

Before the Electricity Ombudsman
9/2, 6th Floor, Mahalakshmi Chambers, M.G.Road,
Bangalore

Present: B.R.Jayaramaraje Urs, IAS (Retd.)

Electricity Ombudsman

Case No.OMB/C/G-109/2010/116

Dated 17.01.2012

BETWEEN

M/s.Precitech Engineers Private Limited,
 58A, 16th Corss, Ramanuja Road, Mysore-570004
(Represented by Sri H.R.Rao -
Authorised Representative)

.. **Appellant**

Vs

1. Assistant Executive Engineer,
 O & M Sub Division,
 Chamundeshwari Electricity Supply Corporation Ltd.,
 Hootagalli,
 Mysore
(Represented by Shri Sriranga, Advocate)

2. Consumer Grievances Redressal Forum (C.G.R.F)
 #1633, Annapoorneshwari Complex, 1st Cross, Anikethana Road, (North),
 P & T Block, Kuvempunagar,
Mysore-570023

.. **Respondents**

1. This is an appeal under the provisions of KERC (Consumers Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the orders passed by the Consumer Grievance Redressal Forum (hereinafter referred to as the 2nd Respondent) vide No. 1000/EA(1000)/AEE/17DgiJ/1/206-11 dated 17.01.2011 in respect of the Appellant's grievance relating to refund of excess amount paid by way of Electricity Tax between 1989 to 1994 along with interest which came to Rs.18,72,012/- and refusal of the 2nd Respondent to issue any directions to the 1st Respondent to refund the principal amount along with interest. Aggrieved by the 2nd Respondent's order (the impugned order), the Appellant has submitted his case as under:

2. M/s Precitech Engineers Private Ltd is a small scale industry set up in the year 1989 at Mysore. This industry was sanctioned 95 H.P power under L.T category and installation bearing No YLPR-70 was serviced on 9th February, 1989. As per the Industrial Policy of Government of Karnataka, Small Scale Industries were exempted from payment of Electricity Tax initially. During the relevant period, Rs.0.10 Electricity Tax was levied per unit of power. This exemption was applicable for a period of 5 years from the date of S.S.I. starting its commercial production. The Appellant's Industry, as per the New Unit Certificate issued by the Assistant Director, District Industries Centre, Mysore Sub-Division, Mysore on 25th May,1990, was exempted from payment of Electricity Tax for a period of 5 years from the date of starting commercial production.

3. The New Unit Certificate was produced on 8th August, 1990 to the jurisdictional Asst. Executive Engineer, V.V Mohalla, Mysore. Before producing the certificate, the Appellant had met the Accounts Officer and enquired regarding the procedure. Accounts Officer clarified that the Appellant should produce: (1) copy of the New Unit Certificate issued by G.O.K. (2) Copy of the 1st Sale Invoice. Further, he informed that it would take some time to issue orders and the Appellant could obtain acknowledgement for delivering the New Unit Certificate in the Assistant Executive Engineer's Office. While delivering the letter to the Assistant Executive Engineer, the Appellant informed that he had already paid Rs.6,205.66 as Electricity Tax and, hence, this amount should be refunded and also future liability should be exempted. Subsequently, Executive Engineer (Electrical) sought details under reference vide No. E.E 4606-07- dated 01.07.1991. On 02.08.1991, the Appellant showed the original documents. The Executive Engineer informed the Appellant that he was satisfied with the records and he could further meet the Accounts Officer for availing the benefits.

4. As advised by the Asst. Executive Engineer, the Appellant approached the Accounts officer and he confirmed having received internal sanction from the

Executive Engineer and conveyed that he would not extend the benefits as the Appellant had gone to the Court with regard to back billing. At this, the Appellant protested and requested the Officer not to link the back billing issue with the tax exemption matters. The Appellant gave a letter to the Assistant Executive Engineer on 06.09.1998 stating that he would claim interest on belated refund of Electricity Tax. The Authorities did not heed to the request of the Appellant and continued to collect the tax. The Appellant too continued to pay the tax. The 1st Respondent did not take meter reading of the installation nor issued bills for 14 months. However, the Appellant, based on the prevailing tariff and based on self meter reading, calculated the amount to be paid and tried to remit the amount. But the authorities refused to receive the amount on the ground that the ledger had not been opened in the case of the Appellant. Not happy with the turn of events, the Appellant complained to the Assistant Executive Engineer. The Asst Executive Engineer on 20.01.1990 instructed the Accounts Officer to issue bill. Still the Accounts officer did not issue bills for the next three months. Since the authorities refused to do their job, the Appellant was compelled to remit the taxes in State Bank of Mysore till the end of August 1990. The Authorities did not act because of the pendency of back billing case in the Civil Court. Three days after the disposal of the case in Civil court, the Appellant on 24.01.2009 reminded the Department to refund the amount with interest. In response to this, the authorities informed the Appellant on 21.02.2009 and 07.05.2009 that the tax amount had been remitted to the Government and, hence, amount could not be refunded. Not satisfied with the replies, the Appellant filed a representation before the 2nd Respondent on 25.03.2009. The 2nd Respondent, after hearing the parties, passed orders rejecting the pleas of the Appellant. Aggrieved by this decision, the Appellant approached the Electricity Ombudsman on 15.10.2009. The Electricity Ombudsman, after hearing the parties, remanded the case to the 2nd Respondent pointing out that one of the members, though participated in the proceedings, had not attested his signature on the order. Finally, the 2nd Respondent passed orders reiterating its earlier decision.

