

BEFORE THE FORUM
FOR REDRESSAL OF CONSUMER GRIEVANCES
IN SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED TIRUPATI

On this the 25th September 2020
C.G.No:166/2019-20/ Tirupati Circle

Present

Sri. A. Sreenivasulu Reddy
Sri. V. Venkateswarlu
Sri. Dr. R. Surendra Kumar

Member (Finance)
Member (Technical)
Independent Member

Between

K.S.Nanjundappa
C/o.M/s. Arunachala Logistics Private Limited,
S.V. Puram (V),
Vadamalapet (M),
Chittoor -Dist

Complainant

AND

1. Deputy Executive Engineer/Puttur
2. Executive Engineer/O/Puttur
3. Deputy Executive Engineer/DPE-HT/Tirupati

Respondents

ORDER

1. The case of the complainant is that complainant is a company registered under the Companies Act, 1956. Complainant Company has workshops at various places in different states. One of such workshop is located at S.V. Puram (V), Vadamalapeta (M), Chittoor Dt. The usual work of workshop is conducting repairs and all other maintenance of its Lorries coming from the factory units of Rain Cements Ltd., while going for unloading at the go-downs and dealers and while coming back with load of Fly ash to the factory of Rain Cements. Maintenance, water servicing, greasing, Realignment of tyres, filling of air in the tyres, filling of high speed Diesels, major and minor repairs and replacement of parts if necessary. Initially the workshop was established at Puttur Rural in the year 2008 and thereafter shifted to S.V. Puram (V), Vadamalapeta (M) in the year 2014. The service connection to the workshop of the complainant was sanctioned under LT Cat - III (A) with a contracted load of 74.5H.P and has billed accordingly.

DESPATCHED

DATE

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ADE/DPE-HT/Tirupati issued a letter dt:28.11.2018 that upon inspection held on 06.11.2018 it was found that their service connection was classified under wrong category and issued show cause notice that he is proposing for reclassification of category of their workshop as per Clause 3.4.1 of GTCS. Then they filed objections dt:25.12.2018 and made a detailed representation on 04.05.2019. However without passing any order for re-categorizing the service connection, DEE/ O/Puttur issued Provisional Assessment Order dt:04.04.2019 demanding of Rs.35,13,907/- purported to be on account of Back Billing for wrong categorization for the period from Sep'2008 to Apr'2019.

Complainant challenged the said order before the Hon'ble High Court of A.P. in W.P.No.6063/2019. The Hon'ble High Court directed the Complainant to deposit 40% of demanded amount and granted stay of all further proceedings vide order dt: 30.04.2019. Complainant complied with the said directions of the Hon'ble High Court by depositing the same amount with AAO/ERO/Puttur.

Without passing any order re-categorizing the complainant's service connection was billed under LT-Cat-II for the month of Mar'2019 and Apr'2019. Challenging the same complainant filed W.P.No.6595/2019 which was disposed vide order dt:15.05.2019 directing the complainant to pursue the said issue in pending writ petition. Hon'ble High Court vide order dt:22.5.2018 in W.P.No.6063/2019 granting stay of all further proceedings including disconnection of power supply to complainant's service connection and same is extended from time to time.

During the pendency of above petition DEE/DPE-HT vide impugned order dt: 17.06.2019 re-categorized the complainant's workshop connection under LT Cat-II.

The Hon'ble High Court was pleased to dispose of W.P.6063/2019 vide order dt: .01.07.2019 with a direction to respondents not to take coercive steps for disconnection of power supply pending consideration of stay petition before the CGRF.

The workshop's contracted load is 74.5 H.P and it is squarely covered under Sub-Clause (2) of Clause.1.3 of LT Cat- III (Industry) as mentioned in tariff order issued by the Hon'ble APERC for the F.Y.2018-19. The above clause has inclusive definition and the workshop is in exclusive category of LT Cat-III and will not come under any exclusions. There is no ambiguity in the definition in so far as workshop is concerned. Therefore their service connection cannot be re-categorized.

