



## **TAMIL NADU ELECTRICITY OMBUDSMAN**

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

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

**Appeal Petition No. 263 of 2011**

M/s.Accurate Products Corporation Pvt.Ltd.,  
Plot No.Ac.25A, AC 24 & AC 22A,  
Sidco Industrial Estate,  
Thirumudivakkam,  
Chennai-600044.

... Appellant  
(Appellant himself on 14.3.12  
& Thiru.N.L. Rajah/Advocate  
on 20.6.2012)

Vs.

The Superintending Engineer,  
Chennai EDC/South,  
TANGEDCO,  
K.K.Nagar,  
Chennai-600078.

... Respondent  
(Respondent himself on 14.3.12  
& Thiru. Sivakumar AAO on  
20.6.2012)

**Dates of hearing 14-3-2012 & 20-6-2012**

**Date of Order : 14.8.2012**

The petition No.263 of 2011 came up for hearing before the Electricity Ombudsman on 14-3-2012 and 20-6-2012. Upon perusing the above petition, counter filed by the respondent and after hearing both sides, the following Order is passed by Electricity Ombudsman.

## Order

### 1. Prayer :

The Appellant prayed for revision of tariff from Commercial to Industrial from June 2006 to August 2010 and refund the excess amount collected under Commercial tariff.

### 2. Facts of the case :

M/s.Accurate Products Corporation Pvt.Ltd., has obtained HT service on June 2006 and the above HT service falls under the jurisdiction of SE/CEDC/South. The service was charged under HT Commercial tariff. The Petitioner has requested for change of tariff to Industrial from the date of service on 15.6.2010 but the tariff was revised with effect from July 2010. The Appellant filed a petition to CGRF of Chennai EDC/South for tariff change from June 2006. But CGRF has not given any Order. Aggrieved over the inaction of the CGRF of the Chennai EDC/South, the Petitioner filed this petition to Electricity Ombudsman.

### 3. Contentions of the Petitioner :

The petitioner contended the following in the petition filed.

- (i) The service was applied for and allotted in industrial tariff in 2006 and The service connection number is HT SC No.610. However the HT supply was charged under commercial tariff from June 2006 to June 2010.
- (ii) In the HT bills issued by the licensee the tariff approved/tariff billed is mentioned as I / III.
- (iii) Based on the Appeal tariff revision was accorded but only for the period of July 2010 to August 2010. But tariff was however not revised for a period of 4 years from June 2006 to June 2010.

(iv) He has submitted the following documents in proof of having commenced their industrial production.

1. CEIG Letter No.KPM/772/CEIG/D3/2006-2 Dt.13.6.2006 vide which approval accorded for HV/MV electrical installation at the factory after installation of a major complement of the machinery (list of HV installation and machinery enclosed).
2. Certificate of registration of captive generating plant dt.11.8.2006.
3. Central excise registration certificate dated 24.3.2006.
4. Invoice No.0001 Dt.31.5.2006 to Invoice No.0040 dt.16.6.2006.
5. From ER-I return of excisable goods and availment of CENVAT credit for May 2006 to July 2006.
6. Monthwise details of excise duty paid from May 2006 to March 2007 during the Financial year 2006-07.
7. From A1 Sales tax returns for May 2006 to August 2006.
8. TNEB bills for April 2006 to August 2006.
9. Tamil Nadu Pollution Control Board consent certificate (air and water ) dt.24.2.2007).

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

The Respondent has contended the following in the counter:

(i) HT Sc No.610 for M/s.Accurate Products Corporation Pvt. Ltd., has been effected with a sanctioned demand of 200 KVA on 16-6-2006. The consumer had already been informed in this office letter dated 30-6-2006 during issue of initial bill for the month of June 2006 that HT Sc No.610 has been billed under tariff I / III (Commercial) and the re-change of tariff will be done after commencement of regular production and also on receipt of the field inspection report from the Executive Engineer / O & M concerned.

(ii) The consumer has applied for change of Tariff in his letter dated 25-5-2010 which was received on 15-6-2010 only and inspection report was called for from EE/Porur on 7-7-2010 and based on report received from EE/O&M/Porur on

27-7-2010 change of tariff i.e. I(A)/III (Commercial) to I(A) (Industrial) has been effected from August 2010 onwards.

