

The petitioner is a tea company which manufactures black tea in their factory at Marongi in Golaghat District. The Assam Power Distribution Corporation Ltd. (AP DCL) has sanctioned 620 KW load and installed the Meter No.ASB 26400, in the factory, for the purpose of billing. However, meter tempering was detected during the inspection made on 9.1.2016 and accordingly, revised assessment for preceding 12 months was made on the basis of the connected load and doubling the assessed sum, Rs.1,50,09,966/- (page-48), was raised as electricity bill. The consumer deposited Rs.75,04,983/- (50% of the assessed sum), during the assessment process and thereafter the consumer approached the appellate authority against the assessment order.

2. In the Appeal No.03/2017, under the order dated 26.7.2017 (Annexure-15), the Appellate Authority noted the meter tempering and held that the assessment bill, served by the Area Manager, IRCA, Jorhat on 20.5.2016, is justified. However, 20% waiver of the penalty for early payment of the assessment bill, was granted to the consumer.

3. Placing reliance on Section 126(5) & (6) of the Electricity Act, 2003, the consumer applied for review of the Appellate order with the contention that computation should not be made under the AERC Supply Code but should be done under Section 126(5) of the Electricity Act. However, the Authority ignored the issue of computation under Section 126(5) and instead referred to the peak and the off season in the tea industry and granted them 40% waiver of the assessed sum for the off season from December to March. However, the waiver of penalty, ordered earlier was withdrawn, under the impugned order dated 19.9.2017 (page-122).

4. Assailing the computation process for the consumer found to have indulged in malpractice, Mr. B.D. Das, the learned senior counsel submits that Sub-Section (5) of Section 126 of the Electricity Act, was substituted by Act 26 of 2007, w.e.f. 15.6.2007, whereas the AERC Supply Code was notified two days earlier on 13.6.2007. The counsel therefore, submits that assessment must be made under the Electricity Act and anything to the contrary contained in the AERC Supply Code, must not override the statute.

5. Whenever unauthorized use of electricity is detected, the first attempt must be to ascertain the amount payable for the consumption. But if the same cannot be verified, the computation should be limited to a period of 12 months, immediately preceding the date of inspection.

6. The bone of contention in the present case is how the amount should be assessed for the preceding 12 months. The petitioner in paragraph-21 has projected that they were assessed to electricity charge to the tune of Rs.42,26,618/- during the 12 months of 2015 and therefore, doubling this sum under Section 126(5) of the Electricity Act, the liability for the malpractice is quantified by the consumer at Rs.84,53,236/-. However, the Area Manager, IRCA, Jorhat has assessed the payable sum for the preceding 12 months, on the basis of the connected load of 620 KW and on that basis, the final assessment of Rs.1,50,09,966/-, was determined. But after the Review Order, without accounting for the off season in the tea industry, the total figure is assessed at Rs.1,09,19,712/-. Thus subtracting the already paid sum of Rs.75,04,983/-, the assessment bill dated 3.10.2017 (page-126), for Rs.34,14,729/- is now raised, against the consumer.

7. The computation of dues for unauthorized consumption of electricity is required to be made, in terms of Section 126(5) & (6) of the Electricity Act, as has been held in the Southern Electricity Supply Company of Orissa Limited vs. Sri Seetaram Rice Mill, reported in 2012 (2) SCC 108. A Division Bench of the Kerala High Court in Sulabha Marketing (P) Ltd. vs. Kerala State Electricity Board [WP(C) No.31025/2008], interpreting the provisions of Section 126, substituted w.e.f. 15.6.2007, had declared that whenever a consumer commits breach, they are liable to pay at the rate equal to twice the tariff, to be assessed in terms of

Section 126 of the Electricity Act. Similar view is also taken by the Calcutta High Court in Sk. Jafar Ali vs. West Bengal State Electricity Board, reported in AIR 2010 CAL 84.

8. In the present matter, there is no dispute between the consumer and the APDCL that in case of malpractice, assessment of tariff is to be made with reference to the 12 months, preceding the date of inspection. The issue here is whether the charges are to be calculated on the basis of power bills in the preceding 12 months or on the basis of the sanctioned load, as is claimed by the APDCL. If sanctioned load is made the basis, the off season low consumption in the tea industry, as has been recognized by the Appellate Authority in the Review Case, will be ignored. Therefore, the computation made by the APDCL with reference to the AERC Supply Code, is open to further legal scrutiny, particularly, in view of the fact that the Code was notified on 13.6.2007, whereas the substituted Section 126(5) was included on 15.6.2007 and the Supply Code cannot override the statutory provisions.

9. Considering the above, let notice returnable in 4 weeks be issued. Mr. N J Dutta, the learned standing counsel for the APDCL, accepts notice for respondent Nos.1 & 3. Necessary extra copies be furnished to him. At this stage, notice need not be issued to the Appellate Authority (respondent No.2).

10. In the meantime, having regard to the fact that the assessment made by the respondents for the preceding 12 months, is on the basis of the connected load but is not on the basis of the power bills raised in the preceding 12 months from the date of inspection, the realization of the balance amount of Rs.34,14,729/-, under the bill dated 3.10.2017 (Annexure-21), is stayed. However, this interim order is subject to deposit of Rs.9,48,253/-, as the consumer had earlier deposited Rs.75,04,983/-, against the post inspection provisional bill, prepared by the respondent No.3. Since today is the due date of bill payment, this ordered payment must be made by 13.11.2017.