IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WP(C).No. 30845 of 2009 (A)

PETITIONER:

BAVENS STUDIO, PULICKAL, J.C.ITTYERAH
SHOPPING COMPLEX, KANJIKUZHI JUNCTION
KOTTAYAM 686 004, REPRESENTED BY ITS PARTNER
PRASAD GEORGE CHERIAN

BY ADVS.SRI.V.V.ASOKAN
SRI.MAHESH V.MENON

RESPONDENT(S):
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1. ASSISTANT ENGINEER, ELECTRICAL MAJOR
SECTION, KERALA STATE ELECTRICITY BOARD
KOTTAYAM EAST.

2. ASSISTANT EXECUTIVE ENGINEER
APTS UNIT, KSEB, KOLLAM.

3. SUB ENGINEER
ELECTRICAL SECTION, KOTTAYAM.

4. DEPUTY CHIEF ENGINEER
KERALA STATE ELECTRICITY BOARD, ELECTRICAL CIRCLE
KOTTAYAM.

5. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM
PATTOM, THIRUVANANTHAPURAM 695 004.

6. KERALA STATE ELECTRICITY REGULATORY
COMMISSION, REPRESENTED BY ITS SECRETARY,
VYDHUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM 695 004.

R1 TO 5 BY ADV. SRI.T.R.RAJAN,SC,K.S.E.B.
R1-5 BY ADV. SRI.P.P.THAJUDEEN, SC, K.S.E.B
R6 BY ADV. SRI.P.NANDAKUMAR,SC,KSEB REGULATORY COMMISSION
R6 BY ADV. SRI.S.SREEKUMAR,SC,KSERC
R6 BY ADV. SRI.ANEESH JAMES,SC,KSEB REGULATORY COMMISSION
R6 BY ADV. SRI.S.SUJIN, SC, ELECTRICITY REGULATORY COMMISSION
SMT.SREEDEVI KYLASANATH,SC,KSER COMMN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.30845/09

PETITIONER'S EXTS:

EXT.P1: COPY OF SSI REGISTRATION CERTIFICATE OBTAINED BY THE PETITIONER FROM DISTRICT INDUSTRIES CENTRE, KOTTAYAM DT.30.1.96.

EXT.P2: COPY OF MAHAZAR DRAWN BY THE 3RD RESPONDENT DT.10.10.08.

EXT.P3: COPY OF PENAL BILL DRAWN BY THE OFFICE OF THE 1ST RESPONDENT DT.20.10.08.

EXT.P4: COPY OF JUDGMENT OF THIS COURT IN WPC.22014/04 DT.11.10.06.

EXT.P5: COPY OF JUDGMENT OF THIS COURT IN WPC.37357/07 DT.11.1.08.

EXT.P6: COPY OF EXPLANATION FILED BY THE PETITIONER DT.11.11.08.

EXT.P7: COPY OF PROCEEDINGS OF THE 1ST RESPONDENT DT.31.12.08.

EXT.P8: COPY OF JUDGMENT IN WPC.1832/09 DT.19.1.09

EXT.P9: COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DT.31.1.09.

EXT.P10: COPY OF ORDER PASSED BY THE 4TH RESPONDENT DT.12.10.09.

RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRAN, J

W.P.(C)No.30845 Of 2009

DATED THIS THE 25th DAY OF MAY, 2015

JUDGMENT

The petitioner is a partnership firm, which is running a photo processing lab, studio and customer counter at Kanjikuzhi in Kottayam district. Ext.P1 is the permanent SSI registration issued to the petitioner in the year 1996, by the General Manager of District Industries Centre, Kottayam. The petitioner was provided with two electric connections to its premises, one with Consumer No.5598 under LT-IV industrial tariff for the photo processing lab and another connection with Consumer No.5140 under LT-VIIA commercial tariff for the studio and customer counter.

2. On 13.10.2008, the Anti Power Theft Squad headed by the second respondent conducted an inspection in the petitioner's premises and noticed that electrical energy supplied to Consumer No.5598 under LT IV-A industrial tariff is also being used for commercial purposes attracting a higher tariff under LT VII-A. The petitioner was issued with Ext.P2 site mahazar. A reading of Ext.P2 site mahazar would show that the petitioner was using electricity

supplied under LT IV industrial tariff with Consumer No.5598 for running the showroom for selling cameras and other accessories as well. Based on the inspection conducted on 13.10.2008, the petitioner was issued with Ext.P3 penal demand for a sum of ₹12,12,225/- along with Ext.P3(a) penalty computation statement.

