



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 10 of 2012

The Superintending Engineer
Erode Electricity Distribution Circle
TANGEDCO
Erode – 608 009

. Appellant
(Rep by party-in-person
on 5.6.2012 and Tmt.Indirani/DGM &
Thiru. M. Kumar /DFC on 6.9.12)

Vs

M/s. Sakthi Auto Component Ltd
Pallagoundanpalayam
Avinasi Taluk,
Tiruppur District

. Respondent
(Rep by Tvl. Raguvarangopalakrishnan/Advocate,
J.S. Sivasubramaniam,
K. Sarkariappan & R. Duraisamy)

Dates of hearing : 5-6-2012 & 6.9.2012

Date of Order : 17.10.2012

The above appeal petition No. AP 10 of 2012 came up for hearing before the Electricity Ombudsman on 5-6-2012 & 6.9.2012. Upon perusing the above petition, Counter filed by the Respondent and after hearing both sides, the following order is passed by the Electricity Ombudsman.

ORDER

1. **Prayer of the Appellant** : The Appellant prayed to set aside the order dated 2-2-2012 of CGRF of Erode Electricity Distribution Circle.
2. **Condonation delay** : The Date of Order of CGRF of Erode EDC was 2-2-2012. As per the regulation for CGRF and Electricity Ombudsman 2004, the appeal shall be made within 30 days from the date of order (i.e.) before 3-3-2012. The Appeal was received at the office of the Electricity Ombudsman on 5-3-2012 with a delay of 2 days. The Appellant has stated that the delay is neither willful nor wanton but due to obtaining of legal opinion and administrative approval from Head Quarters. Hence, prayed for Condonation.

As per regulation 8 of the Forum Regulations, the Electricity Ombudsman may entertain an appeal after the expiry of the said period of 30 days if the Electricity Ombudsman is satisfied that there was sufficient cause for not filing it within that period. As the delay is only two days, I am satisfied with the reasons explained by the Appellant and the delay is condoned.

3. **Brief History of the case** :

M/s Sakthi Auto Component Ltd., is having a HT service with a sanctioned demand of 18000 KVA. Consequent to the imposition of R&C measures, the demand and the energy quota for the industry was fixed and intimated to the company. As the demand quota of 7800 KVA fixed is not sufficient to run the plant, M/s Sakthi Auto Component Ltd., have requested for an optimum demand of 9000KVA and the same was sanctioned by the licensee on 5.11.2008. As M/s Sakthi Auto component Ltd., were unable to maintain the powering

furnaces and holding furnaces with the available 5 % (535KVA) during the holidays, they requested for revising the quota to the original position and got the order on 27.11.2008. Subsequently the power cut was reduced to 30% on 26.5.2008 and to 20% on 14.6.2009. The SE/Erode EDC in his letter dt. 14.6.2009 has intimated that peak hour restriction was not applicable to continuous process industries. But, the SE/Erode has raised demand of Rs.5,15,60,000/- towards excess demand and energy charges for exceeding the peak hour quota fixed. M/s Sakthi Auto Component Ltd., have filed a petition to the CGRF of Erode EDC and the CGRF has set aside the demand notice issued vide Lr. No. A/Cs Br/HT/A4/FR&C/D78/10 dt 1.3.2011. in its order dt.2.2.2012 Hence, the SE/Erode EDC has filed this appeal petition before the Electricity Ombudsman to set aside the orders of CGRF.

4. Order of CGRF : The CGRF in its meeting held on 3.1.2012 has issued the following orders based on the view of two members and the Chairman has remarked as 'do not agree'.

"Now the issue is

- 1) *Whether the levy of peak hour excess charges is applicable for the continuous process industry from 1.11.2008 ?*
- 2) *Whether consumer is entitled for further load ?*
- 3) *What relief to be decided ?*

Issue : 1

The consumer represented that they have chosen to avail continuous working days in order to have a peak hour exemption as per the communication dated 5.9.2009. Further they have represented before 5th September 2009, the TNEB has not communicated them about the peak hour exemption availability only for 25 days continuous operation. Further they have contended that on those periods the industry was inspected during evening peak hours by Chief Engineer/Erode, Chief Engineer/Chennai and Superintending

Engineer/APTS/Salem they are not anything noticed about the peak hour restriction violations and they are allowed their demand quota.

