

**No.N/56/11/1838**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION, BANGALORE**

**Dated 2<sup>nd</sup> November, 2012**

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|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath    | Member   |
| 3. Sri K. Srinivasa Rao       | Member   |

**OP No.26/2011**

**BETWEEN**

Vishnu Textiles Limited  
Kampalapura – 571 136  
Periyapatna Taluk  
Mysore District ...  
(Represented by Shri M.S. Raghavendra Prasad, Advocate)

**Petitioner**

**AND**

1. Chamundeshwari Electricity Supply Corporation Limited  
No.927, Avenue Commercial Complex  
New Kantharaj Urs Road  
Saraswathipuram  
MYSORE – 570 009
2. Mangalore Electricity Supply Corporation Limited  
Maroli, Kulashekara  
MANGALORE – 575 005 ...

**Respondents**

[R-1 Represented by Shri H.V. Devaraju, Advocate  
R-2 Represented by Shri Prashant T. Pandit, Advocate]

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1. This Petition is filed by M/s. Vishnu Textiles Limited, complaining that the Respondents have failed to grant the benefit of the Special Incentive Scheme to it, in contravention of this Commission's Orders on the Special Incentive Scheme passed from time-to-time.

2. It is submitted by the Petitioner that it is an Industrial Consumer of electricity falling under the category of HT 2(a) Tariff of the 1<sup>st</sup> Respondent-Corporation and is consuming electricity and paying for the same to the 1<sup>st</sup> Respondent. Further, it is submitted by the Petitioner that the then KPTCL had introduced a Special Incentive Scheme for HT Industrial Consumers with a view to encouraging the consumption of electricity from the State Utilities and to prevent the Consumers from going out of the Grid. According to the said Scheme, the HT Industrial Consumers were entitled to seek additional supply of electricity at the rate of Rs.3.80 per Unit over and above their previous twelve months' average consumption and the Petitioner had availed of the said benefit and the Respondent had granted the same.

3. In the present Petition, it is the case of the Petitioner that the benefit of the Special Incentive Scheme, available to it, as per KERC's Order dated 27.9.2005 has not been extended to it by the 1<sup>st</sup> Respondent between the period from 4.1.2005 to the date the Scheme was discontinued in November 2009, and consequently, it is entitled to get the refund of excess payment made by it, along with interest at the rate of 12% per annum.

4. The Respondents have appeared and filed their objections dated 29.9.2011. In the Statement of Objections, the Respondents have submitted that the Petitioner's claim for refund of amount towards electricity charges is untenable, as the charges collected by the Respondent are in accordance with

the Tariff Order passed by this Commission. Further, it is submitted by the Respondents that the Petitioner is not entitled to get any benefit based on the Special Incentive Scheme, as the Petitioner did not apply for the Special Incentive Scheme for the period for which now it has sought the benefit.

5. In our view, the controversy revolves round the question: 'Whether the benefit under Special Incentive Scheme was available automatically to every HT2(a) Consumer, like the Petitioner or to those who request for it, till the same was withdrawn in November, 2009?'

6. It is vehemently contended by the Petitioner's Counsel that since the Special Incentive Scheme was part of the Tariff Order, the Petitioner was not required to make an application to avail the benefit. In support of this contention, the Petitioner's Counsel relies upon the Order of this Commission passed in BESCOM's MYT Order for FY08-FY10, wherein it was stated as follows :

*"It has come to the notice of the Commission that the consumers are being directed to apply for the renewal of the scheme on the expiry of the sanction by the licensees. Since the scheme is further continued, there is no requirement of filing of any application for renewal by the Consumer."*

7. In our view, the contention of the Petitioner is not tenable, as the Special Incentive Scheme's benefit will not automatically enure to the Consumers, who are eligible to avail of the Scheme. According to us, in order to avail the benefit of the Scheme, the Consumer has to apply for the same and the same will be

available for the period for which it is opted for. This is clear from the Tariff Order 2005 of the Commission produced by the Petitioner as Document No.3. In the said Tariff Order 2005, this Commission re-introduced the Scheme that was prevailing earlier to 2003. Item No.1 at Paragraph 11.15 of the said Tariff Order, which deals with the Special Incentive Scheme to HT Industrial Consumers, states that:

“The Scheme is applicable to all HT 2(a) consumers in the State subject to the eligibility mentioned below. The benefit of the scheme shall be extended to all HT 2(a) consumers upon their request.”