5. The Appellant prayed this Authority to issue directions to the 1st Respondent to refund the Tax amount paid between 1989 and 1994 and payment of interest of Rs.30,43,620/- which is calculated up to the date of filing the appeal.

6. The 1st Respondent's comments were called vide letter No OMB/C/G-101/2011/9651 dated 18.02.2011. The 1st Respondent furnished his comments vide letter No AEE(E)/AE(T)/Htg/Mys/2011-12/1072-74 dated 10.06.2011.

In his comments, the 1st Respondent submitted that initially when power had been sanctioned to M/s. Precitech Engineers Private Limited, one Mr. H.R.Rao was the Managing director and subsequently the Management changed and, at present, one M.R.Shreedhar is the Managing Director of the Company and though Mr.H.R Rao was no more the Managing Director, he had filed this appeal as Authorised Representative of the Company in gross Violation of KERC and CGRF Regulations.

7. The 1st Respondent added that there was no evidence to substantiate that the Appellant had paid the Electricity Tax from 16.04.1989 to 15.05.1994. Besides, K.E.B had been renamed as Chamundeshwari Electricity Supply Corporation Ltd., and it was almost 21 years since the alleged amount had been paid and such amounts had been credited to the Government and, hence, only Government could refund the amount. The claims were barred by limitation and Shri H.R Rao, not being the legal holder, cannot claim refund and, hence, prayed this authority to dismiss this appeal.

8. The case was taken up for hearing on 29.06.2011 and arguments got concluded on 08.12.2011. On behalf of the Appellant, its authorised representative Sri H.R.Rao appeared and put forth his arguments. For the 1st Respondent, Shri Sriranga, Advocate, appeared and advanced his arguments.

9. Reiterating the submission made in the appeal memo, the Authorised Representative of the Appellant argued that the appeal was not time-barred as the Appellant had sought refund addressing two letters to the 1st Respondent on 08.08.1990 and 06.09.1991. The Accounts Officer deliberately withheld refund because the Appellant had challenged the back bill raised by the 1st Respondent in Civil Court. The Appellant had not received any replies from the 1st Respondent till the case in the Civil Court had been disposed of on 21.01.2009 and three days after the disposal of the case in the Civil Court, the Appellant reminded the 1st respondent regarding refund and the 1st Respondent in response to his letter informed that the 1st respondent had already credited the amount to the Government and, hence, the amount could not be refunded. Because the letters addressed by the Appellant to the 1st Respondent had not been responded till 07.05.2009, the Appellant had no cause of action to challenge in other Legal Fora. The Appellant got cause of action only when he received replies from the 1st Respondent in the year 2009 and, hence, the claims were valid and within the limitation period.

10. The Authorised Representative of the Appellant submitted that the Appellant as per Clause 29.09 of E S & D Code, 2001 and Clause 29.08 of Condition of Supply of Electricity of Distribution Licensees in the State of Karnataka is entitled to receive interest @ 2% per month on belated refund of Electricity Tax of Rs.35,994/- from the year 1989 to 1994 and updated interest of Rs.30,43,620/-. Hence, he prayed this Authority to set aside the impugned orders of the 2nd Respondent and issue directions to the 1st respondent to refund the Electricity Tax along with interest.

11. The Advocate for the 1st Respondent contended that the appeal filed by the Appellant was time-barred and, as per the Indian Limitation Act, the Appellant should have preferred claims, within three years and, in the present case, the Appellant had preferred claims after a lapse of nearly 19 years.

Further, the 1st Respondent was only an agent of Government under the Karnataka Electricity (Taxation On Consumption) Act, 1959 and the 1st Respondent had credited the tax amount to the Government and there is no provision under the said Act for payment of interest and, besides, the Appellant had not produced any original documents to consider extension of tax exemption.

