



## **TAMIL NADU ELECTRICITY OMBUDSMAN**

19- A, Rukmini Lakshmi Pathy Salai, (Marshal Road), Egmore, Chennai – 600 008.

Phone : ++91-044-2841 1376 / 2841 1378/ 2841 1379 Fax : ++91-044-2841 1377

Email : tnerc@nic.in Web site : www. tneo.gov.in

**BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI**

**Present : Thiru. A. Dharmaraj, Electricity Ombudsman**

**Petition No.357 of 2011**

M/s Tamil Nadu Spinning mills Association  
No.2, Karur Road,  
Near Beschi College,  
Modern Nagar,  
Dindigul

(Represented by its Chief Advisor  
Dr.K.Venkatachalam )

... **Petitioner**  
(Rep by Dr. K. Venkatachalam)

Vs

Tamil Nadu Generation and Distribution Co.Ltd.,  
(TANGEDCO)  
144, Anna Salai,  
Chennai-600002  
(Represented by CE/Commercial)

... **Respondent**  
(Rep by Er. K. Mozhiarasi/EE/Tariff)

**Date of hearing : 10-4-2012**

**Date of Order : 29.6.2012**

The Petition No.357 of 2011 filed by M/s.Tamil Nadu Spinning Mills Association came up for final hearing before the Electricity Ombudsman on 10-4-2012. Upon perusing the above petition and rejoinder filed by the Petitioner, counter and written submission filed by the Respondent, and upon on hearing both sides the following Order is passed by the Electricity Ombudsman.

## **ORDER**

### **1. Prayer of the Petitioner:**

The Petitioner prayed to direct the Respondent to release the eligible tariff concession amount to the listed members of the Petitioner within a specified period.

### **2. Facts of the case:**

2.1 The Government of Tamil Nadu granted certain tariff concession for HT Industries coming under HT Tariff I in G.O.Ms.No.29 (Energy) dated 31-1-1995. However, the Government has withdrawn the above concession in G.O.Ms.No.17 dated 14-2-1997. The Government also in its letter dated 1-8-1997 clarified that the word “set up” is to mean the date of obtaining of HT service connection. In view of the above, the Board has intimated that the Petitioners Mills having been provided with HT supply after 15-2-1997 are not eligible for tariff concession.

2.2 Aggrieved by the above decision of the Government and the TNEB the Members of the Petitioner as well as other such affected Mills have preferred writ petition before the Hon’ble High Court of Madras, challenging the order dated 21-8-1997 of the Board. The learned single Judge of the High Court has set aside the impugned Orders of Board and ordered that the Industries which have reported their readiness to the Electricity Board and got power connection are entitled for the tariff concession for the full period of three years according to the G.O. dated 31-1-1995. The Division Bench of Hon’ble High Court of Madras has also held that “If the high tension industry has been erected or established before 15-2-1997, then it is entitled to the benefit of tariff concession even though electricity connection may not have been given to it prior to 15-2-1997. The Hon’ble Supreme Court has also given its order in favour of the Members of the Petitioner on the SLP filed by the Board. As the tariff concession has not been granted to the Member Mills of Petitioner the Hon’ble High Court was approached and the Hon’ble High Court of Madras has delivered three common Orders on 25-9-2008, 26-9-2008 and 17-12-2009 with the consent of the counsel for Respondent to pay the tariff concession. Based on the above orders some of the Mills have got their tariff concession. But the listed members of the Petitioner are yet to get their tariff concession. Hence, the Petitioner has filed the petition on behalf of his members directly to Electricity Ombudsman in pursuance of clause 17(1) of

the Tamil Nadu Regulation for Consumer Grievance Redressal Forum and Electricity Ombudsman 2004 as it relates to several of the distribution circles and the consumers are located and operating at more than one forum.

### **3. Contentions of the Petitioner:**

The Petitioner has contended the following in his petition:

(i) This complaint is filed directly before the Electricity Ombudsman in pursuance of Clause 17(1) of Tamil Nadu Electricity Regulation for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004 due to the common nature of the complaint, as it relates to several of the Distribution Circles/Consumer Grievance Redressal Forums and the consumers are located and operating at more than one Forum.