As per their version there is no violation of any order, so while considering their representation this forum also observed there is no clear instruction or circular regarding the peak hour restrictions for the continuous process industries.

While reading the Boards letter No.SE/EEDC/AEE/Dev/AE/F.OC/F.30% Power Cut/D.287/2009 dated 14.6.2009 addressed to the consumer it is stated that the continuous process industries are exempted from peak hour restrictions. While reading this order and prior order there is no fixed date from when it was exempted. So it is deemed to be taken from the date one of the power cut introduced More over without proper information and intimation to consumer, Board can not pull them into any restrictions, it is against the principles of natural justice. There is no doubt the audit department mechanically calculated the penalty without applying their mind. This forum observed this matter the consumer was not properly intimated about the implementation. The penalty levied is not within the rule of instructions whatever may be. Therefore it is nothing wrong in waiving the amount by set-aside the demand based on the audit report.

Issue : 2

Since the excess charges is waived, the consumer is eligible for availing additional demand of 4000KVA, if the above stated issue (1) is the only bar.

So, this forum concluded that the excess amount levied for the period from 28.11.2008 to 5.9.2009 only and demanded vide Lr.No.A/cs.Br./HT/A4/F.R&C/D.78/10, Dt.1.3.2011 is set aside and the respondent corporation is directed to register and process the additional demand application of the petitioner. ”

5. Contentions of the Appellant :

- i) The Respondent is an auto component manufacturing company and a continuous process industry having induction melting furnace, holding furnaces and pouring furnaces and is being operated with EB power of 18 MW through 110 KV line.
- ii) On 1-11-2008 the R & C measure was introduced by the Appellant by fixing the quota. It is submitted that one of the Conditions was to restrict the Peak hour consumption and also on 3-11-2008 the respondent requested to fix Optimum demand. The above request of the respondent was accepted and on 5-11-2008 an order was issued fixing the optimum demand to run the factory within their quota allotted.
- iii) Subsequently on 26-11-2008, the respondent again requested for reverse back the order to original position which covered the order in 1-11-2008. It was also accepted and the board issued order on 27-11-2008 in this regard.
- iv) When the power cut was reduced from 40% to 30% an order was issued on 26-5-2009 fixing a revised quota.
- v) On 14-6-2009, again the power cut was reduced from 30% to 20% in the said order clearly mentioned that the peak hour restriction was not applicable to the continuous process industry.
- vi) Based on the audit remarks, on 1-3-2011, a demand for quantum of arrear amount to the tune of 5,15,60,000/- was issued. The above excess

charges were calculated for the excess consumption over peak hour quota.

vii) The respondent has represented that in the case of continuous process industries those who are unable to operate the industry with present demand, they can go for optimum demand (in the case of continuous process industries and those HT services which cannot operate with the present level of HT power-cut, the Chief Engineer/Distribution concerned can fix such optimum /minimum demand as may be required to operate the industry). Hence, as per the above instructions of the Appellant, they had operated their industry.

viii) As per TNEB's letter Ref. No. SE/EEDC/AEE/DEV/AE/for/ F.30% Powercut / D.287/2009 dated 14-6-2009, as far as the continuous process industries are concerned, there is no peak Hour restriction as in the case of other industries, i.e. FROM 6.00 PM to 9:00 PM. Therefore the total energy quota fixed for the month shall be segregated into slot-wise in the following ratio:

Peak Hour	:	(6 Hours)	6/24
Normal Hour	:	(11 Hours)	11/24
Off-peak Hour	:	(7 Hours)	7/24

(ix) The energy quota is fixed for the entire month. The energy charges has to be levied as per slot-wise consumption at the applicable rates (i.e. peak hours 3.50 + 20 % normal hours 3.50, off peak hours 3.50 – 5% i.e. 4.20, 3.50 and 3.325 per unit respectively).

(x) Accordingly the following are the monthly demand and energy quota fixed for the HT SC.No85:

Demand Quota	:	10,400 KVA
Energy Quota Slot-wise	:	Total Units (5092853 Units)
Peak Hour	:	1273213.25 units
Normal Hour	:	2334224.292 units
Off peak Hour	:	1485415.458 units

(xi) The Hon'ble forum has not considered appellant's notices issued by the respondent till 14-6-2009 and also stated the Appellant's plea was not considered by the consumer grievance redressal Forum and thereby without traversing into the contentions of the Appellant, an order was passed by CGRF without any basis and the Learned Members had failed to state the reasons for allowing the application filed by the Respondent.