(iii) This is an Government organisation of power industry serving for the welfare of the society, run on a non-profitable basis without any commercial motive. Based on the above facts, it is to be stated that the consumer has to approach the competent authority within the stipulated period with sufficient proof and records, for change of tariff and refund if any, on time.

(iv) Normally, the initial C.C.Bill for new services are being issued under commercial tariff only due to getting the particulars regarding line of activity with supporting documents and field inspections report for physical verification and also to confirm the line of activity declared by the consumer at the time of application for new service connection.

(v) The procedure to be adopted for initial billing the application of HT tariff for new industrial services are as follows:

- a) Memo No.IEMC/EE(T)/AEEI/R.05157/97-2 dated 31-5-1997 the initial billing are being rendered under HT tariff III and subsequent billing are made under HT tariff I after review of electricity consumption pattern, if the actual recorded demand is found to be in excess of 15% of the sanctioned demand and if there is substantial energy consumption also.”
- b) Memo No.SE/Comml/EE/T/AEEI/F.HT. Billing/CR No.1077/2002 (Technical branch) dated 2-3-2002.

“The initial billing made under HT tariff III is to be changed to HT tariff I(A) only from the date of first meter reading taken for billing purpose, if the consumer commenced, industrial activity during the initial billing period.”

- c) Accordingly the HT industrial services are provisionally charged under HT tariff III, from the date of service connection. Subsequently, only when the recorded demand is found to be in excess of 15% of the sanctioned demand, and if there is substantial energy consumption, the HT industrial service is charged under HT tariff I(A).

(vi) In this case particularly the method of classification of tariff was informed to the above consumer vide this office letter dated 30-6-2006 to furnish the supporting documents regarding the usage with commencement of industrial activity which involves in money values approximately in crores. However, the consumer approached this office only on 15-6-2010 in his letter dt. 25-5-2010, even after remitting the C.C. bills every month for the above HT SC No.610 from 6/2006 onwards under HT tariff III without any protest what so ever and without getting any single clarification or approaching any competent authority with sufficient proof and records, to make his claim immediately for the change of tariff with retrospective effect.

(vii) The consumer has cited OP No.13 of 2006 filed before the Tamil Nadu Electricity Ombudsman to substantiate his case in this regard. The Chief Financial Controller/TANGEDCO in Lr.No.CFC/FC/DFC/AS3/D.No.85-1/11 dt.24.11.2011

addressed to SE/Coimbatore /North regarding a similar case has stated as follows :  
An appeal against the Ombudsman order A.P.No.13 of 2006 Judgment had been filed before the Hon'ble Division Bench of Madras High Court by the Superintending Engineer/Dharmapuri and since, the above matter is under purview of the High Court and until receipt of the final order from the Division Bench, the Initial billing of the HT service has to be made only under HT tariff III from the date of availing supply to first meter reading after industrial activity commenced as per the billing procedure communicated in Memo No.SE/Comm/EE/T/AEE.1/F.HT Billing/CR No.1077/2002 (TB) dated 2-3-2002.

(viii) Necessary action will be taken accordingly in respect of HT SC No.610 of Accurate Products Corporation Pvt.Ltd., as per the outcome of the court case filed before the Hon'ble Division Bench of Madras High court mentioned above in para (11) based on the subsequent amendment by the TNERC and TANGEDCO in this regard.

## **5 Hearing held by Electricity Ombudsman**

In order to enable the Petitioner and the Respondent to putforth their arguments in person hearings were held on 14-3-2012 and 20-6-2012.

## **6 Argument of the Petitioner**

6.1 The Petitioner himself has presented his case on 14-3-2012.

6.2 He argued that the industrial activities have started in his industry immediately after getting the HT service connection. He informed that he is not aware that he was charged under commercial tariff initially and immediately on knowing that his service was charged under commercial he applied for changing the tariff to industrial tariff but the licensee has given effect from July 2010 only. Hence, he is now

requesting tariff revision from June 2006. He also informed that peak hour restriction was enforced on his industry.

