

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT – VIII, BHUBANESWAR – 751012**

**Present : Shi B K Das, Chairperson
Sri S K Jena, Member
Sri K C Badu, Member**

Case No.24/2007

M/s.Rliance Communications Ltd.	Petitioner
Vrs.		
CESU, WESCO, NESCO & SOUTHCO	Respondents

**In the matter of : Recalling the order dtd.23.03.2007 passed
by the Commission in Case Nos.57, 58, 59 &
60 of 2006**

Date of Hearing : 13.08.2008

Date of Order : 16.09.2008

ORDER

Mr. R.P. Mohapatra, authorised representative of M/s Reliance Communication Ltd., Mr. P.K. Nayak (Legal), Mr. Debasis Das, DGM, (Corporate Regulatory Affairs), CSO Office, Mr. Manoj Kumar Singh, GM(A&C), CESU and Mr. S.K. Choudhury, DGM (Commerce), SOUTHCO are present. The replies filed by the DISTCOMs and written note of the arguments filed by the Petitioner are taken into record.

2. Heard.
3. Mr. Mohapatra, authorised representative of the Petitioner stated that the petitioner had filed this petition for review of the Order dtd. 23.03.2007 in Case Nos. 57, 58, 59 & 60 of 2006 (RST) as the function of its units is not similar to that of BSNL. However, the submission of Reliance

Communication Ltd. (RCL) is different from that of BSNL and not considered by the Commission for which the review is sought for to consider the petitioner's unit under industrial category and the energy consumed by its units should be charged as IT/ITES industries instead of GP category.

4. Mr. Mohapatra also stated that the State Information and Technology Policy, 2004 which emphasized that IT/ITES units would be exempted from payment of electricity duty as per the Provision of Industrial Policy of the Govt. subject to approval OERC. He further stated that the above policy had been formulated under the Finance Act, 1974 for the purpose of income tax which is not applicable to consumer classification under OERC Distribution (Conditions of Supply) Code, 2004. Mr. Mohapatra pleaded that it was an apparent error on the face of the record since the policy quite undisputedly reflected its applicability to electricity consumption by units coming under the category of IT/ITES.
5. Further, Mr. Mohapatra also submitted that the classification of the energy consumed by the petitioner unit even if implemented under industrial category with retrospective effect, the difference in revenue would not be significant.
6. Mr. Mohapatra, further submitted that the OERC in its order dated 12.08.2004 in Case No. 83 of 2004: M/s Krishna Agriculture Vrs. CESU, had allowed the classification of power consumed by Chilling plant under industrial category. **In IT/ITES sector, the electric power supply at normal voltage and frequency is utilized for creation of electromagnetic waves or for switching in telephone exchanges, where it is not necessary to convert electrical power to mechanical energy.** So the unit of the petitioner may be treated under industrial category instead of GP category.

7. Mr. Mohapatra in his written note of the argument dt.06.08.2008 submitted that it is not its intention to claim the status of industry based on the provisions of Finance Act or the IT or ITES Policy 2004 of the state govt. nor was any submissions made that IT and ITES activities of the petitioner is to be treated as an industry based on definition of any other statute.
8. That it is a submission of the petitioner that the IT and ITES activities should be classified as “industry” based in the classification of consumers in Regulation 80 of the OERC Distribution (Conduct of Business) Regulation, 2004.
9. That in the IT & ITES sector, the electric power supply at normal voltage and frequency is utilized for creation of electro-magnetic waves or for switching in Telephone Exchanges. It is not necessary to convert electrical power to mechanical energy as was contended during discussion.
10. That the petitioner further submitted that industrial productions does not mean something which is perceptible by physical senses like sight, touch etc.

The petitioner has also quoted the Regulation 80 of the Supply Code and submitted that consumers where supply of power relates to industries where power is generally utilised as motive force which applies to contract demand 22 KVA and above, and to substantiate this point he has referred to the Chambers Dictionary which defined “motive power” as “the energy of the source of energy by which anything is operated” Finally he prayed to the Commission pass the order classifying IT and ITES under the industrial category according to Regulation 80 of Distribution Code, 2004.

11. Mr. Debasis Das, DGM (CRA) on behalf of WESCO, NESCO & SOUTHCO stated that in Case No. 58 of 2006, the petitioner had already clarified that its unit was using electricity for providing

telecommunication facilities which is purely commercial in nature and the power is not utilized as a motive force, so the request of the petitioner to classify its unit under industrial category is not justified. He also submitted that there was no apparent error in the Commission's order. The RST are determined by the Commission as per the Electricity Act, 2003 and that categorization of consumers have already been dealt by the Commission as per the Distribution Code, 2004. In support of his contents, he cited the judgment of the Hon'ble ATE in Appeal No. 116 of 2006: BSNL Vrs PSERC at para 7 quoted below:

“it will not correct to borrow the definition of ‘industry’ from ‘other statutes’ for the purpose holding that the appellant ought to be billed as per Industrial Tariff. The Union of India Vrs. Sh. R.C. Jain (AIR 1981 SC 951), the S.C. refused to borrow the meaning of the words ‘local fund’ as defined in the General Clauses on the ground that it is not sound rule of interpretation to seek the meaning of the words used in an Art, in the definition clause of ‘other statutes’. In this regard it was held that definition of an expression in one ‘Statutes must not be imported into another’,

in Loreburn L.C. In Macbeth Vrs Chislett (1910) AC 220, it was observed to the effect that it would be new kind of terror in the construction of Acts of Parliament if the courts were required to limit a word to a particular sense of a statute, which is not incorporated or referred to in the legislation that requires interpretation.”