6. Contentions of the Respondent:

- i) The Respondent, has Induction Melting Furnaces, Holding Furnaces and Pouring Furnaces and satisfies the criteria for classification as a continuous process industry as admitted by the Appellant. It is being operated with the E.B. Power of 18 MW with 110 KV. on 1.11.2008 R& C Measure was introduced by the Appellant by fixing the quota of 7800 KVA. A common notice by fixing the quota was issued to Respondent Service also as in the case of other industries. There was no mention in the order that continuous process industries should not run during Evening Peak Hour (18:00 Hours to 22:00 Hours) and

the TNEB itself grouped the industries as continuous and non-continuous industries. Since the Respondent could not run the industry with allowed quota of 7800 KVA, the Respondent went for the optimum demand of 9000 KVA on 3-11-2008 for which it received the order from the Appellant on 5-11-2008.

- ii) Though the Respondent availed optimum demand of 9000 KVA, they were unable to maintain the Pouring Furnaces and Holding Furnaces with the available power of 5% (535 KVA) during the holidays. Hence, the Respondent requested to revise the quota to the original position and got the order on 27-11-2008. Thereafter the power-cut was reduced from 40% to 30% on 26-5-2009 and again the power-cut was reduced from 30% to 20% on 14-6-2009. In the said Order No. SE/EEDC/AEE/DEV/AE/Foc/F.30%POWERCUT/D.287/2009 dated 14-6-2009, the Appellant itself admitted that the peak hour restriction was not applicable to the continuous process industries.
- iii) It is significant to state that in none of the previous orders issued by the Board there is any mention that continuous process industries should not run during evening peak-hours.
- iv) The Respondent Company H.T.SC No. 85 was also inspected by Chief Engineer, Erode, Chief Engineer (Planning), Chennai, Superintending Engineer, Erode and Superintending Engineer, APTS, Salem during the said period and allowed the Respondent to run the industry without peak-hour restriction with the allowed demand and

energy quota. In the above context, there is no basis and genuine reason to raise the arrear amount to the tune of Rs.5.15,60,000/-.

- v) In the para (5) of the Affidavit the Appellant has admitted there is no peak-hour restriction in respect of continuous process industries and order was issued by the Board accordingly. It is submitted that the Board's letter vide letter No. SE/EEDC/ED/DEV/AE/FOC/DM2/F.HT-QUOTA/D.373/09 dated 5-9-2009 sets out that industries availing optimum demand are exempted from evening peak-hour restriction.
- vi) Only after considering all those points raised above the Hon'ble Consumer Grievance Redressal Forum, Erode passed the orders and consequently set aside the Appellant's demand towards penalty.
- vii) In this regard it would be pertinent to state that the Appellant cannot take a contradictory stand in initially communicating a quota and after the consumer has acted strictly in accordance with such quota restrictions, thereafter, seek to retrospectively make changes and claim penalty. The Appellant is stopped from adopting such a stance. It is therefore clear that the present challenge to the impugned order is devoid of merits and the petition filed by the Appellant deserves to be dismissed.

7. Hearings held by the Electricity Ombudsman :

Hearing was held on 5-6-2012 to enable the Appellant and respondent to put forth their arguments in person. As the advocate for the respondent requested for further hearing to conclude his arguments a hearing was proposed

on 5.7.2012. However, the above hearing was adjourned to 14.8.2012 as prayed by the learned advocate of the respondent. The hearing proposed on 14.8.2012 was adjourned to 6.9.2012 as prayed by the appellant due to his illness.

8. Arguments of the Appellant:

8.1 Thiru N. Vadivelu, SE/Erode and Tmt. K. Indirani, EE have represented the Appellant.

8.2 The SE/Erode EDC reiterated the contents of the Appeal petition. He argued that the respondent was informed about the quota in his letter dated 1-11-2008 and in Para 5 of the said letter the peak hour restriction was clearly indicated. As per the request of the respondent, optimum demand of 9000 KVA was fixed on 5-11-2008. But, as per the request of the respondent it was again reverted back to original quota of 7800 KVA. Further, he also argued that when the power cut was reduced to 30% the quota was revised and intimated vide letter dated 26-5-2009 wherein also it was indicated in para 5, that the peak hour restriction was applicable to the respondent. Hence, he argued that the excess charges levied for exceeding the peak hour is correct.

