



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA
First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: Smt. UDAYA GOURI

Monday the Twenty Sixth Day of November 2018

Appeal No. 45 of 2018

Preferred against Lr.No .Chairperson/CGRF-II/Gr.Hyd/D.No.2227/18-19,

Dated.28-09-2018, Rajendra Nagar Circle

Between

**M/s.Tirupati Containers,Beneficiary Narsi Reddy, Proprietor Om Sainath
Laminates,Plot No 158, D.No 6-6-23, Saibaba Nagar, Kattedan,
Hyderabad-500077, Cell 9391033606.**

... Appellant

AND

- 1. The AE/OP/Shivrampally/TSSPDCL/Hyderabad.**
- 2. The ADE/OP/Shivrampally/TSSPDCL/Hyderabad.**
- 3. The DE/OP/Rajendra Nagar/TSSPDCL/Hyderabad.**
- 4. The AAO/ERO/Gaganpahad/TSSPDCL/Hyderabad.**
- 5. The SE/OP/Rajendra Nagar/TSSPDCL/Hyderabad.**

... Respondents

The above appeal filed on 03.10.2018, coming up for final hearing before the Vidyut Ombudsman, Telangana State on 14.11.2018 at Hyderabad in the presence of Sri. Ch. Narsi Reddy - Appellant and Sri. P. Prem Kumar - ADE/OP/Rajendra Nagar and Smt. K. Suma - AAO/ERO/Gaganpahad for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

This is an Appeal filed against the orders of CGRF Greater Hyderabad Area vide Lr.No. 2227 of 2018-19 dt.28.09.2018. The Appellant contended that on the demand notice issued by ADE/OP/Rajendranagar vide D.No.1322 of 2018 dt.31.08.2018 demanding for back billing amount of Rs 28,86,362/- from 10.07.2008 to 31.07.2018 by way of changing from the Category No. III to Category No. II on their service connection, they have approached the Hon'ble CGRF seeking to set aside the said demand notice but the said CGRF failed to do so. And hence they have filed the

present Appeal.

2. The Appellant contended before this office that the Appellant i.e. M/s. Tirupati Containers in Plot No. 158, D.No.6-6-23, Sai Baba Nagar, Kattedan, Hyderabad -500 077 has a service connection bearing No. 341401194 and that One Narsi Reddy is the proprietor of the said concern. They claimed that though the Appellant is a manufacturing unit, the ADE/OP/Rajendranagar vide his letter bearing No. D.No. 1322/18 dt.31.08.2018 alleged that their concern is only a commercial unit and hence comes under Category II but they are showing their unit as a manufacturing unit under category III and the same has come to light on the inspection of the DE/DPE on 31.07.2018 at 12.55 PM and hence they categorised their unit under Category No. II, hence demanded for back billing amount of Rs 28,86,362/- from July,2008 to July,2018. They contended that in view of the said wrong categorisation they have approached the CGRF but the CGRF failed to appreciate the real facts and returned their file under Section 126 and 127 of the Indian Electricity Act,2003. Hence aggrieved by the same the present Appeal is filed. Hence prayed that the back billing amount demanded under the letter bearing D.No. 1322/18 dt.31.08.2018 for an amount of Rs 28,86,362/- be set aside as their unit comes under Category III and not under Category II.

3. The Appellant further contended that it is a manufacturer of Flexible Packaging and Laminates Conversion. The Appellant has various consumers who require this packaging material and as they have to sell their own product on their own brand, design logo pattern hence as per the requirement of various consumers and upon their brand, design, logo pattern are printed on the plastic bags which are manufactured by the Appellant. That the main activity of the Appellant is manufacturing of the plastic bags/ packaging material and not printing. The required cylinder/drums will be provided by the consumers. That the reclassification of the Respondents saying that the Appellant have activity of printing is incorrect, arbitrary and not sustainable and the a copy of Udyog Aadhaar Memorandum dt.10.03.2006 is furnished.

As per Clause 3.3 of GTCS of supply the classifications 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. 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 application for Small Scale Industrial Unit which have been licenses by the Industries Department as bonafide Small Scale Industries and given registration Number SSI

Registration Scheme.

As per Clause 9.18 of Tariff Order dt.23.06.2016 of FY 2016-17 (Page No. 208) "Industrial Purpose shall means, supply for the purpose of manufacturing, processing and/or preserving goods for sale." As our unit falls under manufacturer process, processing and or preserving goods for sale our power supply falls under LT Industrial III Category which is at present in the same category.