6.3 On 20.6.2012, Thiru N.L.Rajah, Advocate represented the Petitioner. He argued that the excess amount charged under HT tariff III has to be refunded citing section 72 of the Indian Contract Act.

*“A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it”*

6.4 The Learned Advocate also argued that the limitation is applicable only for the courts and not applicable to proceedings before Tribunals citing Jaganath Prasad Vs.UP (1963) 2 SCR850: AIR1963SC416: 14STC536. Quoting the above he argued that the limitation does not apply to this case and hence the difference in amount between the tariff III and I has to be refunded to the Petitioner.

6.5 Regarding Appeal pending against Ombudsman Order No.OP.No.13 of 2006 in Hon'ble Division Bench of Madras, the learned counsel argued that as no case is pending in any court between M/s.Accurate Products Corporation Pvt. Ltd., Chennai and the Licensee the clause 17(4)(d) of the Forum Regulations is not bar on the Ombudsman to take this case.

6.6 He also argued that the peak hour penalty for exceeding the quota cannot be straight away applied as the proceedings like issue of show cause notice, chance to defend etc., are there.

6.7 The learned counsel also argued that the factors mentioned in section 144 of the Act may be taken into account to this case also even though the section is not applicable to this case. The factor mentioned in the said section is reproduced below:-

*“Section 144. Factors to be taken into account by adjudicating officer:- While adjudicating the quantum of penalty under section 29 or section 33 or section 43, the adjudicating officer shall have due regard to the following factors, namely –*

- (a) *the amount of disproportionate gain or unfair advantage, wherever, quantifiable, made as a result of the default;*
- (b) *the repetitive nature of the default*

## **7 Argument of the Respondent:**

7.1 The Respondent Thiru M.Madan, SE/CEDC/South himself has argued for the Respondent on 14.3.2012.

7.2 The SE/CEDC/South argued that in his letter dt.30-6-2006, while sending the provisional bill for the month of June 2006, the Petitioner was clearly informed that his service was charged under tariff III (commercial) provisionally. It was also indicated in that letter that recharge of tariff will be done after commencement of the regular production and also on receipt of field inspection report from EE/O&M/ concerned. But, the Petitioner has applied for change of tariff only during June 2010 and the field inspection report was received on 7-7-2010. Accordingly, the tariff was changed from HT tariff III to HT tariff IA. Hence, the revision is in order.

7.3 He also argued that the Petitioner is claiming industrial tariff from June 2006 onwards only during June 2010, after a lapse of 4 years. Hence, the claim is a time bared one.

7.4 He further argued as per regulation 17(4)(d) of the Forum Regulations, the Ombudsman cannot entertain a petition when an appeal against the order of Ombudsman on the same subject is pending. He cited the appeal petition filed by SE/Dharmapuri EDC against the order No.OP 13 of 2006 of Ombudsman and argued as the case is pending in the Hon'ble Division Bench of High Court the Ombudsman may dismiss the above petition. He also informed that the peak hour restriction for industry has to be applied if the tariff is changed to industrial category and consequent penalty will also come into force if any violation is noticed.

7.5 On 20.6.2012, Thiru. S. Sivakumar A.A.O only attended the hearing. He argued that as per section 56 of the Electricity Act there is a limitation of 2 years for the Board to claim arrears from the consumers. Citing the above, he argued that limitation applies to this case also.

7.6 Further he also argued that if the tariff is changed from 2006 onwards, then the peak hour restriction applicable to the industry has to be applied to the Petitioner and penalty if any consequent to change of tariff may also to be levied.