8.3 On 6.9.2012. Tmt. Indirani, DGM Erode EDC and Thiru. M. Kumar DFC have represented on behalf of the appellant.

8.4 The DFC informed that as the meter fixed in the HT service was a 3 slot meter, the evening peak hour violation was not known to them and hence, they have not raised bill for the peak hour violation in the respective months. Only on downloading the details the violations were noted and hence based on audit the

demand was raised. He also argued that, in the quota fixation letter it has been clearly mentioned in para 5 that peak hour restriction is applicable . The consumer could have raised objection for deleting the clause if they think they are exempted from peak hour restriction. But they have never raised any clarification.

8.5 Regarding the SE's letter dt. 5.9.2011 requesting clarification on the applicability of the peak hour restriction, the appellant's representative informed that it is an internal correspondence and the assumption can not over ride the conditions given in writing. He also informed that the CE/Commercial has clarified that continuous process industries availing optimum demand facility were only permitted to operate during peak hours vide his letter dt.17/20.9.2011.

9. Argument of the Respondent :

9.1 Thiru. Raguvaran Gopalakrishnan, Advocate representing the Respondent has reiterated the contents of the counter.

9.2 He argued the Appellate has raised this issue only based on Audit remarks. The Appellant has never informed that peak hour restriction is applicable to M/s. Sakthi Auto Component Ltd. In fact the Appellant in his letter dated 14-6-2009 in para 1 has clearly stated that as far as continuous process Industries are concerned there is no peak hour restriction and hence, total energy fixed for the month shall be segregated into slotwise in the following ratio

Peak hour	: 6 hrs	:	6/24
Normal hour	: 11 hrs	:	11/24
Off Peak hour	: 7 hrs	:	7/24

9.3 Accordingly they have fixed the quota as below in para 2 of the said letter dated 14-6-2009.

Demand : 10,400 KVA
Energy : Peak Hour : 1273213.25 units
Normal Hour : 2334224.292 units
Off peak Hour: 1485415.458 units

9.4 The learned counsel argued that as per the above letter to SE/Erode Electricity Distribution Circle, the continuous process Industries are exempted from peak hour restriction. Hence, the peak hour excess charges demanded is not correct and the Order of CGRF is to be upheld.

9.5 On 6.9.2012, the learned counsel for the respondent argued that the respondent has not levied excess demand charges and excess energy charges then and there for the peak hour violation noted. Had they levied excess demand and energy charges for 12/2008 in the same month bill they would have taken necessary action to avoid such occurrences in future and also raised the issue of continuous process industries are exempted from evening peak hour restriction. Further, he also argued though in the quota fixation letter, the peak hour restriction was specified it was not enforced in the monthly bills of December 2008, January 2009, February 2009, March 2009 , April 2009 and May 2009. Hence, it is established that by conduct the Appellant waived his right to claim the charges which amounts to waiver and acquiescence. Further, the learned counsel has also produced a copy of letter dt.5.9.2011 written by SE/Erode EDC to CE/Commercial wherein the SE has stated they have allowed the consumer of HT SC No.85 M/s Sakthi Auto Component Ltd., to run their industry to draw power during peak hours on the assumption that the peak

hours restriction is not applicable to the continuous process industries, whether they have obtained optimum demand or not. Hence, it is a known fact that the appellant has permitted the industry to run during peak hour also. As he has asked for clarification, it shows he has doubt about the applicability of peak hour restriction for the continuous process industries. But he cannot transfer the burden of not knowing the applicability of peak hours restriction to the consumer.

9.6 The learned counsel also argued that the additional load may be ordered to be sanctioned at the earliest. Further, without prejudice to his prayer of waiver of the excess demand charges and energy charges for peak hour violation, he requested to permit the respondent to pay the amounts in installment if at all any amount is to be paid by the consumer as per the orders of the Electricity Ombudsman. He also pleaded that on payment of first installment, the additional load may be ordered to be effected.

10. Findings of the Electricity Ombudsman :

10.1 I have heard both sides and perused the documents adduced before me as evidence. As the respondent is arguing that peak hour restriction is not applicable to them as they are the continuous process industries. I fix the following as the issues to be decided.

(i) Whether M/s Sakthi Auto Component Ltd., Pallagoundanpalayam, is a continuous process industry ?