[Emphasis supplied]

The subsequent Tariff Orders, wherein this Scheme has been continued, are only continuation Orders and not new ones. Therefore, the contention of the Petitioner that the benefit of Special Incentive Scheme was available to all HT(2) Consumers, including to it, automatically and without application, does not merit acceptance.

8. The reliance placed by the Petitioner on the Commission's MYT Order for FY08-FY10, does not support its argument that the Petitioner need not have made a request for the benefit under the Special Incentive Scheme. A careful reading of the Order of this Commission at Page-203 only deals with the renewal of the Special Incentive Scheme by the Licensee, and not the renewal of the request of a Consumer. This is obvious from a reading of the following paragraph of the said MYT Order :

*“It has come to the notice of the Commission that the consumers are being directed to apply for the renewal of the scheme on the expiry of the sanction by the licensees. Since the scheme is further continued,*

*there is no requirement of filing of any application for renewal by the Consumer."* [Emphasis supplied]

The Commission's above observations that the Consumers need not apply for renewal of the Scheme, is being misread to mean that the Consumer need not seek renewal by way of request for availing the benefit of the Special Incentive Scheme; whereas, what was meant to be conveyed was no fresh application for renewal of the Scheme was necessary.

9. The letters of the Petitioner produced by the Respondent on 26.4.2012, as well as those produced by the Petitioner along with the Petition, clearly support the view advanced by the Respondent that the Consumers had to apply, by way of renewal request, for grant of benefit of Special Incentive Scheme. Significantly, in all these letters, the Petitioner had made a request for allotment of additional energy under the Scheme, and additional allotment is granted as per the request. If there was no need to apply for the benefit, the Petitioner would not have addressed any letters at all. The Petitioner has also not made out a case that other Consumers have been treated differently and the Special Incentive Scheme benefit has been granted to any other Consumers, even though there was no specific application to that effect.

10. The Judgment dated 1.3.2012 passed by the Hon'ble High Court in Writ Petition No.21401/2010 (GM-KEB) in the case of *KIOCL Limited -Vs- The Superintending Engineer (Ele) (C & RP), MESCOM and another*, which is relied upon by the Respondents, also clearly supports the stand of the Respondents that

the Special Incentive Scheme was available only to those making a specific request or application, and not otherwise. In the said Judgment, at Paragraph-11, the Hon'ble High Court has held that:

*"Insofar as the scheme is prospective or retrospective is concerned, indeed both Ombudsman as well as the Redressal Forum were clearly in error in holding that the scheme was only prospective. Indeed 'retrospective' or 'prospective' phrases are used with reference to the statute. In the case on hand, the scheme itself envisages that it is operational between 01.04.2004 to 31.12.2009. Hence, the question of it being prospective or retrospective does not arise. Any person who makes an application seeking such concession, is entitled. It appears the reason for the authorities to hold that the scheme is prospective is on the basis of a request made by the petitioners for a period anterior to their request. Indeed that cannot be construed, as the scheme is only prospective and not retrospective."* [Emphasis supplied]

11. We, therefore, hold that there was no violation of any of the Tariff Orders. Consequently, the Petitioner's prayer for issuing a direction to the Respondents to extend the benefit to it, during the period when the Scheme was in vogue, even though the Petitioner failed to apply for its benefit, cannot be granted.

12. The Judgment of the Hon'ble Appellate Tribunal for Electricity, relied upon by the Petitioner's Counsel in the case of *Cotton Spinning Mills Pvt. Ltd. -Vs- Tamil Nadu Electricity Board*, does not advance the case of the Petitioner, as on facts, it has no case.

13. For the foregoing reasons, this Petition is liable to be rejected and accordingly it stands dismissed.

Sd/-  
(M.R. SREENIVASA MURTHY)  
CHAIRMAN

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd/-  
(K.SRINIVASA RAO)  
MEMBER