The present workshop is not having any nexus with Kodada unit. The service connection at Kodada was issued to Transport office and workshop as such it will not come under LT Cat- III. The workshop in Kodada is located in a different state and out of the area of APSPDCL. Workshops like RTCs, Railways and TTD workshops are being billed under LT Cat -III only. The load in the workshop will be used for conducting activities of 15 HP Air compressor , 10 HP Air compressor , 4 HP welding machines, 1 HP Grinding machines, 0.5 HP Drilling machine, 3 HP Air drier, 0.7 HP Wheel alignment machine, 0.5 HP Tyre repair equipment, 1 HP Tyre changer, 2 HP Nitrogen compressor, 6 HP vehicle washing machine, 4 HP IOCL diesel pumps for filling of diesels for vehicles, 8 HP bore well motors , 3.5 HP water purifier, Tyre spotter, 2 ton AC 2 Nos., 1.5 ton AC 2 No's and 1 ton AC 1 No., computers for maintaining data for day to day repairs of the vehicles and usage of material and storage material, purchase of the material etc., which will not exceed 74.5 HP. Therefore the complainant service connection will come under LT Cat-III but not under LT Cat- II. Hence the order passed by DEE/DPE-HT/Tirupati be set aside.

2. DEE/DPE-HT/Tirupati filed written submission stating that he has inspected the premises of the complainant on 06.11.2018 vide HSC No.5324200002379 having Connected load of 74.5 HP. The service was released on 05.06.2008 under Industrial category and billed accordingly.

The following activities observed at the premises are:

- 1) Cement loaded Lorries staying point
- 2) Drivers and other staff avail rest for performing further journey
- 3) General servicing of vehicles like water wash, filling of Air, Greasing wheel alignment and other general maintenance of such halted cement loaded Lorries
- 4) Filling of diesel and other fuels to the vehicles at their own diesel outlet center.
- 5) Office well equipped with systems and staff to monitor and control the vehicle movements.

There is no manufacturing / processing is going on there and the same is confirmed by the representative of the complainant at the time of inspection and who signed in it.

All the above activities will not come under LT Cat-III. The definition of LT Cat-III is given in Part-A under 1.3 in Chapter XI of Retail Supply Tariff.

As per the information given by the representative of complainant's one service in Kodada of TSSPDCL vide SC No.105908936 of Kodada Rural and service No. Shiva Kesava Transport Arunachala Logistics Pvt Ltd., Vengalampalli (V) Peapully (M) of Kurnool Dt. vide SC. No. 8222524000275 which are having same activities as that of the complainant herein are released under LT Cat - II only.

He also inspected one more service M/s. Core Logistics company vide Sc. No.2234145000387 near Pandillapalli (V) of Kamalapuram (M) in Kadapa District where Lorries come from various cement factories form Yerraguntla staying in the yard premises and utilizing power for activities that of Arunachala Logistics, Vadamalapeta is also released under LT Cat -II

The meaning of Logistics is "Commercial activities of transporting goods to consumers and the activity of organizing the movement equipment and accommodation of troops." Based on the above definition of Logistics only the firm has registered the title "Arunachala Logistics Pvt. Ltd., "

The activities are purely commercial based on the facts he has re-classified the category of the complainant service from Industrial to Commercial.

3. EE/O/Puttur and DEE/O/Puttur filed written submissions separately on similar lines as that of the written submission filed by DEE/DPE/ HT-TPT.
4. Complainant filed an application to grant stay from disconnecting the service connection till disposal of the case before the forum and same was allowed as per orders in I.A. No.12/2019-20/ Tirupati Circle.
5. Personal hearing was conducted on 19.11.2019 at Court Hall, Tirupati and personal hearing through Video conferencing was conducted on 26.08.2020.

Complainant filed written submission stating that their unit is a workshop it will come under LT Cat-III as per Clause No.1.3 of Retail Tariff order F. Y.2018-19 issued by the Hon'ble APERC . The above said clause is and inclusive clause. When the workshop is mentioned in the clause directly there is no scope of further interpretation for the same. The contention of the respondents that there is no manufacturing going on there and the same is confirmed by the representative of consumer who was present and signed in inspection notes has no stand in Law.