(ii) Whether the contention of the respondent that being the continuous process industry the peak hour restriction enforced by the licensee is not applicable to them is correct ?

11. Findings on the First Issue :

11.1 As per the list of continuous process industries enclosed with licensee circular dt.1.11.2008 industry which are having induction melting are treated as continuous process industries.

11.2 Both the appellant and the respondent are agreeable that M/s Sakthi Auto Component Ltd., Pallagoundanpalayam is a continuous process industry and there is no dispute over it. Hence, it is held that M/s Sakthi Auto Component Ltd., is a continuous process industry.

12. Findings on Second Issue :

12.1 The appellant argued that as per quota fixation dt. 1.11.2008 and 26.5.2008 the respondent was informed not to draw power from TNEB during evening peak hours and hence, peak hour restriction is applicable to the respondent M/s Sakthi Auto Component Ltd.,

12.2 The learned advocate appearing for the respondent argued though the evening peak hour restriction was indicated in the quota fixation letters, it was not enforced by the licensee from December 2008 onwards. Hence, it amounts to acquiescence and waiver of rights to levy excess demand charges and excess energy charges for evening peak hour violation. The Superintending Engineer/Erode EDC who is issuing quota fixation letter and collecting the CC

charges has assumed that the evening peak hour restriction is not applicable to continuous process industries and sought clarification from Chief Engineer/Commercial vide letter dt.5.9.2011. Hence, it is construed that the licensee has not levied excess demand and energy charges for evening peak hour violation on the assumption of continuous process industries are exempted from evening peak hour violation. The SE/cannot transfer the burden of not knowing the applicability of evening peak hour restriction to the consumer and levy the above charges at a later date.

12.3 The appellant's representative argued that as the 3 slot meter was fixed in the service, the excess demand and excess energy consumed during the evening peak hour is known to them only after analyzing the CMRI downloaded details. Hence, there was some delay in levying the excess demand and excess energy charges for the evening peak hour violation and argued that the licensee has not waived its rights to levy the above charges. With regard to the argument of the respondent that the SE/Erode EDC cannot transfer the burden of not knowing the applicability of evening peak hour restriction to M/s Sakthi Auto Component Ltd., and levy the above charges at a later date, the appellant argued that the clarification sought by the SE/Erode EDC in letter dt.5.9.2011 on the applicability of evening peak hour violation to the respondent is only an internal correspondence and argued that the assumption cannot override the order given in writing.

12.4 In view of the above argument of the appellant issuing bills for December 2008, January 2009, Feb 2009, March 2009, April 2009, May 2009 & June 2009,

without peak hour excess demand charges & excess energy charges for evening peak hour violation (ie) for 7 months may not be sufficient enough time to treat as waiver or acquiescence . Hence, I am of the view that waiver and acquiescence is not applicable here. It is only the period of limitation as set out in section 56 of Electricity Act, 2003 which can be said to apply for the demand and collection of excess peak hour charges. The respondent has not made any claim that the appellant's claim is barred by limitation as per section 56 of Electricity Act 2003.

12.5 As the appellant has referred the quota fixation letters for confirming the applicability of the evening peak hour restriction, the relevant para of the quota fixation letters dt.1.11.2008, 26.5.2008 and 14.6.2009 are furnished below :

12.5.1 "Lr.No.SE/EEEDC/AEE/Dev/AE/G.DM2/F.HT Quota/D.4782008,dt.1.11.2008

"x x x x x x x x x x x"

5. You are instructed not to draw power from TNEB Grid during evening peak hour (18.00 hrs to 22.00 hrs) . However you are permitted to avail minimum power supply for lighting and security purpose during the above peak hour period not exceeding 5% of the quota fixed (5% of the demand quota fixed for industrial and 10% for commercial services"

12.5.2 On a plain reading of the said para 5, it is noted that the licensee has instructed the consumer not to draw power from TNEB Grid during evening peak hours (18.00 hrs to 22.00 hrs) . However, the consumer was permitted to avail minimum power supply for lighting and security purpose during the above peak hour period not exceeding 5% of the quota fixed.

12.5.3 However, it is noted that the quota was refixed on 5.11.2008 taking into consideration of the request of the respondent for fixing an optimum demand. As per the above order, the respondent was permitted to avail a demand quota of 9000KVA for 26 days and there is no mention about evening peak hour restriction. But, the respondent has requested for adoption of original quota fixed in 1.11.2008 letter and accordingly the licensee has issued a revised quota letter on 27.11.2008. In the above letter it has been stated that all conditions stipulated in letter dt.1.11.2008 will continue.