(ii) The Government of Tamil Nadu issued a Notification dated 31-1-1995 granting tariff concession for High tension industries to be set up in the area other than the Madras Metropolitan Area. The relevant portion of the concession as extracted from the Notification made in G.O.Ms.No.29 Energy, dated 31-1-1995 runs as below:

*“Tariff concession for High Tension Industries coming under High tension tariff I:*

i) *In the case of new high tension industries to be set up in the areas other than the Madras metropolitan areas, the following concessional tariffs shall be charged for the first three years from the date, the consumer is given service connection under the high tension tariff-I*

*For the first year-60% fo the high tension rates*

*For the second year-70% of the high tension rates*

*For the third year – 80% of the high tension rates*

*For the fourth year-full tariff”*

Encouraged by the tariff concessions notified by the Government which were consistent with the Industrial Policy of the Government to promote industrialization in backward areas, the listed members of the Petitioner Association have decided to set up textile mills for manufacturing yarn at various places in Tamil Nadu

(iii) After the setting up of industrial units and after reporting of their readiness to receive power supply, there was undue delay in getting power connection from the Respondent Corporation. Therefore, in view of the fact that several crores of rupees having been invested in the setting up of the industry, the mills of the Petitioner's Association have started operations and commenced their commercial production on various dates with the aid of generator power. However, the Respondent Corporation has extended power supply subsequently to the members of the petitioner on various dates after 14-2-1997.

(iv) However, the Government issued another Notification in G.O.Ms.No.17 dated 14-2-1997 and accordingly, withdrawn the High Tension Tariff concession granted in the earlier Notification dated 31-1-1995. As the members of the petitioner have set up their industries much prior to 14-2-1997 and even commissioned their mills with the aid of DG sets, they are clearly eligible for the tariff concession as ordered in the earlier GO dated 31-1-1995. However, it has been subsequently clarified by the Government by its letter dated 1-8-1997 that the word set up is to mean the date of obtaining high tension service connection and therefore; the Petitioner's mills having been provided with high tension supply after 15-2-1997 are not eligible for tariff concession.

(v) The members of the Petitioner as well as other such affected mills, which were put under similar predicament, preferred Writ Petitions before the Hon'ble High Court, Madras challenging the order dated 21-8-1997 of the Electricity Board with the prayer for a direction, directing the Respondent Corporation to extend to the members of the Petitioner the tariff concessions, in terms of notification dated 31-1-1995.

(vi) A learned Single Judge of the High Court of Judicature at Madras on a thorough examination of the facts and evidences on record was pleased to set aside the impugned communication of the Respondent Corporation given on the basis of clarification dated 1-8-1997 issued by the Government, vide his Lordship's well reasoned and legally correct judgment and order dated 23-4-1999, while holding as under:

*"21. This Court has to interpret the expression "set-up" on the basis of the decisions cited above and on the basis of the object of the amendment, the expression "set-up" would mean only ready to commence business or ready to start functioning. For the purpose of the present case, an industry has "set-up" should be construed as having reported their readiness to the Electricity Board for getting power connection irrespective of the fact*

*whether actual power supply is given or not. In view of the above, the impugned communication given by the Electricity Board on the basis of the clarification given by the 1<sup>st</sup> Respondent Government cannot be sustained and it is set aside. The industries which have reported their readiness to the Electricity Board and got power connection are entitled to enjoy the tariff concession for the full period of three years, according to the Government order dated 31-1-1995.*

(vii) The learned Single Judge further held that in respect of other writ petitions in which the petitioners have not made applications or sent intimations regarding their readiness to the Electricity Board to get power connections on or before 14-2-1997 are also entitled to tariff concession as stipulated in the Notification dated 31-1-1995 provided they should satisfy the Electricity Board that in the face of the concession announced in the Government order dated 31-1-1995, they have altered their position by establishing the industry on or before 14-2-1997.