The drivers and other workers of those vehicles which have under maintenance or any other work is being under taken in the workshop of the complainant. Only they will stay in the workshop till the work of the vehicle is done and not otherwise. Complainant is providing amenities which it is obliged to provide under Factories Act, 1909. The diesel outlet is solely utilized for its vehicles and there is no retail outlet in the workshop.

Category cannot be decided on the title of the firm as the firm is different from the workshop. The nature of the work that would be undertaken in the workshop is only maintenance and other repair works to the vehicles of the company. There is no commercial activity of transporting goods to customers in the subject workshop no activity of organizing the movement equipment and accommodation of troops. It only conducts maintenance to the vehicles which transports the materials of Rain Cements. Changing the category of the service connection of the workshop relying up on the name of the company is not justified.

The other 2 (two) units at Kodada and Peapully are not concerned to this as it is apparent from the statement of respondents that one service connection was applied by Cement Company and another by Transport Company. Therefore the same cannot be attributed to the complainant's workshop.

APSRTC workshop was categorized under HT- III (A) the definition of LT- III (A) category and HT- III (A) category is one and the same only depending on the load, it will be decided whether it will fall under HT/LT. Therefore respondents are not justified in discriminating the complainant by misinterpreting the Clause No.1.3 of Retail Supply Tariff Order. The orders of the respondents in classifying their workshop in LT Cat- II is not justified and liable to be set aside and the complainant is entitled to continue its service connection under LT Cat- III only.

6. Point for determination is whether the category of the complainant's service can be continued to be billed under LT Cat-III or not?

Admittedly it is evident from the records made available to the forum, DEE/DPE-HT/TPT has inspected the service connection of the complainant on 06.11.2018 vide his inspection notes. The inspection notes does not contain the connected load of the service connection but the inspecting officer has noted total load as 74.5 HP instead of recording physical connected load apparatus wise existing in the complainant's premises. In this connection it is pertinent to refer the definition of connected load as per Clause No.2.2.9 of GTCS as approved by the Hon'ble Commission.

Clause No: .2.2.9:

“Connected load” means the aggregate of the manufacturer’s rating of all the apparatus including portable apparatus on the consumer’s premises. This shall be expressed in kW or HP. If the ratings are in kVA the same should be converted to kW by multiplying the kVA with power factor of 0.90. If some or any of the apparatus is rated by manufacturers in HP, the HP ratings shall be converted into kW by multiplying it by 0.746”

Further it is also relevant to refer Clause No.2.2.29 of GTCS as to the definition of inspection report.:

Clause No: 2.2.29:

“Inspection report” means a report issued by the Inspecting Officer to the consumer on completion of the inspection and is contained in Appendix IV”.

Inspection notes is to be prepared by the inspecting officer as per Appendix-IV A or IV B of GTCS as the case may be depending upon whether the service pertains to LT /HT.

It is also relevant to refer Clause No. 9.1.2 of GTCS which is as follows:

“The Inspecting Officer shall record the observations made at the time of inspection by preparing the Inspection Report as per the format prescribed in Appendix IV A for LT consumers or Appendix IV B for HT consumers, as the case may be and serve a copy of the same to the consumer at the end of the inspection. The Inspecting Officer shall send a copy of such Inspection Report by the next working day to the Assessing Officer for preparation of the Provisional Assessment order for cases of Un - authorised Use of Electricity”.

Since the inspection report does not contain the physical connected load at the time of inspection and hence the inspection report is not a valid one.

As per the Tariff Order for retail sale of electricity for the F.Y. 2018-19 Part-A LT Tariffs – Terms and conditions vide Para 1.3 LT Cat-III Industry the applicability is as follows:

LT CATEGORY-III: INDUSTRY

Applicability:

“The tariffs are applicable for supply of electricity to Low Tension industrial consumers with a Contracted load of 75kW/100 HP and below. Industrial purpose shall mean, supply for

purpose of 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, bus stations, railway stations and other similar premises, notwithstanding any manufacturing, processing or preserving goods for sale.

