

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 236 of 2006**

**Dated: March 7 , 2007**

M/s. Baby Marine Exports,  
P.B. No. 901, West Hill, Calicut-673 005,  
Represented by the Managing Partner Mr. K.C. Babu ... Appellant

Versus

1. Kerala State Electricity Board,  
Vaidyuthi Bhavan, Pattom,  
Thiruvananthapuram – 695 004,  
Represented by its Secretary
2. The Special Officer (Revenue),  
Kerala State Electricity Board,  
Vaidyuthi Bhavan, Pattom,  
Thiruvananthapuram – 695 004,
3. The Kerala State Electricity Regulatory Commission,  
(KSERC), Parameswara Bhavan, Kawdiar,  
Thiruvananthapuram  
Represented by its Chairperson ... Respondents

**Present: Hon'ble Mr Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member**

Counsel for the appellant(s) : Mr. N. Raghuraj

Counsel for the respondent(s) : Mr. M.T. George for Resp.1, KSEB  
Ms. Bina Madhavan, Mr. Hemal  
Sheth for Resp. 3-KSERC

## **JUDGMENT**

### **Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson**

This Appeal is directed against the Order of the Kerala State Electricity Regulatory Commission (for short 'KSERC') dated May 11, 2006, whereby it was held that the appellant was liable to pay electricity charges under HT-IV Commercial Category from 5/99 to 7/05 and not under HT-1 Industrial Category.

2. The appellant is a registered small scale industrial unit exporting marine products.

3. On January 19, 1992, the appellant entered into an agreement with Kerala State Electricity Board (for short 'KSEB'), whereby it was agreed, *inter alia*, that the Board shall supply to the appellant all the electrical energy required for operating and lighting its Freezing and Cold Storage premises upto a total quantity of 400 KVA.

4. The appellant, right from the date of the execution of the agreement dated January 19, 1992 was being billed by the Board as High Tension Industrial consumer.

5. On May 14, 1999, the KSEB issued the Tariff Order called 'The Kerla Electricity Board Extra High Tension Tariff Revision Order, 1999'. As per the Tariff Order, High Tension consumers were divided into five categories: (1) H.T. I – Industrial; (2) H.T. II- Non Industrial/Non

Commercial; (3) H.T. III – Agriculture; (4) H.T. IV – Commercial & (5) H.T. V – Seasonal Consumers.

6. Even after coming into force of the Tariff Order dated May 14, 1999, KSEB kept on billing the appellant under HT-1 Category until the month of December, 2004 for which bill was issued on January 4, 2005.

7. On February 5, 2005, Bill for January, 2005 was issued to the appellant in which he was categorised as HT-IV consumer and was charged accordingly. The appellant feeling aggrieved by the bill dated Feb. 5, 2005 filed an appeal before the Chief Engineer (Electrical) North Zone, Koshikode. While the appeal was pending, the appellant filed a writ petition before the Keral High Court. The High Court by its Order dated Feb. 21, 2005 directed the Chief Engineer to dispose of the pending appeal of the appellant within one month.

8. The Chief Engineer by its order dated March 9, 2005, rejected the appeal of the appellant on the ground that the appellant does not fall in H.T. 1 category as electricity was being used by it for the cold storage and freezing units. It was pointed out in the order that the process involves cleaning, dressing and packing of the raw fish manually. Thereafter, the same is kept in the freezing plant and cold storage, which run on electric power. In these circumstances, it was found that the appellant can only be categorized under LT- IV (commercial) category.

9. The appellant being aggrieved by the order passed by the Chief Engineer (Electrical) North Zone, Koshikode, filed another writ petition before the Kerala High Court. The High Court directed the appellant to place its grievance before the Kerala State Electricity Regulatory Commission. Accordingly, the appellant filed an appeal before the KSERC.

10. On September 6, 2005, KSEB informed the appellant that the KSERC while examining its appeal opined that since the appellant was consuming electricity mainly for the purpose of cold storing of seafood items, there was no need for re-classifying it under H.T. 1 Industrial category for tariff purposes. Since the appeal was rejected, it was asked by the KSEB to pay a sum of Rs. 25, 92,750/-, on the basis of re-assessed electricity charges in H.T. IV category from 5/99 to 7/05.

