall notify any consumer it intends to re classify that the consumer must execute a fresh agreement on the basis of the altered classification.*
2. *The notice shall state that the licensee may disconnect the supply of power if the consumer does not take required steps within the period specified by the notice.*

- i. The final order is passed by the DE/Elecl/O/Bowenpally relying on Clause 7.5.1 read with Annexure XII(VII)(C) of General Terms and Conditions of Supply (GTCS). It may be noted that the Clause 7.5.1

of GTCS pertains to the defective meters and whereas, the present issue pertains to change of category.

15. M/s. Lotus Polypacks India Pvt. Ltd. filed a Writ Petition before the Hon'ble High Court for the State of Telangana and for the State of Andhra Pradesh against the Provisional Assessment notice towards back billing from LT Category IIIA Industrial to LT Category II Commercial issued by the DISCOM. The Hon'ble High Court in WP No. 6493 of 2016 has passed the following Judgement:

"In the instant case, application of Tariff Order dt.30.04.2015 for charging the Petitioner's unit under L.T.Category -II depends upon the fact whether the petitioner is running only printing press or manufacturing plastic/PVC/NEC articles as part of the whole manufacturing process. If the latter is true, then the Tariff Order dt. 30.04.2015 cannot be made the basis for changing the petitioner's service connection to L.T.Category -II. Therefore, in order to determine this question, a prior notice is very much necessary, if after such notice, the petitioner is unable to show that he is carrying on manufacturing activity and that he is involved only in printing on the plastic PVC/NEC articles, the Respondents will be entitled to change the Petitioner's service connection from LT-Category-III(A) to LT Category-II. As this procedure is not followed by the Respondents, the impugned bills are set-aside. The Respondents are given liberty to issue notice to the petitioner calling for objections for change of the latter's category. On consideration of the objections along with the material, if any that may be filed by the petitioner, the competent authority shall pass speaking order and communicate the same to the petitioner. Till such a decision is taken, the petitioner is directed to pay the electricity charges under LT Category -III(A). The bills of the petitioner will however be subject to revision depending upon the result of the enquiry and the order that may be passed by the competent authority as directed above".

16. As per the directions of the Hon'ble High Court, the ADE/OP/Balanagar issued a fresh notice to the Appellant M/s. Ambika Industries vide Letter dt.10.02.2017 for giving an opportunity to be heard to the Appellant before the change of the Category.

17. The consumer approached DE/OP/Bowenpally objecting to the back billing notice. Subsequently DE/OP/Bowenpally vide order number- DE/OP/BWPY/D NO 1009 Dt: 01-07-2017 issued final assessment order confirming the liability for payment of

electricity charges at Rs 7,51,382/- . The order was based on the observation that the service was released in february 2010 in the name of M/s. Ambika Industries and Mrs.Lotus polypack India Pvt Ltd have taken the premises on lease from February 2010 (i.e from the date of release of supply) and took up printing and lamination work whose nature of activity is different from the nature of activity applied for by M/s. Ambika Industries. From then onwards, neither M/s.Ambika industries nor M/s.Lotus polypack have informed the DISCOM regarding change in the nature of the activity and change in the name. Hence, the activity in the premises is found to be only commercial as there is no manufacturing of films, as reported by ADE/OP/RR Nagar and thus the case amount has been confirmed.

18. The Appellant relied on the brief information regarding their manufacturing process and a flow chart as shown infra:

BRIEF MANUFACTURING PROCESS:

Production of flexible packaging products begins in pre-presses (printing machines). The main pre-press process involves the digital design for packaging graphics, including color separation, text and layout. The rotogravure printing process involves diamond-etching a cylinder for each product's color layer. It is appropriate for high-quantity orders.

Traditionally, machinery and equipment requirements for rotogravure printing have been greater than for any other printing.