This tariff will also apply to:

- (1) Water Works & Sewerage Pumping Stations operated by Government Departments or Co-operative Societies and pump sets of Railways, pumping of water by industries as subsidiary function and sewerage pumping stations operated by local bodies.*
- (2) Workshops, flour mills, oil mills, saw mills, coffee grinders and wet grinders, ice candy units with or without sale outlets, grass cutting and fodder cutting units.*
- (3) The Information Technology (IT) units identified and approved by the Consultative Committee on IT Industry (CCITI) constituted by GOAP.*
- (4) Newspaper printing units.*
- (5) Poultry Hatcheries and Poultry Feed Mixing Plants, Aqua hatcheries & Aqua Feed mixing plants.*
- (6) Mushroom production units, Rabbit Farms other than those coming under LT Category-IV.*
- (7) Floriculture in Green Houses.*
- (8) Sugar cane crushing.*
- (9). Aqua culture and Animal husbandry, such as Poultry Farms, Pisciculture, Prawn culture and Dairy Farms etc.*

The definition of workshop as per the Factories and Workshops Act, 1909 is as Follows:

“Workshop means any premises, room, or place, not being a factory, in which premises, room, or place, or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, viz.:

- (i) the making of any article or part of any article; or*
- (ii) the altering, repairing, ornamenting or finishing of any article; or*
- (iii) the adapting for sale of any article;*

(iv) laundry work (not carried on in a private laundry), bleaching, or dyeing; and to or over which premises, room, or place, the employer of the persons working therein has the right of access or control”.

Admittedly DEE/DPE-HT/Tirupati in his written submission has stated that the activities of the complainant include among other things servicing of vehicles like water wash, filling of air, greasing, wheel alignment and other general maintenance of such halted cement loaded Lorries. This clearly shows that the complainant's activity fall under the definition of workshop and hence entitled to be categorized under LT Cat-III as per the Tariff Order.

Merely because the title of the service connection is in the name of M/s. Arunachala Logistics (P) Ltd. classification of the service cannot be done. Classification of service connection can be decided only on the activity for which supply is being availed by the consumers but not on the title of the service connection.

It is an admitted fact that the service connection was released on 05.06.2008 under LT Cat-III Industry General for a contracted load of 74.5 HP in the name of M/s. Arunachala Logistics Pvt Ltd. The respondents have not filed any documentary evidence to prove that the complainant has changed its line of activity for availing of power supply and hence it is liable to be re-categorized under LT-II non domestic/commercial category. In the absence of any valid documentary evidence it cannot be said that the complainant has changed its line of activity and hence service connection has to be billed under LT Cat-II.

On the other hand the complainant in his written submission has stated that major contracted load of their service is being used for workshop purpose such as air compressor, welding machine, nitrogen compressor, bore well motors, Tyre spotter, vehicle washing machine etc., which falls under workshop purpose and minor loads are used for supporting services such as ACs and office lighting.

Respondents did not show any provisions, GTCS, instructions or tariff order in support of their claim that when the service is being availed for multiple purposes (such as commercial/non domestic and industrial), the service connection can be categorized under LT Cat-II.

In view of the above, the forum is of the opinion that the service connection has to be categorized under LT Cat-III only. Thus the point is answered accordingly.

7. In result the respondents are directed to re-categorize the service connection under LT Cat-III and the amount paid by the complainant if any due to change of category from LT Cat- III to LT Cat-II shall be adjusted in future bills. Respondents are directed to issue revised bills under LT Cat-III within 15 days from the date of receipt of this order and submit compliance report within 15 days thereon.

If aggrieved by this order, the Complainant may represent to the **Vidyut Ombudsman, Andhra Pradesh**, 3rd Floor, Sri Manjunatha Technical Services, Plot No: 38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008, within 30 days from the date of receipt of this order.

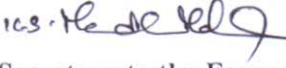
This order is passed on this, the day of 25th September 2020.

Sd/-
Member (Finance)

Sd/-
Member (Technical)

Sd/-
Independent Member

Forwarded By Order


Secretary to the Forum

To

The Complainant

The Respondents

Copy to the General Manager/CSC/Corporate Office/ Tirupati for pursuance in this matter.

Copy to the Nodal Officer (Executive Director/Operation)/CGRF/APSPDCL/TPT.

Copy Submitted to the Vidyut Ombudsman, Andhra Pradesh , 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008.

Copy Submitted to the Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad- 500 004.