(viii) Aggrieved by the order dated 23-4-1999 passed by the learned Single Judge of the High Court of Judicature at Madras, the Respondent Corporation filed Writ Appeals before the Division Bench of the Hon'ble High Court, Madras. The Writ Appeal No.1735 of 1999 as well as other similar Writ Appeals filed against the common judgement of the learned Single Judge dated 23-4-1999 was disposed off by a common judgement and order dated 19-7-2005 of the Division Bench of the High Court of Judicature, Madras, since the common question of Law involved in all the cases centers around the meaning of the expression of the word "set-up" as used in the Notification dated 14-2-1997. The Division Bench of the High Court, Madras relying on the numerous classical judgements of the Hon'ble Supreme Court was pleased to hold that the meaning of the words "set-up" as contained in the Notification dated 14-2-1997 would mean, "erect or establish" and therefore held that "if the high tension industry has been erected or established before 15-2-1997, then it is entitled to the benefit of the tariff concession, even though electricity connection may not have been given to it prior to 15-2-1997".

(ix) Aggrieved over by the Order and judgement of the Hon'ble Division Bench of Madras High Court, the Respondent Corporation again filed a SLP before the Hon'ble Supreme Court of India and however, the same was also decided in favour of the members of the petitioner on 16-5-2008 by a Common Order.

(x) Even though the matter was decided in favour of the members of the Petitioner, the Respondent Corporation has not allowed the tariff concession to the members of the Petitioner and however, attempted to take new grounds to refuse the tariff concession and accordingly, started delaying the payment of tariff concession.

(xi) Hence, the matter was again agitated before the Hon'ble High Court and accordingly, by three batches of Common Orders delivered on 25-9-2008, 26-9-2008 and 17-12-2009, the Hon'ble High Court has set out the case of the members of the Petitioner very clearly and ordered the Respondents to pay the tariff concession amount suitably by a consent order with the consent of the counsel appearing for the Respondent Corporation.

(xii) Some of the mills covered by the Court Order have managed themselves to get the tariff concession amount and accordingly, they have been paid with the amount. However, the listed members are not able to get the same till today even with a continuous effort of more than 14 years. The Respondent Corporation has not acted upon positively on the orders of various Courts passed on various dates and till today the matter has not been settled.

#### **4. Contention of the Respondent:**

The Respondent has contended the following in its counter:

(i) The Government of Tamil Nadu in exercise of such powers had issued G.O.Ms.No.29 dated 31-1-1995 providing tariff concession for HT Industries.

(ii) The Electricity tariff concession to new high tension industries would arise only after the industries availed HT supply from the Electricity Board and as such extension of such concession would be subject to the fulfilment of the conditions stipulated in the relevant tariff concession notification governing at the date of effecting HT supply.

(iii) The Government considering the public interest at large and after examining the difficulties faced by the Tamil Nadu Electricity Board have issued

G.O.Ms.No.17 dated 14-2-1997 withdrawing the concession for the new industries set up on or after 15-2-1997.

(iv) The Government of Tamil Nadu had issued clarification letter dated 1-8-1997 that the word “set-up” would mean obtained service connection.

(v) The said G.O. was challenged before Hon’ble High Court. The Hon’ble High Court in the common order dated 23-4-1999 in the batch of Writ petitions delivered judgement in favour of HT consumers.

(vi) The tariff connection can be availed by the consumer only on production of CEIG certificate with readiness proving commercial production and should have paid all the requisite charges by them as per Supreme Court order dated 16-05-2008 in civil appeal No.3940 of 2008 and others. Hence the delay of effecting service connection under tariff concession may be caused by the consumer themselves.

(vii) The Division Bench of High Court in order dated 19-7-2005 ordered that the individual units should approach TNEB and if they satisfy TNEB that the units were set up before 15-2-1997, they will get the benefit of Tariff concession with the observation among others that the Secretary of the Government cannot clarify an amendment to the schedule which has been made by the Governor. Hence the appellant cannot get any benefit from the letter of Secretary to the Government of Tamil Nadu dated 1-8-2007. The appeals of the State Government were consequently dismissed and all other appeals and writ petitions were disposed off.

(viii) Aggrieved over by the order dated 19-7-2005 of the Division Bench of the Hon’ble Madras High Court, the Tamil Nadu Electricity Board took up the matter before the Hon’ble Supreme Court by way of SLPs and the Hon’ble Supreme Court by common order dated 16-5-2008 in Civil Appeal No.3940 of 2008 etc., disposed of several appeals interpreting the word “set-up”.