12. Referring to the interest claims of the Appellant, the Advocate for the 1st Respondent submitted that the Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka had come into force from 17.06.2006 and the Appellant's claims relate to the year 1990. From the year 1989, the Appellant was claiming interest and he was relying on Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka which had not been in vogue during the relevant period. The Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka was prospective in nature and did not have any retrospective effect. Further, he argued that during the relevant period K.E.B Electricity Supply Regulations, 1988 had been in operation and there was no provision for payment of interest on excess collection of Electricity Tax under that Regulation. If we applied the rules then prevailing, the K.E.B was not liable to pay any interest.

13. Arguing on the claims of the Appellant for payment of interest, the Advocate for the 1st Respondent submitted that the Appellant had not offered any explanation for making claims after a lapse of 19 years and Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka could not be retrospectively effected and the Consumer had not taken any steps till 2009 to approach any Legal Fora including Civil or High Court and, hence, prayed this Authority to dismiss the appeal and uphold the impugned orders passed by the 2nd Respondent.

14. Both parties were informed vide letter No.OMB/C/G-101/2011/10211 dated 20.05.2011 regarding availability of Sub-Regulation 1 of Regulation 20 of

KERC (Consumer Grievance Redressal Forum and & Ombudsman) Regulations, 2004 which provides for settlement by agreement through conciliation and mediation. However, both parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

15. From the above rival contentions, the following issues come up for our consideration:-

(a) Whether the Appellant is entitled for refund of Electricity Tax of Rs.35,994/-?

(b) Whether the Appellant is entitled to receive interest of Rs.30,43,620/- on belated refund of Electricity Tax of Rs.35,994/-?

16. In order to answer the questions framed above, first, we will have to refer to Karnataka Electricity (Taxation On Consumption) Act, 1959 and Rules. Under Section 4(1) of the said Act ***"Every Licensee shall collect and pay to the State Government at the time and in the manner prescribed, the Electricity Tax payable under this Act on the units of energy supplied by him to consumers"***

17. Further Section 4(4) of the said Act states ***"When any Consumer fails or neglects to pay at the time and in the manner prescribed, the amount of Electricity Tax due from him, the Licensee or, as the case may be the person supplying energy free of charge, may without prejudice to the right of the State Government to recover the amount under Section 7, after giving not less than seven clear days' notice in writing to such person, cut off energy to such person and he may, for that purpose, exercise the power conferred on a Licensee by sub-section (1) of Section 24 of the Indian Electricity Act, 1910 for the recovery of any charge or sum due in respect of energy supplied by him."***

18. The above sections make it clear that the Licensee acts as an agent of Government insofar as collection of Electricity Tax from the Consumer is concerned and the Licensee has to follow the procedure laid down under the Act.

19. Under Rule 9(2) of the Karnataka Electricity (Taxation on Consumption) Rules, 1959 **“Electricity Tax recovered in excess, if any, during the month may be refunded, after verification, by the Licensee either in cash or by adjustment in the bills for the future months.”**

20. Under the said Rules, the Licensee is empowered to refund or adjust the excess tax amount collected from the Consumers.

21. The Appellant submits that he had paid Rs.35,994/- towards Electricity Tax between 1989 and 1994. As per the submissions of the Appellant, he has paid this amount voluntarily without any demand from the 1st Respondent.

22. It is clear from the reading of the Karnataka Electricity (Taxation on Consumption) Act, 1959 and Rules that there is no liability cast on the part of the Licensee to pay interest on the belated refund of excess amount collected from the Consumer. However, the Licensee has got powers to refund any Electricity Tax recovered in excess during the month or such excess amount may be adjusted in the bills for the future months.

23. The Appellant, in the present case, is claiming refund of Electricity Tax paid and interest thereon under Clause 29.09 of E S & D Code 2000-01 and Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka.

24. The E S & D Code came into force during 2000-01 and later this Code was renamed as Conditions of Supply of Electricity of Distribution Licensee in the

State of Karnataka in the year 2006. Provisions of Clause 29.09 of E S & D Code 2000-01 are retained as it is in the Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka under Clause 29.08, the extract of which is given below:-

"Adjustment of Erroneous Bills.-(a) At any time during verification of the consumer's account, if any, short claims caused by erroneous billing are noticed, the consumer is liable to pay the difference...."