That the Appellant company right from the inception is in the activity of manufacturing of Articles of Plastic bags etc. and is still continuing the same manufacturing activity There is no change in manufacturing activity of the Appellant till today. The action of the Respondent in reclassification of the category unilateral without basis or material is bad. It is also submitted that the Respondent has not assigned the reasons or material for reclassification.

The claim of back billing assessed amount for the period from 10.07.2008 to 31.07.2018 made vide Lr.No.ADE/OP/Rajendranagar/D.No.1322/18 dt.31.08.2018 is barred by Section 56(2) of the Electricity Act,2003 and

Hon'ble High Court of Judicature at Hyderabad for the state of Telangana and the State of Andhra Pradesh in order ddt.29.02.2016 in WP No. 6492 of 2016 directed the Respondents to issue notice calling objections from the Appellant for change of category. The competent authority shall pass speaking order and communicate to the Appellant duly considering to note at this juncture that the competent authority of the Respondent company has not passed any speaking order for change of category. A copy of order of Hon'ble High Court in WP No.6493 of 2016 is furnished. It is pertinent to note at this juncture the following facts:-

- a. The Appellant is not having any due amount to the Respondents as on date and not in default:
- b. The threat of disconnection of power on 01.10.2018 is illegal, without notice which is a violation of Section 56(1) & (2) of Electricity Act,203,
- c. The claim of Rs 28,86,362/- will become due only after passing of speaking order by the competent authority.
- d. The claim of back billing amount for the period 10 years is in violation of provisions of Act,2003.

That this Hon'ble Vidyut Ombudsman vide its order dt.06.03.2018 in Appeal No. 27 of 2017 passed the order in favour of the Appellant therein which is similar to the present appeal.

In view of the above stated facts the Appellant pray to the Hon'ble Vidyut Ombudsman to issue an order under Sub Section 3.41 and 3.55 of Regulation 3 of 2015 dt.03.10.2015 directing the Respondents:

Under Sub Section 3.41

Not to disconnect power supply to the LT III Service connection No. 3414 01194 of Appellant pending final decision by this authority in the present Appeal.

Under Sub Section 3.35

i. To set aside the return memo bearing No. Chairperson/CGRF-II/TSSPDCL/D.No.2227/18-19 dt.28.09.2018 passed by Respondent No.1.

II. To set aside the claim of Rs 28,86,362/- made vide Lr.No.ADE/OP/Rajendranagar/D.No.1322/18 dt.31.08.2018 and

III. Any such other order or orders as may deem fit by the Hon'ble Ombudsman in the circumstance of the Appeal in the interest of justice and fair play.

4. The Respondents through the ADE/OP/Rajendranagar i.e. Respondent No.1 filed their written submissions dt.20.10.2018 vide SD/F.No.1688 stating that the Appellants i.e. M/s. Tirupati Containers with Service Connection No. 341401194 located at Sai Baba Nagar, Kattedan was inspected by DE/DPE on 31.07.2018 at 12.55 PM and found that the Appellant were utilising the above service connection under Category No. III instead of Category No. II in spite of the fact that there is no manufacturing process being taken up in their concern and as such on the basis of the said report of the DE/DPE, the Respondent No. 1 herein issued a demand notice for back billing amount of Rs 28,86,362/- by changing the category of service of the Appellant from Category No. III to Category No. II. They pointed out that the Appellant is using the said service connection for supply of printing job work but not any manufacturing or processing work and pointed out that the load patterns on various job works are as follows:

Job Work	Load
Printing Works	34 HP
Paper Cutting	15.5 HP
Pouching	5.9 HP
Lamination	144 HP
Compressor	12.5 HP

The total load is 81.9 HP and 600W lighting load. The total load is utilised for job work only and hence, the category is changed to commercial and raised an amount of Rs 28,86,462/- through back billing.

5. The Appellant further given the rejoinder on dt.14.11.2018, apart from reiterating the Clause 213.1.3.3 of Tariff Order FY 2012-13 and Clause 9.18 of Tariff Order FY 2016-17 as following:

“That the Lr.No.ADE/OP/Rajendra Nagar SD/F.No.8/D.No.1688/18-19 dt.20.10.2018 in fact is in concurrence with the contention of the Appellant. That the Five steps of the job work with load as mentioned in the said letter, seriatim is not as per manufacturing process. The manufacturing process is in the serial of lamination, printing work, paper cutting and pouching. The compressor only used for the working of the machine. Print on the pouch is optional i.e. as required by the customer, if required customers themselves get it designed, get their own drum and in the process of making pouches etc the product with designs comes out. It is pertinent to note that the said letter used the term “Printing Works”. This also shows that there is not printing machine per se but printing is in the processing of manufacturing.