(ix) Based on the above Honourable Supreme Court judgement dated 16-5-2008, the Board has issued instructions vide memo dated 10-6-2008 to SE/Distribution to grant tariff concession to consumers after ascertaining whether the consumers has not only started commercial production before the said date namely 14-2-1997 but also had applied for HT service connection, paid all the deposit amount and were ready

with safety certificate issued by CEIG to avail supply before the cut off date (namely) before 14-2-1997.

(x) Some of the HT consumers obtained stay against implementation of the above Board's memo dated 10-6-2008. The High Court of Madras delivered orders granting tariff concession to all consumers by categorizing the batch of cases in two groups viz.(i) Those who had commenced commercial production with the help of generators and (ii) those who had applied and paid the initial deposit. Thus all the HT industries that belonged to any one of the groups were eligible for grant of tariff concession.

(xi) In the judgement delivered on 25-9-2008, the Hon'ble High Court in its order has stated that by consent of the learned counsels on either sides, has ordered, that the consumers who had commenced commercial production with the help of generators were eligible for grant of tariff concession and in the judgement delivered on 13-11-2008 it was ordered to quash the memo dated 10-6-2008 and tariff concession was made eligible to those who had paid the initial deposit (ie.) EMD. This is in contravention to the order of the Hon'ble Supreme Court which made the tariff concession applicable apart from other conditions, "to those who had deposited the amount asked for". The payment of development, service connection charges etc., which were required to effect service connection has not been covered under the Hon'ble High Court order. It is only when all payment required to effect HT service connection have been made, would the status of the applicant be taken as having partially fulfilled the order passed by the Hon'ble Supreme Court.

(xii) Review petitions have been filed by the circle Superintending Engineers against judgement dated 25-9-2008/ 26-9-2008 and Writ appeals against the order dated 13-11-2008 were filed against those consumers who were not eligible for tariff concession as per Apex Court order dated 16-5-2008.

(xiii) The review petitions have been filed against the judgement dated 25-9-2008 / 26-9-2008 in respect of the following consumers and numbered as given below:

- |     |   |                   |
|-----|---|-------------------|
| i)  | M/s.KSV Cotton Mills (P)Ltd., Dindigul  | S.R.No.59761/2010 |
| ii) | M/s.SMP Textile Mills (P)Ltd., Dindigul | S.R.No.59767/2010 |

iii)	M/s.Parameswari Spinning Mills (P)Ltd.,	S.R.No.59765/2009
iv)	M/s.Jayalakshmi Textiles (P)Ltd.,Virudhunagar	S.R.No.59757/2009
v)	M/s.Leeds Spinning Mills(P)Ltd., Gobi	S.R.No.59737/2009
vi)	M/s.Supreme Yarn Spinners, salem	S.R.No.59733/2010
vii)	M/s.Sambandam Siva Textiles(P)Ltd.,Salem	S.R.No.59746/2010
viii)	M/s.Sadas Textile Mills(P)Ltd., Erode	S.R.No.59747/2010
ix)	M/s.Rogini Mills (P)Ltd., Gobi	S.R.No.59736/2010
x)	M/s.Classic Spinning Mills, Palladam	S.R.No.59735/2010
xi)	M/s.Ramani Textiles Mills (P)Ltd., Tirupur	S.R.No.59759/2010

(xiv) The review petitions have been filed against the following consumers and they are yet to be numbered.

- i) M/s.Hariprasath Textiles(P) Ltd., Namakkal
- ii) M/s.Raghav Industries Ltd., Namakkal
- iii) M/s.StatusSpinning Mills (P)Ltd., Namakkal
- iv) M/s.Nilgiri Textiles Pvt.Ltd., Coimbatore
- v) M/s.BRT Spinners Ltd., Coimbatore
- vi) Salona Cots Spin Ltd., Gobi

(xv) The tariff concession had been allowed for the following consumer as it satisfied the conditions of TNEB for allowing tariff concession:-

- i) M/s.SJLT Spinning Mills, Nammakkal.