25. In the present case, the Appellant's claim pertains to the years 1989-1994 and during the relevant period, The Karnataka Electricity Board Electricity Supply Regulations, 1988 was in operation. Under these Regulations, there was no provision to pay interest to the Consumers on belated refund of Electricity Tax. For the first time, provision was made in the E S & D Code in the year 2000-01 for payment of interest to the Consumer in case of excess claims by the Licensee. Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka also provides for payment of interest, the extract of which is given below:-

"In case the verification of the consumer's account shows excess claims made in the past, the excess amount shall be credited to the consumer's account along with the interest at Bank rate from the date of payment up to the date of credit. This shall be done within one month from the date of pointing out the excess claims. If for any reason there is delay in crediting the amount to the consumers account, interest @ 2% per month shall be paid to the consumer for the period beyond two months"

26. Karnataka Electricity (Taxation On Consumption) Act, 1959 is a Statute and it has been in force since 1959, whereas the E S & D Code & Conditions of Supply of Electricity of Distribution Licensee

in the State of Karnataka are Regulations framed by KERC in the year 2000-01 and 2006-07 respectively under the Electricity Act 2003. Under the Karnataka Electricity (Taxation on Consumption) Act 1959, Electricity Tax is collected and credited to the state Government, whereas the energy charges are paid to the Distribution Licensee under E S & D Code 2000-01 & Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka. The E S & D Code and Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka deal with the matters relating to supply of electricity by the Licensee and recovery of energy charges from the consumers. Clause 29.09 of E S & D Code and Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka deal with the short claims caused by erroneous billing and excess claims made by the Licensee against supply of energy to the consumer and the said Clauses do not deal with the Electricity Tax as it comes under the domain of the State Govt. Under the Karnataka Electricity (Taxation On Consumption) Act, 1959, Electricity Tax is levied at the rates prescribed by the Government from time to time. Clause 29.09 of E S & D Code and Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka do not deal with Electricity Tax. These clauses deal with the matters relating to adjustment of erroneous Billing with regard to supply of energy by the licensee. There is a provision to collect belated payment charges from the Consumers under the Karnataka Electricity (Taxation on Consumption) Act, 1959 at the rates prescribed by the Government from time to time. In the absence of Government rates, it is provided under Clause 29.05 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka to follow the rates as noted in Sub-Clause 29.05(i). There is no specific provisions either in E S & D Code or Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka for payment of interest to the

Consumers for belated refund of Electricity Tax in case of excess claims by the Licensee.

27. It is clear from the above discussions that the Appellant does not come under the ambit of Clause 29.09 of E S & D Code, 2000-01 or Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka inasmuch as no exercise pertaining to verification of consumer's account has been done by the Government in the present case. These two provisions operate in different areas, more so, pertaining to Energy Charges as distinguished from Electricity Tax. To put it in other words, these provisions interpreted in any favourable way, cannot come to the rescue of the Appellant in respect of refund of electricity tax nor interest thereon. If these provisions are read to include electricity taxes also, it would be far beyond the literal interpretation of the statutory provisions. The concept of electricity tax is too foreign to Clause 29.08 of E S & D Code, 2000-01 & Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensee in the State of Karnataka.

28. Examination of the above provisions makes it clear that the 1st Respondent being a Licensee is duty cast to collect the Electricity Tax when energy is supplied to the consumer and such taxes have to be credited to the Government. In the present case, the 1st Respondent has collected and credited the tax amount to the Government. In case of excess collection of Electricity tax, the 1st Respondent has got powers to refund such excess amount to the consumer under Rule 9(2) of Karnataka Electricity (Taxation on Consumption) Rules, 1959. However, there is no provision under the Karnataka Electricity (Taxation on Consumption) Act & Rules requiring the Government or the Licensee to pay interest for belated refund of Electricity Tax. In the absence of provisions for payment of interest under the Karnataka Electricity (Taxation on Consumption) Act & Rules,

this Authority cannot direct the authorities to do so. At the most, the Appellant would be entitled for refund of electricity tax of Rs.35,994/- and this will be subject to the Appellant producing the tax paid receipts.

Hence, the following orders:-

ORDER

29. For the foregoing reasons, the appeal is **partly allowed**.

(a) The 1st Respondent to refund the Electricity Taxes of Rs.35,994/- subject to the Appellant producing the relevant receipts for having paid the amount.

(b) Appellant's claim against the 1st Respondent for payment of interest of Rs.30,43,620/- is hereby **rejected**.

(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1.M/s.Precitech Engineers Private Limited, 58A, 16th Cross, Ramanuja Road, Mysore-570004 (represented by Shri H.R.Rao, "Sushobith", 1094, E&F Block, 8th Main, R.K.Nagar, Mysore-570022

2. Assistant Executive Engineer, O & M Sub Division, CESC, Hootagalli, Mysore.

3. Consumer Grievance Redressal Forum, CESC, #1633, Annapoorneshwari Complex, 1st Cross, Anikethana Road, (North), P & T Block, Kuvempunagar, Mysore-570023

4. Managing Directors of all ESCOMs.

5. PS to Hon. Chairman, KERC

6. PS to Hon. Member(H), KERC

7. PS to Hon. Member(S), KERC

8. PS to Secretary, KERC

9. OCA