## **8 Written argument of the Petitioner**

The Petitioner's advocate has furnished the following written argument on 9-7-2012.

i) *The counter of the Respondent in para 8(iii) sets out the relevant rule applicable to levy of charges in respect of industrial consumers. The respondents have stated that "accordingly the HT industrial services are provisionally charged under HT tariff III from the date of service connection. Subsequently, only when the recorded demand is found to be in excess of 15% of the sanctioned demand, and if there is substantial energy consumption, the HT Industrial service is charged under HT tariff IA." From the above it is clear that no manner of intimation from the consumer is required.*

ii) *The other defence in para 10 is that there is another matter pending before the High Court and action will be taken in accordance with the outcome of the court case filed before the Hon'ble Division Bench of the Madras High Court. It is to be noted that this para once again is vague and does not even furnish the number of the Writ Petition pending in the High Court. No details of if what this matter relates to has been divulged either to the Hon'ble Ombudsmn or to the Appellant. In these circumstances, this defence which is also totally bereft of any particular whatsoever can be taken note of by the Hon'ble Ombudsman.*

iii) *In respect of the oral argument relating to limitation, it is relevant to note that in the decision reported in Rethinaswamy –Vs- Komalavalli and another (1982) 2 MLJ 406 has clearly held that limitation will not apply to any authority other than Courts unless the provision of law under which they have been created specifically provides for application of the law of evidence.*

iv) *It is further to be noted that as held in Sale Tax Officer Nanaras –vs- Kanhaiya Lal Mukundlal Saral AIR 1959 Sc 135 where any amount is paid under the mistake of law or fact the person making the payment is entitled to refund. This is a full bench judgement of the Supreme Court and is binding on the Hon'ble Ombudsman.*

v) *Waiver and acquiescence have not even been pleaded by the Respondent. Therefore, the applicant's rights have not been defeated by any process known to law.*

vi) *It is relevant to note that section 56 of the Electricity Act 2003, provides for a period of limitation only in respect of claims to be made by the Electricity Department against the consumer. No period of limitation has been stipulated for a claim to be made by the consumer against the department. Hence, section 56 would also have no application. The rules framed either by the Hon'ble Commission or the department cannot reach beyond the provisions of the Act.*

## **9 Issues for consideration:**

I have heard both side arguments and perused the documents furnished by the Petitioner and the Respondent. On a careful consideration of the rival submissions and perusal of documents, I fix the following as issues for consideration.

- i) Whether, the case pending on the same subject at the Division Bench of Madras High court is a bar on the Electricity Ombudsman to take the case on file.
- ii) Whether the Petitioner industry has started its industrial production from the day of effecting HT service?
- iii) Whether law of limitation applies to the case on hand?

iv) Whether the respondent is deemed to have waived his right to claim after a lapse of 4 years?

**10 Findings on First issue:**

10.1 The Respondent has informed that an appeal against OP No.13 of 2006 is pending in the Hon'ble Division Bench of Madras High Court.

10.2 The case referred to by the Respondent is an appeal against the order in WP No.6199 of 2007 filed by the SE/Dharmapuri EDC challenging the orders of Electricity Ombudsman dated 17-11-2006 in OP No.13 of 2006 issued in the case of M/s.Meenakchi Udyog India Pvt.Ltd.,

10.3 In the order of Electricity Ombudsman, it has been ordered to charge tariff of the industry under industrial category as the Appellants Industrial Establishment has been provisionally registered as small scale industry in the provisional certificate issued by the department of Industries and Commerce from the date of supply.

10.4 Against the above order of the Electricity Ombudsman, the respondent SE/Dharmapuri EDC has filed a writ petition in the Hon'ble High Court of Madras vide WP No.6199 of 2007. The Hon'ble High Court in its order dated 14-8-2007 has dismissed the petition. The relevant para of the order is reproduced below:-

*“In the background of the said provisions, it is not possible to accept the contention that the Electricity Ombudsman loses his authority once efforts failed under regulation 20, consequently, I uphold the jurisdiction of the Ombudsman under regulation 21 to pass an award as an arbitrator would do under normal circumstance. Since, no arguments were advanced on the merits of the award passed, I confirm the order impugned in the proceedings. Consequently, the writ petition fails and the same is dismissed. No costs. Consequently, connected MP are closed.”*

10.5 On a careful reading of the above para, it is noted that the hon'ble High Court upheld the jurisdiction of the Ombudsman and dismissed the writ petition. The Hon'ble court also observed that the Petitioner has not advanced any arguments on the merits of the case. Against the above orders of the single Judge of the Hon'ble High Court, the petitioner (SE/Dharmapuri EDC) has made filed a Writ Appeal in W.A.S.R.No.60163/09 and the case is pending in the Hon'ble High Court.