3. The demand made in Exts.P3 and P3(a) was under challenge before this Court in W.P.(C)No.31567/2008. The aforesaid writ petition was referred to a Division Bench. The Division Bench of this Court observed that Ext.P3 demand notice issued to the petitioner should be treated as a notice, so as to enable the petitioner to file objections before the first respondent, and the first respondent was directed to take a decision in the matter. Pursuant to that judgment, the petitioner submitted Ext.P6 explanation before the first respondent challenging the penal demand made in Ext.P3. The first respondent, after conducting a personal hearing, confirmed the penal demand made in Ext.P3 by Ext.P7 order dated 31.12.2008. The petitioner again filed W.P.(C)No.1832/2009 and this Court by Ext.P8 judgment dated 19.1.2009 relegated the petitioner to

avail the statutory remedy of appeal as provided under Section 127 of the Electricity Act, 2003, subject to payment of a sum of ₹4,00,000/-.

4. The petitioner thereupon filed Ext.P9 appeal before the fourth respondent and the fourth respondent after conducting a personal hearing passed Ext.P10 order. By Ext.P10 order, the fourth respondent exempted the petitioner from the liability to pay surcharge for the period during the pendency of the appeal and also electricity duty for the penal portion of the current charges and confirmed the penal demand made in Ext.P3 in all other respects. It is aggrieved by Exts.P3, P3(a), P7 and P10, the petitioner has approached this Court in this Writ Petition claiming various reliefs.

5. Heard arguments of the learned Senior Counsel for the petitioner and also the learned Standing Counsel for the Kerala State Electricity Board.

6. The learned Senior Counsel for the petitioner would contend that when the petitioner's premises with Consumer No.5598 is provided with electricity supply under LT IV industrial tariff, he cannot be saddled with the liability to pay energy

charges at the LT VII-A commercial tariff merely for the reason that in the inspection conducted by the Anti Power Theft Squad, it was found that a customer counter is also attached to the photo processing lab. The learned Senior Counsel would also rely on Exts.P4 and P5 judgments of this Court and would contend that in similar circumstances, this Court has interfered with the penal demand made by the respondent-Board.

7. Per contra, the learned Standing Counsel for the Board would contend that the issue raised in this Writ Petition is squarely covered against the petitioner in the decision of the Division Bench of this Court in **Classic Colour Lab** v. **Assistant Engineer and others (2014 (3) KLT 57)**. The learned Standing Counsel would contend that in the inspection conducted by the Anti Power Theft Squad, it was found that the petitioner was unauthorisedly using the electricity supplied under LT-IV industrial tariff intended for the photo processing lab for a showroom attached to the Unit as well, which attracts LT VII-A commercial tariff at a higher rate. In such circumstances, the finding of the assessing authority as well as the appellate authority that the petitioner has indulged in unauthorised use of

electricity warranting penal demand under Section 126 of the Electricity Act is legally sustainable. The learned Standing Counsel would contend further that, valid reasons have been stated in the assessment order as well as in the appellate order in order to sustain the penal demand made in Ext.P3 and in such circumstances, no interference of this Court is called for.

8. I have considered the rival submissions made at the Bar.

9. As borne out from Ext.P2 site mahazar, in an inspection conducted in the petitioner's premises with Consumer No.5598, the Anti Power Theft Squad detected unauthorised use of electricity supplied under LT IV industrial tariff for photo processing lab for running a showroom for selling cameras and other accessories. As per the prevailing tariff order, such use of electricity will attract a higher tariff, i.e., commercial tariff under LT VII-A. The fact that the energy supplied under LT-IV industrial tariff was also used for running a showroom/sales counter is not in dispute. In **Classic Colour Lab** v. **Assistant Engineer and others, (2014 (3) KLT 57)**, a Division Bench of this Court (in which I was a party) held that a consumer indulging

in unauthorised use of electricity supplied under LT-IV industrial tariff for commercial purposes attracting higher tariff under LT VIIA commercial tariff is liable to be penalised under Section 126 (6) of the Electricity Act. Para.16 of the judgment reads thus:

> "16. The KSEB is supplying electricity for industrial purpose, under LT-IV tariff, at a subsidised rate, whereas, supply of electricity for commercial purpose, under LT-VIIA tariff attracts a higher rate. As evident from the calculations made in Exhibit P5 demand, the commercial tariff under LT-VIIA during the relevant period was ₹8.25 per unit. As pointed out by the learned Standing Counsel for the KSEB, the industrial tariff under LT-IV during the relevant period was only ₹4.25 per unit. Therefore, if the appellant is assessed under Section 126(6) for the unauthorised use of electricity, taking LT-IV industrial tariff @ ₹4.25 per unit as the basis for calculating the rate equal to one and half times the tariff applicable for the relevant category of service, then the appellant need pay only ₹6.37 per unit for unauthorised use of electricity for commercial purpose, as against the prevailing rate of ₹8.25 per unit applicable for the commercial tariff under LT-VIIA. If such an interpretation is given, it would defeat the very purpose that Section 126 has to achieve, i.e., to put an implied restriction on unauthorised consumption of electricity. On the other hand, if the appellant is assessed for the unauthorised use of electricity, taking LT-VIIA industrial tariff @ ₹8.25 per unit as the basis for calculating the rate equal to one and half times the tariff applicable for the relevant category of service, the appellant has to pay only ₹12.37 per unit for unauthorised use of

> electricity for commercial purpose, as against the prevailing rate of ₹8.25 per unit applicable for the commercial tariff under LT-VIIA. Therefore, the only interpretation that can be given to Section 126(6) of the Electricity Act, 2003, is that, in an assessment under Section 126 for unauthorised use of electricity, assessment shall be made at a rate equal to one and half times (two times with effect from 15.6.2007) the tariff applicable for the relevant category of service attracting higher tariff for which the electricity supplied was unauthorisedly used and not the relevant category of service to which the consumer belongs, and we hold so."

10. The learned Senior Counsel for the petitioner would rely on Exts.P4 and P5 judgments of this Court. A reading of the aforesaid judgments would make it abundantly clear that those judgments are on different factual matrix. At any rate, the principle laid down in those judgments cannot be applied to the case on hand, especially in view of the judgment of the Division Bench of this Court in **Classic Colour Lab's case** (supra).

11. A reading of Exts.P7 and P10 orders by the assessing authority as well as the appellate authority would show that valid reasons have been stated to sustain the penal demand made in Ext.P3. In Ext.P10, the penal demand made against the petitioner is sustained on the specific finding that the petitioner had indulged in unauthorised use of electricity under LT IVA

industrial tariff for commercial purpose attracting a higher tariff under LT VII-A. There is also a clear finding to the effect that the showroom is intended for sale of camera, photographic materials and other accessories including camera stands, compact discs, memory card, etc.

12. The learned Senior Counsel for the petitioner would contend that as in the case of **Classic Colour Lab's case** (supra), there was no attempt on the part of the petitioner to use electricity supplied through the electric meter under LT IV industrial tariff to another premises which was provided with electricity supplied through another electric meter under LT VII-A commercial tariff and in such circumstances, the principle laid down in the aforesaid judgment cannot be made applicable to the case on hand. In **Classic Colour Lab's case** (supra), in the inspection conducted by the APTS, it was found that the electricity supplied under industrial tariff (LT-IV) for the colour processing lab was being utilised for commercial purpose in the sales counter, attracting commercial tariff (LT-VIIA). It was also found that, the consumer was utilising the power supplied through the light meter under LT IV tariff for lighting the neon

lights and for running the air conditioners in the studio, attracting a higher tariff under LT-VIIA. In the case on hand, in the inspection conducted by the APTS on 13.10.2008, it was found that the electricity supplied under LT-IV industrial tariff for photo processing lab was being used for running a showroom for selling cameras and other accessories, attracting a higher tariff of LT-VIIA.

13. Going by the Explanation to Section 126 of the Electricity Act, 2003, "unauthorised use of electricity" means, among other things enumerated in sub-clauses (i) to (iii) of clause (b), the usage of electricity for the purpose other than for which usage of electricity was authorised or for the premises or areas other than those for which the supply of electricity was authorised. Therefore, tampering of electricity meter is not essential to attract 'unauthorised use of electricity' warranting a penal assessment under sub-section (6) of Section 126 of the Electricity Act. When a consumer uses electricity for a purpose other than for which usage of such electricity was authorised or uses electricity for an area other than for which supply of electricity was authorised, it will amount to unauthorised use of

electricity as defined under the explanation to Section 126 of the Act. It is not in dispute that, the energy supplied under LT IV industrial tariff for the purpose of photo processing lab was utilised by the petitioner for running a sales counter/showroom. If that be so, the petitioner is liable to be assessed under sub-section (6) of Section 126 of the Electricity Act for unauthorised use of electricity supplied under LT IV industrial tariff for commercial use, attracting higher tariff under LT VII-A. Therefore the contentions to the contra raised by the learned Senior Counsel for the petitioner can only be rejected.

14. In the result, I find absolutely no grounds to interfere with the Exts.P3, P3(a), P7 and P10 orders.

The writ petition fails and the same is dismissed.

Sd/-
ANIL K.NARENDRAN,
JUDGE

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