Hence, admittedly there is no specific printing machine nor there is a independent printing activity in the process of manufacturing of products by the Appellant. “

Further the Appellant submitted:

(i) a copy of certificate Provisional registration as a Small Scale Industry showing manufacturing activity in terms of flexible packaging and laminates conversion issued online by the department of Industries, GoAP in the unit named M/s. Om Sainath Laminates P. Narsimha Reddy, Ch. Narasimha Reddy Partners, H.No. 9-262/2, Rajiv Gandhi Nagar, I.E.,Kukatpally, Balanagar (M), RR Dist.

(ii) copy of order of Hon’ble High Court in WP No.6493 of 2016

(iii) copy of order of Vidyut Ombudsman in Appeal No. 27 of 2017 M/s. Ambika Industries.

6. In support of their claim both the Respondents and the Appellant submitted the Photographs showing the activity of the industry.

7. In the face of the said contentions by both sides the following issues are framed:

Issues

i. Whether the Appellants are undertaking manufacturing work and hence their service connection comes under Category No. III as contended by them or whether the Appellants are undertaking supply for printing job work and hence comes under Category No. II as contended by the Respondents?

ii. Whether the Appellants are entitled for the setting aside of the notice of ADE/OP/Rajendranagar bearing D.No. 1322/2018 dt.31.08.2018 demanding for a back billing amount ? and

iii. To what relief?

Issue Nos. 1 & 2

8. Admittedly the Appellant with service No. 341401194 is running a unit styled as M/s. Tirupati Containers in the premises bearing plot No. 158 and Door No. 6-6-23, Sai Baba Nagar, Kattedan, Hyderabad and that one Narsi Reddy is the proprietor of the said concern. As per the Appellant they manufacture flexible packaging and laminates conversion as per the requirement of their consumers who require the packaging material to sell their own products on their own brand, design, logo pattern etc. and hence on their requirement their brand, their design, their logo patterns are printed on the plastic bags which are manufactured by the Appellant and hence contended that the main activity of the Appellant is manufacturing of plastic bags/packaging material and not printing as contended by the Respondents. While on the other hand the Respondents contended that on inspection by the DE/DPE on 31.07.2018 it has come to live that the Appellants are undertaking only supply of printing job work on the plastic bags and packaging material but are not manufacturing any plastic bags as contended by the Appellants. And hence as there is no manufacturing process being undertaken by the Appellants their service connection

comes under Category No. II and not Category No. III and hence they are liable to pay the back billing amount as demanded by the Respondent No.1 under his notice and pointed out that even the photographs filed by both sides support their contention.

9. The Appellant in support of their contentions relied on Clause 213.1.3.3 of Tariff Order FY 2012-13: Appellant held that as per the given Clause industrial category III B is for the units of Small Scale Industries which have been licenses by the Industries Department as bonafide Small Scale Industries and given registration Number SSI Registration Scheme. The referred clause 213.1.3.3 of Tariff Order FY 2012-13 is applicable to the consumers who wish to avail supply at Low Tension subject to certain conditions and fall under connected loads above 75 HP and upto 150 HP. The Appellant service connection contracted load is 37.3 KW, which means that the above said Industrial category LT III B is not applicable to the Appellants service connection.

10. While the Respondents relied on Clause No.of Tariff Order FY 2016-17 : This Clause reiterates the definition of Industrial purpose, which means supply for the purpose of manufacturing, processing and/or preserving goods for sale. The Appellant held that the manufacturing process is involved in 5 steps of Job Work in the serial of lamination, printing work, paper cutting and pouching, the compressor was only used for the working of the machine. Print on the pouch is optional based on the requirement of the customer and printing is in the processing of manufacturing.The Appellant held that the nature of industry involves manufacturing process and hence the applicable billing category is LT Category III. In support of his claim the Appellant submitted the order given by the Vidyut Ombudsman in Appeal No. 27 of 2017 M/s. Ambika Industries Pvt. Ltd., wherein in the similar case the classification of the M/s. Ambika Industries was confirmed to be LT III Category based on the nature of activity involved i.e. apart from flexible packaging products, printing and lamination the industry also included extrusion of polythene as an added activity, which involves the raw material in the pellet form (resign) will be extruded into rolls of appropriate diameter, thickness and width and the value of the raw material used as an input in pellet form, will be added on and manufactured into flexible packaging material. Here the Appellant has not shown any such activity in their process where any raw material is been used and manufactured into another commodity. And the lamination paper cutting and pouching is the subsidiary work of printing work and no manufacturing work got involved.