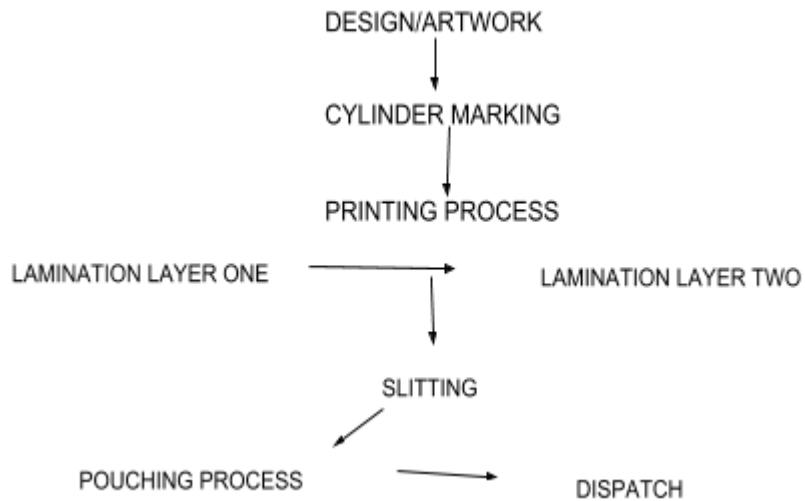
19. The Appellant further stated that the production of flexible packaging product continues by combining the different layers of material(s) required for each particular packaging order; the combination of materials depends on the product's requirements, such as impermeability, desired shelf life and cost consideration. Flexible packaging products are made from any combination of the following plastics(such as polypropylene, polyethylene and/or polyester), aluminum foil, paper, wax and adhesives. The most common packaging types are multi-layer, co extruded barrier films, and metallized films. Many of the packaging component materials are purchased in film rolls. Due to the high volume of polyethylene used in flexible packaging, this raw material is purchased in pellet form (resin) and will be extruded at the company's facilities into rolls of the appropriate diameter, thickness, width and color for each particular order.

After the printing process, additional laminates and any other necessary layer are attached (laminated) using adhesives between layers. Finally, the rolls are cut, folded (if

necessary) and packaged. The following depicts the flexible packaging production process:

Graphic designing, extrusion of polyethylene, printing, laminating and layering (as required), cutting/slitting(as required), folding/pouching (as required), packing/shipment.

MANUFACTURING PROCESS- FLOW CHART:



20. The dispute relates to nature of business activity, where the appellant asserted that he has been utilising the supply for **manufacturing articles of plastics/ PVC N.E.C** and billing shall have to be done under LT category-III for their service connection number S6006143. The Respondents claimed that the supply is being utilised for **laminating and printing purpose only** which fall under LT category-II as per the tariff orders.

21. According to the Respondents, on inspection they found that initially the service was released in the name of M/s.Ambika industries in Feb 2010 and M/s.Lotus polypack India Pvt Ltd have taken the premises on lease from the date of release of supply i.e in February 2010. The nature of the present activity is different from the nature of activity applied for by M/s.Ambika Industries. There is no manufacturing of the films in the unit in question, and hence the demand notice was issued for payment of Rs 7,51,382/- assessed based on the difference of charges between already billed LT-III category rates and LT-category-II commercial rates for the period from 1.4.2011 to 31.3.2015.

22. The Appellant relied on the series of processes used in their unit to claim that the service falls under LT-III Industry Category and its main activity is stated to be the

Graphic designing-Extrusion of polyethylene-printing-laminating & Layering(as required)-Cutting/Slitting(as required)-Folding/Pouching(as required)-Packing/shipment.

23. As per the Tariff Order, Industrial purpose shall mean use of supply for the purpose of **manufacturing**, processing and/or preserving goods for sale. The rates applicable for LT category-III tariff are generally less than the LT-II commercial category.

24. In order to understand what is a manufacturing process, clause-34(K) of the Factories Act, 1948 is reproduced here under:

“Manufacturing process” means any process for-

- (i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use sale, transport, delivery or disposal, or
- (ii) Pumping oil, water, sewage or any other substance; or
- (iii) Generating, transforming or transmitting power; or
- (iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;
- (v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;

25. The ERC while addressing the OBJECTIONS/SUGGESTIONS RELATING TO TARIFF AND REVENUE of the Tariff Order FY 2011-12, has issued the following directions on

Classification of Newspaper printing & printing presses by way of clarification/reply.