12. Mr. Das further submitted that based on the RST so determined, the licensees were to recover cost as approved in ARR of the DISTCOs after public hearing. The petitioner was one of the objectors in the said proceeding and that there is fine balance between approved tariffs across various categories based on fair estimate of sales and that any attempt to change the category on retrospect effect would cause financial hardship to

the DISTCOs. So the Commission may not allow the petitioner unit as industrial category for which the review petition is filed, it is also not maintainable and liable to be rejected.

13. Mr. M.K. Singh GM (AT&C), CESU stated that OERC has approved the unit of the petitioner under GP category in ARR and RST Order dtd. 23.03.2007 for FY 2007-08 in Case Nos. 57, 58, 59 & 60 2006. In its tariff Order, it is clarified in para 5.24.2 or that just like of BSNL, RCL is also engaged only in commercial activities.
14. Mr. Singh further submitted that as per Regulations of OERC Distribution (Conditions of Supply) Code, 2004 for classification of consumers, it was clear that electric energy should be substantially used as motive force by the industrial category consumers for industrial production. But in case of RCL, it is quite irrelevant to include the unit under industrial tariff. Hence the inclusion of the unit under GP category is quite logical and justified. So the review petition filed by the petition is not maintainable and liable to be rejected.
15. After hearing the parties and perusal of the case records we would like to quote the issue of consumer classification and tariff as recorded in para 5.24.2 of RST order in Case No.56,57,58 & 59 of 2007 :

5.24.2 Similarly, representative from BSNL pleaded that, BSNL should be classified under the industrial category, since the Finance Act 2002/03 envisages that, the business of telecom, services, whether basic or network and including radio paging, domestic satellite services, network of traffic, broad band network and internet services come within the ambit of industrial undertakings. We have considered the forceful submissions put forth by the representative and observe that, the said provision under the Finance Act, has been stipulated for the purpose of income tax and is not applicable to consumer classification under the OERC Distribution (Condition of Supply) Code, 2004. Besides, BSNL is engaged in commercial activities and has to be classified under appropriate G.P. category. **Representative of Reliance Communication Ltd. argued for allowing industrial tariff to them as in the case of IT**

and ITES Services. The Commission feels that their case is similar to that of BSNL which is to be included in GP tariff.

16. Hon'ble Appellate Tribunal of Electricity in their order dt.4th October, 2007 in appeal no.116 of 2006 have extensively dealt the issue of Bharat Sanchar Nigam Ltd. (short BSNL) against the order of the Punjab Electricity Regulatory Commission for placing the consumer under non-residential supply category for the purpose of levy of tariff for consumption of electricity for the FY 2006-07.
17. In the said appeal the appellant BSNL asserted that the business of telecommunication services, whether basic or cellular including radio paging, domestic, satellite service, network of trunking, broadband network and internet services fall within the purview of the term "industrial undertaking".
18. This is very relevant for our purpose considering the fact that the petitioner makes a prayer to treat them in industrial category in the lights of the argument forwarded that the source of energy by which anything is operated should be defined as motive power ,a prime consideration for being considered as industrial consumers.
19. **Besides, the thrust of the Petitioner,s argument is that in IT/ITES sector, the electric power supply at normal voltage and frequency is utilized for creation of electro-magnetic waves or for switching in telephone exchanges, where it is not necessary to convert electrical power to mechanical energy.**
20. The above is best answered by quoting the Hon'ble ATE's order at para 9, an observation of Hon'ble Supreme Court in Case No. BSNL Vrs.Union of India and others, 2006, 3SCC1, "electromagnetic waves are neither abstracted nor are they consumed in the sense that they are not extinguished by their user. They are not delivered, stored, possessed nor are they marketable, they are merely medium of communication. What is

transmitted is not an electro magnetic wave but the signal through such means”

Finally, in para 10 and 11 the Hon’ble ATE has quoted as under :

Thus, it needs to be noted that there is no consumption of electro-magnetic waves by the customer. The mere fact that electrical energy is converted into electro-magnetic waves does not detract from the fact that the appellant is providing only service to its customers and nothing more. In the process, no goods are being manufactured. Unlike goods the electro-magnetic waves are neither delivered to the customers nor consumed by them.

In view of the above mentioned decision of the Supreme Court, we can not accept the argument that the appellant is an industry and ought not to be placed in the category of NRS category.

This settles the matter that IT and ITES cannot be covered under industrial category as prayed for.

21. In the review petition no apparent error on the face of record has been proved. The petitioner neither added a new and important matter of evidence which was not raised earlier. There are no sufficient reasons to relook into the matter. Hence this review petition stands dismissed.
22. Accordingly, the matter is disposed of.

Sd/-
(K.C. Badu)
Member

Sd/-
(S.K. Jena)
Member

Sd/-
(B.K. Das)
Chairperson