(xvi) At present the matter is subjudice in the Courts. Hence the complaint is not eligible before Electricity Ombudsman as per regulations 17(4)(d) of Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman 2004, and on this ground only, the above complaint may be rejected. The balance of convenience is in favour of the respondent/Board herein.

## **5. Contentions of the Petitioner in the Rejoinder**

The Petitioner has furnished rejoinder on 10-4-2012. The points that are not covered in the petition are furnished:

i) Both the Hon'ble Supreme Court of India and the Hon'ble High Court of Judicature at Madras have categorically established, what the word "set-up" means and therefore, any averment made beyond the interpretation of the Apex Court of India is beyond the functional scope of the Respondent and therefore, it requires no weight at all. On the obligation of the mills of the petitioner to get a CEIG safety certificate was not a precondition for defining the term "set-up" and therefore, the spirit of the Government order by which tariff concession was allowed cannot be altered for the convenience of the Respondents. Further, the averment of getting the CEIG safety certificate was not at all raised anywhere either before the Single Judge, or before the Division Bench. Only before the Hon'ble Supreme court of India it was raised in the first occasion and however, that was not considered in respect of industries commenced commercial production with the aid of generators for whom safety certificate from CEIG is not a prerequisite and therefore, such cases of industries were fully made eligible to receive tariff concession amount.

ii) The following is the only condition imposed by the Honourable High Court of Judicature in the order dated 25-9-2008/26-9-2008 in the Batch of Writ Petitions disposed off in pursuance of the Order of the Honourable Supreme Court of India delivered on the matter on 16-5-2008 in Civil Appeal No.3940 of 2008 Batch Cases. The Petitioners ought to have commenced the commercial production before 14-2-1997 by use of generators.

iii) If the safety certificate of CEIG is a must for sanction of tariff concession amount, the Respondent should have appealed the matter before the appropriate forums and accordingly, would have requested for different orders. Without doing so, now coming and telling that CEIG safety certificate is necessary is absolutely not maintainable by law. Therefore, the same cannot be quoted as a reason for not sanctioning the tariff concession amount to the aggrieved in spite of the High Court Orders dated 25-9-2008/26-9-2008 which goes as follows:

*By consent of the learned counsel on either side, the below mentioned order is passed:*

*“The Petitioners in the above said writ petitions claim to have satisfied paragraph No.45 of the order dated 16-5-2008 passed by the Honourable Supreme Court in SLP Nos.3940 of 2008 etc., batch, regarding commencement of commercial production before 14-2-1997 by use of generators.*

*Hence the Respondents are directed to extend the tariff concession sought for by the Petitioners, within a period of four weeks from the date of receipt of a copy of this order, however, subject to the production of the evidence of use of generators and commencement of commercial production before 14-2-1997”*

iv) The matter has been fully settled down by the APEX Court of this country in favour of the members of the Petitioner as follows:

*“45. We have noticed herein before that some of the industries had even installed generators. They had to do it. They inevitably had to do it because the Board would not supply power. Would it not be too much to contend that even those industries have not been set up as they have not become consumers? We think that for the said purpose, the proviso has to be read down. It must be made applicable to them who not only had started commercial production before the said date, namely, 14-2-1997 but also had applied and were otherwise ready to take electrical connections having deposited the amount asked for, where for their industries were otherwise ready for consuming electrical energy.”*

v) All members of the Petitioners listed in the petition are falling within the category of commenced commercial production before the due date of 14-2-1997 with the aid of generators and as such they are declared eligible to receive tariff concession by virtue of all means as declared in all the 3 judgement quoted.

vi) The question of getting CEIG safety certificate does not arise as the premises were not supplied with the electricity of the Respondent Corporation when the industry has gone up for commercial production with the aid of generators of the Petitioners' owned. Only after the completion of the works of the Respondent Corporation's side, the certificate could be applied and could have been obtained. As long as the work of the Respondent Corporation is pending, no application could be made under Rule 63 to get the CEIG safety certificate. But however, this was not a reason to deny that the industry was not at all set up. The tariff concession is to be paid for all industries to be set up on or before 14-2-1997

vii) M/s.Sri Parameswari Spinning Mills (P)Ltd., was an industry existed much before the due date and was getting the tariff concession amount

already and the dispute is only in respect of the additional capacity added and therefore, the question of safety certificate does not arise for them at all.