Clause 146. The issue of classification of Newspaper printing & printing presses has been brought to the notice of the Commission by CPDCL and it stated that Newspaper printing units shall be classified under HT-I Industry and all other printing activities shall come under HT-II Others. Similar treatment shall be extended to LT consumers also i.e., Newspaper printing in LT-III Industrial & other printing activities in LT - II Non Domestic/Commercial.

Commission's view: The Commission accepted the proposal of CPDCL and included the Newspaper printing units in HT-I Industry and LT-III Industrial as the case may be. All other printing activities shall come under HT-II Others or LT-II Non Domestic/Commercial as the case may be.

26. Relying on the above directions of the ERC, the Respondents proposed back billing under commercial Category-II from the existing industrial category -IIIA stating that the Appellant service usage of supply is for lamination and printing works. The Appellant is totally opposing the action of the Respondents.

27. To determine the nature of business activity, it is important to ascertain whether the Appellant is using the supply for lamination and printing works only or whether any manufacturing process is involved. There is no doubt that during the whole process of production of flexible packaging products, printing and lamination is involved. It is to be noted that the **extrusion of polyethylene** is an added activity, other than printing and lamination which the Respondents have not taken into consideration. Basically, the extrusion of polythene/ plastic involves the raw material in pellet form (resin) which will be extruded into rolls of appropriate diameter, thickness and width, depending upon the requirement of the customer. Hence the claim of the Respondents that their process involves only printing on the plastic PVC/NEC articles is not correct. The value of the raw material used as an input to the process shall get added and manufactured into flexible packaging material. This aspect has not been examined by the CGRF leading to denial of the claim of the Appellant. The Appellant thus succeeded in his claim that it is a manufacturing unit and not a printing press as claimed by the DISCOM officials.

28. The claim of the Appellant that the back billing case is hit by section 56(2) of the Electricity Act,2003 is not tenable. A perusal of the record shows that the demand through Provisional Assessment has been made beyond the period of two years from the date of inspection on 31.03.2015. Against this assessment the provisions of Section 56(2) of the Electricity Act,2003 are not applicable. Section 56(2) is applicable only when disconnection is sought for non payment of the energy charges. The provision is specifically used for collection of the due amount only on the threat of disconnection that too for dues for a period below 2 years. Therefore, the contention of the Appellant that Section 56(2) is a bar for recovery of the arrears for more than 2 years is not correct. Further under Clause 3.41 of GTCS(amended on 31.05.2014), the DISCOM is permitted in the case of reclassification, to revise the bills for the entire ascertained period and in case of uncertainty, the period of retrospective billing shall be limited to 12 months immediately preceding the date of inspection.

29. The final orders issued by the DE/OP relying on Clause 7.5.1 read with Annexure XII(VII)(C) of General Terms and Conditions of Supply is not connected to the

present case as the said Clause relates to computation of the assessed units towards defective meters. All the issues are answered accordingly.

30. In view of the aforementioned reasons, the Appeal is allowed directing:

- a. The classification of the consumer service from LTIII-A(Industrial) to LT II (Commercial) is not legal as the Appellant is successful in establishing his claim that his business in question is an industrial activity.
- b. In view of the finding on (a) above, the back billing notice issued by the DISCOM is found as not legal and it is set aside.
- c. The impugned orders are accordingly set aside.

31. The licensee shall comply with and implement this order within 15 days from the date of receipt of this order under clause 3.38 of the Regulation 3 of 2015 of TSERC.

TYPED BY Clerk Computer Operator, Corrected, Signed and Pronounced by me on this the 6th day of March, 2018.

Sd/-

Vidyut Ombudsman

1. M/s. Ambika Industries, Beneficiary Lotus Polypack (I) Pvt.Ltd., represented by Sri. Sanjay Kanodia, # 9-27/1, Plot No.5, Kukatpally, Hyderabad - 500 037.
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4. The DE/OP/Bowenpally/TSSPDCL/Hyderabad.
5. The SE/OP/Hyd.North Circle/TSSPDCL/Hyderabad.

Copy to :

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