10.6 But in the Affidavit filled in Writ Appeal petition, the SE / Dharmapuri EDC has discussed the merits of the case now.

10.7 The learned advocate for the Appellant argued that as there is no case between Appellant and the Respondent in this subject matter and hence there is no bar on the Ombudsman to take the case. He also argued that in the Appeal petition they cannot agitate any issue which was not raised in the original petition. As the respondent has challenged the order of the Electricity Ombudsman on the Jurisdiction issue, the Electricity Ombudsman may take the case as the subject matter of the case pending in the Court and the present case are different. In the written argument the learned advocate informed that the case details are not given by the respondent . Hence the appellant and Electricity Ombudsman are bereft of particulars to take note of the case.

10.8 In this regard, the relevant Regulation 17(4) (d) of the Regulation, for Consumer Grievance Redressal Forum and Electricity Ombudsman 2004 are reproduced below:

*“(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.”*

10.9 On a careful reading of the regulation 17(4)(d), it is noted that Electricity Ombudsman shall not entertain a complaint if the complaint pertains 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 Court.

10.10 In the present case, an order of the Electricity Ombudsman issued in OP No.13 of 2006, for adoption of Industrial service from the date of service connections dated 15.3.2003 was challenged by the SE / Dharmapuri EDC on jurisdictional issue and not on the merit of the case and the Single Judge of the Court has passed an order upholding the jurisdiction of the Ombudsman under Regulation 21 to pass an award with the observation that no arguments made on the merits of the case. The SE / Dharmapuri EDC has made filed an appeal against the said order and the case is pending. As in the appeals no new issue could be argued, it is opined that the subject matter of the case pending is only jurisdictional issue of Ombudsman and not adoption of industrial tariff from the date of service.

10.11 In view of the above, I am of the view that regulation 17 (4) (d) is not applicable for the present case.

## **11 Findings on the second issue:**

11.1 It is noted that the service connection was effected for the Appellant's Industry on 16-6-2006 with a sanctioned load of 200 KVA. On a perusal of the HT bill for the month of June 2006, it is seen that there is no consumption. Hence, it is construed that there is no production in the industry for the first month and the tariff applied has no relevance as only demand charges are levied which is same for both HT tariff I and HT tariff III. On perusal of July 2006 bill, it is noted that the consumption is 20,572 units. Even if the circulars of the licensee, are adopted, the company has to be treated as an industry for tariff adoption from July 2006 onwards. However, in the present case, the adoption to industrial tariff from June or July makes no difference as there was no consumption in June 2006. As per the consumption pattern, the industry has started its production from July 2006 onwards and bill for June 2006 will be the same whether it was charged under HT Industrial or Commercial tariff. The tariff will have financial implication only from July 2006. In view of the above it is held that the above service has started its industrial production from July 2006 onwards.

## **12 Findings on Third issue:**

12.1 With regard to limitation, the learned counsel has argued that section 14 of limitation Act is not applicable to this case, stating that the Limitation Act is not applicable citing the decision reported in Rethinasamy Vs Komalavalli and another (1982) 2 MLJ 406. In the above decision, it has been held that limitation will not apply to any authority other than courts unless the provision of law under which they have been created specifically provides for application of the law of evidence.

12.2 The representative of the respondent citing section 56 of the Electricity Act has argued that the claim is time barred one as the Appellant has claimed the refund for adoption of commercial tariff only on 15-6-2010 (ie.) after a lapse of 4 years.

12.3 The learned advocate of the Appellant argued that section 56 of the Electricity Act provides for a period of limitation only in respect of claims to be made by the Electricity Department against the consumer no period of limitation has been stipulated for a claim to be made by the consumer against the department. Hence, section 56 would also have no application Section 56 of the Electricity Act is reproduced below :

*“56. (Disconnection of supply in default of payment): -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days’ notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer : Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -*

*(a) an amount equal to the sum claimed from him, or*

*b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*

*(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously*

*as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”*

On a plain reading of the said section 56(2) of the Electricity Act, it is noted that no sum due from the consumer under this section shall be recoverable after the period of two years, from the date when such sum become first due unless such sum has been shown continuously or recoverable as arrears. Here, the term employed is “sum due from the consumer” hence, I am also of the view that the above section is applicable for the dues to be recovered from the consumer only.