viii) The Respondent Corporation have listed out only the SR No. having obtained a SR No. cannot make the case as sub-judice unless the matters are numbered and admitted. The review of order could be made only by the Judge who passed the order and it should be noted that the Judge who passed the order has already retired and there is no scope for any review as of now and therefore, this cannot be considered as sub-judice and therefore, un-admitted review petitions even with SR Nos. cannot make the matter sub-judice in any manner. It should be also noted that the SR Nos. are pending from the years 2009 onwards and for some cases not even no efforts have been made to file review petitions even though a period of 4 years have already been lapsed from the date of order by the Single Judge at Madras High Court. Hence it is very clear that the Respondent Corporation is making all efforts just to delay the payment and no way permitted by law to get a benefit in any manner by any one of the judgements on the matter.

ix) There was no mention about the mill namely M/s.Palaniappa Textiles (P)Ltd., which was listed already under Serial No.7 of the petition and hence, the Respondent Corporation is under obligation to update the position in respect to the above industry.

#### **6. Hearing held by Electricity Ombudsman:**

In order to enable the Petitioner and the respondent to putforth their views in person, a hearing was held on 10-4-2012. Dr.K.Venkatachalam has represented the Petitioner and Er.K.Mozhiarasi, EE/Tariff/Commercial has represented the Respondent.

#### **7. Argument of the Petitioner**

Dr.K.Venkatachalam who represented for the Petitioner has furnished a rejoinder for the counter filed against the petition No.AP 357 of 2011. The contents are detailed in para 5.

7.1 Dr.Venkatachalam has reiterated the contents of the petition and rejoinder. He argued that as the Common Order issued by the Hon'ble High Court on 25-9-2008 and 26-9-2008 are issued on the consent of all the Counsels appearing

for both sides, the review is not possible. Further he also argued that the Respondent has furnished only SR numbers for the review petitions filed. The case can be treated as sub-judice if it is numbered and admitted. Hence argued that the matter is not sub-judice as stated by the Respondent

7.2 He also argued that obtaining of CEIG certificate was not necessary as the industries have commenced their commercial production and he argued that the case here is to allow the tariff concession to the members of the Petitioner's Association based on the Hon'ble High Court order and not the merit of the case decided by the Hon'ble High Court. He vehemently argued that the Respondent would have gone for appeal on the orders of the High Court but cannot deny the payment on CEIG certificate.

7.3 He also informed that payment to M/s.SJLP Spinning Mills, Namakkal was yet to be made.

7.4 He also argued that no details in respect of M/s.Palaniappa Textiles (O) Ltd., was given in the Counter.

## **8. Argument of the Respondent**

8.1 Er.Mozharasi who was representing the respondent has reiterated that contents of the counter. She also argued that CEIG certificate has to be furnished by the Industries in support to their readiness for getting supply on or before 15-2-1997. The Petitioner members have not furnished the above.

8.2 She also argued that for filing an appeal, the orders issued by the Single Judge of Hon'ble High Court of Madras has to be reviewed as the orders were issued on consent of the Counsels. Hence the Respondent has filed the review petition and obtained the SR numbers. She informed that she will furnish the present status of the review petition filed in her written arguments.

## **9. Written arguments of the Respondent**

The Respondent has furnished the following in his written submission.

i) The Honourable Supreme Court in its Judgement dated 16-5-2008, in para 45 has observed the following among others :

*“45. XXX.It must be made applicable to them who not only had started commercial production before the said date, namely 14-2-1997 but also had applied and were otherwise ready to take electrical connection having deposited the amount asked for”*

In view of the above, as per the above Supreme Court judgement, the Petitioners who had applied and were otherwise ready to take electrical connection having deposited the amount asked for on or before 15-2-1997, are eligible for tariff concession. Hence, the Board can allow the tariff concession only for those who satisfy the condition of ready to take electrical connection by having deposited the amount asked for by the Board along with the proof of having started commercial production. Therefore, it is clear that to satisfy the work ‘ready’ it is must to produce CEIG certificate as per rule 63 of the Indian Electricity Rules, 1956, which relates to, the supply of energy shall not be commenced by the supplier unless and until the Inspector is satisfied that the provisions of Rules 65 to 69 have been complied with and the approval in writing of the Inspector has been obtained.