12.5.4 It is noted from the above, that the condition stipulated in 1.11.2008 will be applicable to the respondent. Hence, peak hour restriction is applicable to the respondent as per quota fixation letter dt.27.11.2008. Further, it is also to be noted that the appellant while fixing the optimum demand has specified only 26 days as working days whereas in normal quota fixing letters no such condition was stipulated. Hence, the licensee has clearly established that there is a difference in fixing the quota for industries seeking optimum load and the others. The above is known to the respondent also as they have received quota fixation letter for both the patterns. M/s Sakthi Auto Component Ltd., would have clarified with the appellant whether peak hour restriction is applicable to them since, the above condition was clearly stipulated in the quota fixation letters issued to them and there is no indication about the number of working days. Hence, there is a lapse on the part of respondent in utilising the power during evening peak hour also despite the fact that evening peak hour restriction is applicable to them as per the quota fixation letter.

12.5.5 Consequent to the reduction of power cut from 40% to 30%, the SE/Erode EDC has issued a revised quota to Ms Sakthi Auto Component Ltd., vide letter Lr.No.SE/EEDC/AEE/Dev/AE/FOC/F.30% Power Cut/D.248/2009 dt.26.5.2009

12.5.6 The para 5 which is relevant to peak hour restriction is reproduced below:

“You are instructed not to draw power from TNEB Grid during evening peak hours (18.00 hrs to 22.00 hrs). However you are permitted to avail minimum power supply of lighting and security purpose during the above peak hour period not exceeding 5% of the quota fixed. (5% of the demand quota fixed for industrial and 10% for commercial services). If any violation 48 hrs notice will be issued.”

12.5.7 On a careful reading of the said para 5, it is noted that the respondent was instructed not to draw power from grid during evening peak hour. Hence, peak hour restriction is applicable to the respondent HT SC No.85 as per the above quota fixation letter.

12.5.8 Consequent to reduction of power cut from 30% to 20% the quota was revised and intimated to the respondent by the SE/Erode EDC vide letter No.SE/EEDC/AEE/Dev/AE/FOC/F.30% Power Cut/D.297/2009, dt.14.6.2009.

Para 1 of the above dt.14.6.2009 letter is reproduced below :

“1. Accordingly, 20% demand and energy cut will be imposed on the base demand and base consumption with immediate effect . The based demand will be worked out based on the highest maximum demand registered in any month

during the period from October 2007 to October 2008 or sanctioned demand whichever is less. The base consumption will be the highest average of any three consecutive months between October 2007 to October 2008 respectively. In case of new services 63% of sanctioned demand as demand quota and for energy for one shift industry 125 Units KVA and for two shifts industry 250 Units/KVA and for three shift industry 300 units/KVA in the sanctioned demand

As far as the continuous process industries are concerned there is no peak hour restriction as in the case of other industries ie from 6 pm to 9 pm. Therefore the total energy quota fixed for the month shall be segregated in to slot wise in the following ratio.

Peak Hour	:	(6 hours)	6/24
Normal hour	:	(11 hours)	11/24
Off Peak hour	:	(7 hours)	7/24

The energy quota is fixed for the entire month. The energy charges has to be levied as per slot wise consumption at the applicable rates. (ie peak hours 3.50 + 20% normal hours 3.50, off peak hours 3.50-5%, ie., 4.20, 3.50, 3.325 per unit respectively).

2. Accordingly the following are the monthly demand and energy quota fixed for your HT Demand Quota : 10400 KVA

Energy Quota Slot wise	:	Total units (5092853 units)
Peak Hour	:	1273213.25 units
Normal Hour	:	2334224.292 units
Off Peak Hour	:	1485415.458 units

The unutilized quota in any quota period will not be carried over to the subsequent period .”

12.5.9 On a plain reading of the said para , it is noted that the SE/Erode EDC has stated that as for as continuous process industries are concerned there

is no peak hour restriction as in the case of other industries (i.e) from 6pm to 9pm. Hence, from 14.6.2009, the evening peak hour restriction was not applicable to the respondent as per the SE's letter.

12.5.10 Further, in SE/Erode EDC's letter dt.5.9.2009, the respondent was asked to choose any one of the following options,

(i) To avail full working days as approved already but peak hour restriction is to be followed.