12.3 Regarding applicability of limitation Act, the Hon’ble Supreme Court has held that the limitation Act would apply only to the Courts and not the other bodies such as quasi-judicial authorities like State Commission and this has been laid down in AIR 1976 SC177; AIR 1985 SC 1279, AIR 2000 SC 2023, 2004 (II) SCC 456 and 1985 (II) SCC SPU.

In view of the Supreme court decisions, it is held that Limitation Act would not apply.

### **13 Findings on the Foruth issue:**

13.1 The respondent has argued that the Appellant was informed that his service was provisionally changed under HT tariff III (Commercial) for the month of June 2006 and the recharge of tariff will be done after commencement of regular production and also receipt of the field inspection report from the EE concerned in his letter dated 30-6-2006. But the Appellant has approached the respondent only on 15-6-2010 (letter dt.25-5-2010) even after remitting the CC bills for the HT SC No.610 from 6/2006 onwards under HT tariff III without any protest whatsoever and without getting any single clarification on approaching any competent authority with sufficient proof and records to make his claim immediately for the change of tariff

with retrospective effect. The Appellant has applied for change of tariff in his letter dated 25-5-2010 which was received by the respondent on 15-6-2010 and based on inspection report to the EE/O&M/Porur, on 27-7-2010, the change of tariff has been effected from August, 2010.

13.2 The learned advocate of the Appellate argued that as per section 72 of Contract Act the money paid by mistake or under coercion must be returned.

13.3 In the present case the Appellant has to be charged under HT tariff I (industrial) from the date of service but was charged under HT III (Commercial). Hence, he argued that the difference in tariff has to be refunded.

13.4 In this regard, it is to be noted that the section 72 of the Indian Contract Act referred is reproduced below : -

*“72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.*

*A person, to whom money has been paid, or any thing delivered, by mistake or under coercion must repay or return it.”*

13.5 On a plain reading of the said section 72 of the Indian Contract Act, it is noted that anything paid on mistake or under coercion has to be returned. Here, there is no coercion is noticed. But the advocate argued that electricity charges was paid under tariff III by mistake.

13.6 In the written argument the learned counsel has stated that in sales tax officer Bavaaras Vs Kanhaiya Lal Mukundlal Saral AIR 1959 SC 135 it was held that where any amount is paid under mistake of law or fact the person making the payment is entitled for refund. He also argued that it is a full bench judgement of the Supreme Court and is finding on the Ombudsman.

13.7 On a perusal of records, it is noted that the Appellant made a claim for change of tariff only on 16-6-2010 (the respondent informed that the letter dated 25-5-2010 was received by him only on 16-6-2010) whereas the service was effected on 16-6-

2006. The Appellant has requested for change in tariff from 16-6-2006 on 16-6-2010. Admittedly there is a delay of 4 years on the part of the Appellant and when questioned on this he has informed that he is not aware that his service was charged under tariff III (Commercial) and on knowing the fact he immediately applied for change of tariff. In the letter dated 30-6-2006 the SE/CEDC/South has clearly informed him that his service was charged under HT tariff III provisionally and will be changed on commencement of the regular production and also on receipt of field inspection report. In spite of the above letter he has not claimed any change of tariff for 4 years.

13.7 The Supreme Court has held in the following cases that a person who failed to exercise his right within a reasonable period of time is deemed to have waived his rights.