ii) Based on the Supreme Court Judgement dated 16-5-2008, the Hon’ble High Court in its order dated 25-9-2008 / 26-9-2008 has observed that the tariff concession is made applicable to the petitioners who ought to have commenced the commercial production before 14-2-1997 by use of generators, which is against the Hon’ble Supreme Court Judgement dated 16-5-2008 since the 17 mills listed by the complainant have not even submitted the certificate of approval issued by the Inspector as contemplated in Rule 47-A of the I.E. rules 1956. Therefore, the Board had filed review petitions against the Hon’ble High court order dated 25 / 26-9-2008 along with condone delay petition as per the legal opinion rendered by then Additional Advocate General instead of filing Appeal Petition. The condone delay petitions were numbered as M.P.No.1 of 2010 in the said review petitions.

iii) M/s.Parameswari Spinning Mills (P)Ltd., is not eligible for getting tariff concession, since they availed additional demand during tariff concession period and also they had foregone the tariff concession by giving an undertaking at the time of effecting the additional demand.

iv) Review petitions for the 17 Nos. of writ petitions in respect of following HT consumers have already been filed accordingly and numbered as M.P.No.1 of 2010 for condonation of delay.

1. M/s.KSV Cotton Mills (P) Ltd., Dindigul
2. M/s.SMP Textile Mills (P) Ltd., Dindigul
3. M/s.Parameswari Spinning Mills (P)Ltd., Virudhunagar
4. M/s.Jayalakshmi Textiles (P)Ltd., Virudhunagar
5. M/s.Leeds Spinning Mills (P) Ltd., Gobi
6. M/s.Supreme Yarn Spinners, Salem
7. M/s.Sambandam Siva Textiles(P)Ltd., Salem
8. Sadas Textile Mills (P)Ld., Erode
9. M/s.Rogini Mills (P)Ltd., Gobi
10. M/s.Classic Spinning Mills, Tirupur
11. M/s.Ramani Textiles Mills(P)Ltd., Tirupur
12. M/s>Hariprasath Textiles (P)Ltd., Namakkal
13. M/s.Raghav Industries Ltd., Namakkal
14. M/s.Status Spinning Mills (P)Ltd., Namakkal
15. M/s.Nilgiri Textiles Pvt.Ltd., Coimbatore
16. M/s.BRT Spinners Ltd., Coimbatore
17. M/s.Salona Cots Spin Ltd., Gobi

Even though M/s.SJLT Textiles (P) Ltd., had not approached any Court against the judgement dated 16-5-2008 of the Honourable Supreme Court for getting tariff concession, the tariff concession was allowed to the consumer since they had satisfied all the conditions as specified in the Honourable Supreme Court judgement dt. 16-5-2008 and the amount had been refunded through their 12/2011 CC bill of HT SC No.241 as per the request of the consumer. It has been reported by SE/Dindigul EDC that M/s.Palaniappa Textiles (P) Ltd., has also satisfied all the parameters mentioned in the Honourable Supreme Court order dated 16-5-2008 for getting the tariff concession and action is being taken to refund the eligible tariff concession amount.

v) The orders in the main writ petition was passed by Hon'ble Justice Mr.A.Kulasekaran who has retired few years back and hence, the cases of review petition has to be placed before the Hon'ble Chief Justice for appropriate

orders to list the Review Petitions. Accordingly, action is being taken to list the case before the Hon'ble Chief Justice.

vi) The Hon'ble Ombudsman's jurisdiction is well defined and a complainant can make a complaint only in the matters covered under Regulation 2(f) of the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman 2004. The subject matter of issue raised by the petitioner is not covered within the said Regulation 2(f). Hence the petition is not maintainable before this Hon'ble Ombudsman.

vii) At present the matter has already been considered and ordered by the Honourable Supreme Court of India and the Honourable High Court of Madras. Further the review petitions filed by the Board against the orders of the Honourable High Court dt. 25-9-2008 and 26-9-2008 in WP No.15877/2008 etc., and WP No.16864/2008 etc., (batch cases) respectively are being under consideration and numbered as MP NO.1/2010 for condoning the delay as on date. As stated above, MP NO. has since been assigned to condone the delay, the complaint need to be rejected summarily. Further the same is not maintainable before the Electricity Ombudsman as per regulations 17(4)(d) of Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman 2004, and on this ground also, the above complaint may be rejected.