(ii) To avail continuous 25 working days only in a billing month in order to have peak hour exemption.

12.5.11 Out the above, the respondent has chosen option (ii) Hence, from 5.9.2009, the respondent is exempted from evening peak hour restriction. But on holidays they have to use only 5% of the quota fixed for lighting and security purposes. The appellant will levy excess demand charges and excess energy charges if they exceeded the quota fixed for holidays. Accordingly, the appellant has levied excess demand charges & energy charges for the period from 5.9.2009 to March 2010 for exceeding the quota fixed for holidays.

12.5.12 The respondent also agreed that the excess demand charges & energy charges levied for the above period is not disputable. But informed that there are some clarification on the arithmetic part of the excess demand and energy charges charged and it will be settled between them.

12.5.13 As both the parties agreed to settle the difference by sitting together I am not issuing any orders for the period from 5.9.2009 to March 2010.

12.5.14 In respect of the balance, period, it is noted from the discussions of previous paras, the licensee has categorically informed that evening peak hour restriction is applicable to the respondents HTSC No.85 as per their letter dt.1.11.2008 and 26.5.2009. Hence, the excess demand charges and excess energy charges are applicable from 28.11.2008 to 13.6.2009. But in letter dt.14.6.2009, the SE/Erode EDC has informed the respondent that continuous process industry are exempted from evening peak hour restriction and also not included any clause stating that you are instructed not to draw power from Grid during evening peak hour. Hence, I am of the view that from 14.6.2009 to 5.9.2009, there is no evening peak hour restriction for the respondents HT service. Hence, it is held that the excess demand and excess energy charges levied for the above period from 14.6.2009 to 5.9.2009 is not correct.

13. Conclusion :

13.1 In view of my findings in paras 12 above (i) the licensee is directed to levy excess demand charges and excess energy charges for the evening peak hour violation from 28.11.2008 to 13.6.2009 only.

(ii) the excess demand charges and excess energy charges levied for the period from 14.6.2009 to 4.9.2009 shall be cancelled.

(iii) the excess demand charges and excess energy charges levied for exceeding the quota fixed for the holidays for the period from 5.9.2009 to March 2010 may be rechecked by both the parties and the corrected amount is to be paid by the respondent.

(iv) During the hearing, the respondent also requested for making the payments in installments if any amount is to be paid by them as per the orders of Electricity Ombudsman. The licensee is directed to consider the above request as per the rules in force.

13.2 The appellant is directed to issue a revised demand notice as ordered in para 13.1(i),(ii)&(iii) above within 30 days and a compliance report on the above shall be sent within 45 days.

13.3 It is to be pointed out that as per the Hon'ble Appellate Tribunal for Electricity's order dt.11.1.2011 in appeal No.111, 114,119,120,127 to 131 and 141 of 2010, the excess demand charges & energy charges for evening peak hour violation has to be given effect from 4.5.2010 only. But, it is also noted that the licensee has filed a case against the above order before the Hon'ble Supreme Court of India and the case is pending . Hence, the matter is sub-judice.

13.4 The case before the Electricity Ombudsman is whether M/s Sakthi Auto Component Ltd., is exempted from peak hour violation. The final conclusion was given in para 13.1. However, it is to be pointed out that the excess demand charges and excess energy charges for evening peak hour violation levied by the licensee consequent to this order shall be subject to the interim / final orders that may be passed by the Hon'ble Supreme Court of India from time to time on the subject matter.

14. With the above findings the A.P. No.10 of 2012 is finally disposed of by the Electricity Ombudsman . No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

- 1) The Superintending Engineer
Erode Electricity Distribution Circle
TANGEDCO
Erode District.
- 2) M/s. Sakthi Auto Component Ltd
Pallasoundanpalayam
Avinasi Taluk,
Tiruppur District
- 3) The Chairperson,
Consumer Grievance Redressal Forum,
Erode Electricity Distribution Circle,
TANGEDCO,
Erode-638 009.
- 4) The Chairman & Managing Director,
TANGEDCO,
NPKRR Malaigai,
144, Anna Salai, Chennai – 600 002.
- 5) The Secretary,
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai,
Egmore,
Chennai – 600 008.
- 6) The Assistant Director (Computer) - **(FOR HOSTING IN THE WEBSITE)**.
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai
Egmore,
Chennai – 600 008.