13.8 The Hon'ble Supreme Court in *M/s.Pannalal Binraj Vs. Union of India* (AIR 1957 SC P.412 in para 45 observed as follows:

*“There is moreover another feature which is common to both these groups and it is that none of the petitioners raised any objection to their cases being transferred in the manner stated above and in fact submitted to the jurisdiction of the Income Tax Officers to whom their cases had been transferred. It was only after our decision in *Bidi Supply Co Vs. the Union of India (B) (Supra)* was pronounced on 20<sup>th</sup> March 1956 that these petitioners woke up and asserted their rights, the Amristar group on 20<sup>th</sup> April 1956, the Raichur group on 5<sup>th</sup> November 1956. If they acquiesced in the jurisdiction of the Income Tax Officers to whom their cases were transferred, they were not certainly entitled to invoke the jurisdiction of this Court under Article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court.*”

*The Hon'ble Supreme Court, in the case of Dharendra Nath Gorai Vs. Shudir Chandra Ghosh (AIR 1964 SC 1300) has held that if a judgement debtor despite having received the notice of proclamation of sale did not object to the non-compliance of the required provision, he must be deemed to have waived his right conferred by that provision.*

*In Indira Bai Vs. Nand Kishore (1990) 4 SCC 668, the Hon'ble Supreme Court has held that the right to notice is amenable to waiver. Further, the petitioner has acquiesced to the levy of commercial tariff from the beginning without any objection."*

13.9 The legal meaning of "Acquiescence" as given in page 18 of the Concise Law Dictionary by P.Ramanatha Aiyar (1997 Edition) is as follows:

*"The action or condition of acquiescing, the assent to an infringement of rights, either express or implied from conduct, by which rights to equitable or discretionary relief may be lost (S.39, Indian Contract Act (9 of 1872), a consent inferred from silence. A tacit encouragement.*

*Acquiescence is the common element in a somewhat indefinite group of equitable estoppels, constituted by the fact that the person entitled has, as it is said "slept upon his rights" and by his conduct at the time of breach of them, or subsequent thereto, has with full knowledge, both of his own rights and of the acts which infringe them, led that person responsible for infringement to believe that he has waived or abandoned his rights. (Ency. Of the Laws of England)."*

13.10 In view of the above pronouncements of the Hon'ble Supreme Court, the respondent by virtue of his prolonged silence and by his act of acquiescence to the levy of commercial tariff shall be deemed to have waived his statutory rights to claim refund from the date of service connection.

13.11 In a similar type of case between SE / Coimbatore EDC / North and Sree Vari Corporation, Mettupalayam, the Electricity Ombudsman has held that the HT Industry has lost its right to claim differential tariff in view of his prolonged silence vide order dated 8-11-2006 in O.P.No.14 of 2006. In the above cases the HT industry has claimed the difference in tariff after a period of 5 years (i.e. the claim was made on 23-11-2005 for the period commencing from 5-11-2000). In the present case, the claim was made on 16-6-2010 for a period commencing on 16-6-2006. Hence, the claim is made after a prolonged silence of 4 years and the Appellant has not given any valid reason except he is not aware that he is charged under tariff III instead of tariff I. But, the above contentions was rebutted by the respondent that the appellant was already informed in letter dated 30.6.2006 that his service was charged under HT tariff III provisionally and will be changed on commencement of the regular production and also on receipt of field inspection report. Hence I am of the view that Appellant has lost his right to claim the difference in tariff amount from the date of service connection.

#### **14. Conclusion**

In view of my findings in para 13 above, I am of the view that the petitioner has lost his right to claim the differential tariff due to his prolonged silence. With the above findings, the A.P.263 of 2011 is finally disposed of by the Electricity Ombudsman. No costs.

**(A. Dharmaraj)**  
Electricity Ombudsman

To

- 1) M/s.Accurate Products Corporation Pvt.Ltd.,  
Plot No.Ac.25A, AC 24 & AC 22A,  
Sidco Industrial Estate,  
Thirumudivakkam,  
Chennai-600044.

- 2) The Superintending Engineer,  
Chennai EDC/South,  
TANGEDCO,  
K.K.Nagar,  
Chennai-600078.
- 3) The Chairman & Managing Director  
TANGEDCO,  
NPKR Malaigai,  
144, Anna Salai,  
Chennai – 600 002.
- 4) The Secretary  
Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmi pathy Salai  
Egmore,  
Chennai – 600 008.
- 5) The Assistant Director (Computer) - **FOR HOSTING IN THE WEBSITE**  
Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmi pathy Salai  
Egmore,  
Chennai – 600 008.