#### **10. Written submission of the Petitioner**

10.1 The Respondent has misrepresented the Judgement of Supreme Court in his favour and not in the lines by which the judgement was delivered.

10.2 The opinion of Additional Advocate General for filing a review petition ought to have been brought to the knowledge of the Ombudsman.

10.3 Whether an order passed in a writ petition could be the subject matter of review is a major question of law to be analysed by the Ombudsman.

10.4 M.P.No.1 of 2010 quoted by the Respondent in the written submission needs to be again vouchsafed by suitable documents.

## **11. Findings**

11.1 As the respondent has stated that their review petition is pending before the Honourable High Court of Madras, the issue before the Electricity Ombudsman is whether Electricity Ombudsman can issue any orders on the above subject.

11.2 In this regard Regulation 17(4) of the Regulation for Consumer Grievance Redressal Forum and Electricity Ombudsman 2004 which is relevant to the present case is reproduced below:

17(4) No complaint to the Electricity Ombudsman shall lie unless:

(a) The complainant had before making a complaint to the Electricity Ombudsman made a written representation to the forum of the licensee named in the complaint and either the forum had rejected the complaint or the complainant had not received any reply within a period of two months from date of filing of the grievance or the complainant is not satisfied with the reply given to him by the forum. This shall however not be applicable to the complaints of common nature described under clause 17 (1).

(b) The complaint is made within three months after cause of action has arisen.

(c) The complaint, which is not settled, is not in respect of the same subject, which was settled through the office of the Electricity Ombudsman in any previous proceedings whether received from the same complainant or along with one or more complainants or anyone or more of the parties concerned with the subject matter;

(d) The complaint does not pertain to the same subject matter for which any proceedings before any court is pending or a decree or award or a final order has already been passed by any competent court; and

(e) The complaint is not frivolous or vexatious in nature.

11.3 As per the said regulation 17(4)(d), the Electricity Ombudsman cannot entertain a petition if any proceedings before any Court is pending or a decree or award or a final order has already been passed by the competent Court on the same subject.

11.4 As the Respondent has stated that their review petition filed against the orders dated 25-9-2008 and 26-9-2008 of Honourable High Court of Madras is under consideration and numbered as MP.No.1 of 2010 for condoning the delay as on date. The respondent has also produced a copy of letter written by Thiru. S.K. Rameswar, Standing Counsel. The standing counsel has stated that one miscellaneous petition numbered as M.P. No. 1/2010 to condone the delay in all review SR Nos. As the Respondent has stated that they have filed 17 Nos. review petition to review the Honourable High Court orders issued on 25-9-2008 and 26-9-2008 and are numbered as M.P.No.1 of 2010 for condoning delay the matter is sub-judice, and hence as per regulation 17(4)(d) of the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman 2004, the Electricity Ombudsman cannot entertain the above complaint for passing any order. Hence, the above petition is treated as closed.

## **12. Conclusion**

With the above findings in para 11, No.357 of 2011 is finally disposed by the Electricity Ombudsman. No cost.

**(A. Dharmaraj)**  
Electricity Ombudsman

To

- 1) Tamil Nadu Spinning mills Association,  
No.2, Karur Road,  
Near Beschi College,  
Modern Nagar, Dindigul
- 2) The Chief Engineer /Commercial,  
TANGEDCO,  
144, Anna Salai,  
Chennai – 600 002.
- 3) The Chairman & Managing Director,  
TANGEDCO,  
144, Anna Salai,  
Chennai – 600 002.
- 4) The Secretary,  
Tamil Nadu Electricity Regulatory Commission,  
No.19A, Rukmini Lakshmipathy Salai,  
Egmore,  
Chennai – 600 008.
- 5) The Assistant Director (Computer)  
Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmipathy Salai,  
Egmore, Chennai – 600 008. - for hosting in the website.