11. Thereupon, the appellant filed a third writ petition before the Kerala High Court mainly on the ground that the appeal was dismissed by the KSERC without providing any opportunity of hearing and without notice to it.

12. The Kerala High Court by its Order dated January 11, 2006 disposed of the writ petition with the direction to the KSERC to provide an opportunity of hearing to the appellant and decide the matter afresh. The KSERC after providing an opportunity of hearing to the appellant rejected the appeal of the appellant by a reasoned order.

13. The appellant, not being satisfied with the order passed by the KSERC, filed yet another writ petition. The writ petition came to be disposed of on July 27, 2006 by the Kerala High Court with the direction to the appellant to file an appeal before this Tribunal. This is how the matter has come before us.

14. We have heard the learned counsel for the parties.

15. The learned counsel for the appellant submitted that the appellant was being billed upto the month of December, 2004 under HT-1 Category but suddenly the respondent, KSEB, from the month of January, 2005, started billing the appellant under Category H.T.-IV (Commercial) without notice and without providing an opportunity of hearing to it. It was also submitted that the appellant does not fall in HT IV-Commercial and has been wrongly shifted to category H.T.-IV (Commercial) by the KSEB. It was also contended that the appellant is engaged in the business of processing, packing and export of the seafood and the rest of the activities namely, freezing the same and keeping it in the cold storage are only incidental in nature and therefore, the appellant cannot be billed under the category HT-IV (Commercial). The learned counsel also found fault with the Order of the Commission as it permitted the KSEB to recover charges under HT-IV commercial category with effect from 5/99 to 7/05.

16. We have considered the submissions of the learned counsel for the appellant.

17. In the Agreement dated June 19, 1992, it has been clearly stated that all the electrical energy was required for operating and lighting the appellant's Freezing & Cold Storage premises at Temple Road West hill, Calicut. This clearly indicates the purpose for which the electricity was required to be consumed. In the Tariff Order, consumers were classified into five categories. While H.T. I - Industrial category is applicable to Water Works, Printing Presses (including presses engaged in printing dailies), Plantations, Granite Crushing Units (Industrial consumers) Dairy Farms, Drinking water, pumping for the public and all other non agricultural pumping etc., H.T. IV - Commercial applies to consumers such as Hotels/Restaurants, Lodges, Hostels, Guest/Rest Houses, Travellers, Bungalows, Cold Storage, Freezing Units, Commercial establishments, Business houses, Film Studios, cinemas, Theatres etc. Since the energy is being supplied to the appellant for cold storage and freezing units, it squarely falls within the category H.T. IV (Commercial). The tariff was fixed by the KSEB in exercise of its quasi legislative power under the provisions of the Electricity (Supply) Act, 1948. In the Electricity (Supply) Act, 1948, there was no provision for providing an opportunity of hearing to the consumers before determining the tariff. Once cold storage and freezing units were classified under Category-IV (Commercial), the classification automatically applied to the appellant

from the day the Tariff Order was issued viz. May 4, 1999 as according to the agreement between the appellant and the KSEB, the electrical energy is being supplied for running the cold storage and freezing units of the appellant. Therefore, no notice was required to be given to the appellant by the KSEB before billing it under Category-IV (Commercial).

18. The learned counsel for the appellant submitted that as per the agreement in case the category of the appellant was to be changed, he was required to be given a notice. We regret our inability to accept the contention of the appellant as the agreement cannot have primacy over the Tariff Order which is statutory in nature. In any event, though no notice was issued to the appellant before billing its consumption under Category-IV (Commercial), he has been subsequently heard by the Chief Engineer (Electrical), North Zone, Koshikode, KSERC and this Tribunal and as such no prejudice has been caused to the appellant.

19. In the circumstances, therefore, we do not find any merit in the appeal. Accordingly the same is dismissed.

**(Justice Anil Dev Singh)**  
**Chairperson**

**(A.A. Khan)**  
**Technical Member**

Dated: the March 07 , 2007