11. In view of the above provisions relied by both sides the directions issued on classification of the consumers by the Hon'ble Commission from time to time is perused and found that the categorisation of printing was discussed and suitably classified in Tariff Order 2011-12 which is reproduced as under:

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.

12. In the light of the said view of the Commission the contention of the activity being undertaken by the Appellant clearly goes to show that their main activity is printing on the plastic bags/ packaging material as per the requirement of their consumers. The Appellant though contended that they manufacture the plastic bags and then print the required brand, design, logo pattern etc., have not filed any document in support of their contention that they manufacture the plastic material for the purpose of making them into bags or packing material to print the brand, design, logo pattern etc. as per the requirement of their consumers. They have not filed any photographs or documents to show that they have machinery or raw material to manufacture the plastic bags or packing material to support their contention. On the other hand their own photographs and the material filed by the Appellant clearly show that they are only undertaking the printing job work and nothing more.

13. The Appellant attempted to support their contentions by filing a copy of the certificate of provisional registration as Small Scale Industry showing the manufacturing activity in terms of flexible packaging and laminates conversion issued online by the Department of Industries by the Government of Andhra Pradesh in the unit named as M/s. Om Sainath Laminates of which One P. Narasimha Reddy and One Ch. Narsimha Reddy are the partners in the premise bearing No. 9-262/2, Rajiv Gandhi Nagar,

Industrial Estate. Kukatpally, Balanagar Mandal, Rangareddy District and also relied on the copy of the Order of the Hon'ble High Court in WP No. 6493 of 2016.

14. A perusal of the said certificate or provisional registration in the name of Om Sainath Laminates at Kukatpally shows that the same is issued in the name of Om Sainath Laminates and not in the name of M/s. Tirupati Containers and that too the same is issued online to help the concern to start their business without delay in time to enable the consumer to take the required steps for the required registration of Small Scale Industry. As such I am of the view that a certificate given in the name of one unit cannot be taken as a blanket order for all the other units functioning on similar lines. The Order of the Hon'ble High Court vide WP No. 6493 of 2016 referred by the Appellant also does not come to the rescue of the Appellant in view of the fact that the Appellant though approached the concerned final authority on the notice issued by the ADE/OP/Rajendranagar dt.31.08.2018, did not wait for its order. Hence the question of passing any speaking orders or calling for objections on the said notice of the ADE/OP/Rajendranagar by the final authority does not arise in this case. The said order of the Hon'ble High Court would have come to the rescue of the Appellant if the Appellant has approached the concerned final authority for an order and if he was not given an opportunity under the said final order and that the said order was not a speaking order.

15. The averments of the Appellant also go to show that the Appellant is contending that the back billing demanded by the Respondent No. 1 is hit by Section 56 (2) of the Electricity Act,2003 but a perusal of the said section shows that the same is applicable only when disconnection is sought for non payment of energy charges. The said provision is specifically used for collection of the due amount only under threat of disconnection that too for dues for a period below two years. Hence, the contention of the Appellant that Section 56(2) is barred for recovery of arrears for more than two years is rejected.

16. Hence in the face of the above discussions the Tariff Order 2011-12 clearly categorises the Appellant i.e. M/s. Tirupati Containers under Category II in view of the fact that the Appellant only undertakes printing job works and not manufacturing that comes under Category III and hence decides these issues against the Appellant.

Issue No.3

17. In the result the Appeal is accordingly disposed, but the Respondents are directed to revise the bill for back billing from April,2011 to July,2018 instead of July,2008 to July,2018, in view of the Tariff Order of 2011-12 coming into force from the said date

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

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this the 26th day of November, 2018.

Sd/-

Vidyut Ombudsman

1. M/s.Tirupati Containers,Beneficiary Narsi Reddy, Proprietor Om Sainath Laminates,Plot No 158, D.No 6-6-23, Saibaba Nagar, Kattedan, Hyderabad-500077, Cell 9391033606.

2. The AE/OP/Shivrampally/TSSPDCL/Hyderabad.

3. The ADE/OP/Shivrampally/TSSPDCL/Hyderabad.

4. The DE/OP/Rajendra Nagar/TSSPDCL/Hyderabad.

5. The AAO/ERO/Gaganpahad/TSSPDCL/Hyderabad.

6. The SE/OP/Rajendra Nagar/TSSPDCL/Hyderabad.

Copy to :

7. The Chairperson, CGRF- Greater Hyderabad Area, GTS Colony, Vengal Rao Nagar, Erragadda,Hyderabad.

8. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapul,Hyd.