

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present : Shri S. P. Nanda, Chairperson
Shri B. K. Misra, Member
Shri S. P. Swain, Member

Case No.38, 39, 40, 41 & 90/2009

Case No.38/2009

EE-cum-AGM, Rourkela Electrical Division	.....	Petitioner
Vrs.		
M/s Bharat Ice & Cold Storage	...	Respondent

Case No.39/2009

EE-cum-AGM, Sambalpur Electrical Division	....	Petitioner
Vrs.		
M/s Kalinga Cold Storage	....	Respondent

Case No.40/2009

EE-cum-AGM, Sambalpur Electrical Division	....	Petitioner
Vrs.		
M/s Shyam Cold Storage	....	Respondent

Case No.41/2009

EE-cum-AGM, Sambalpur Electrical Division	....	Petitioner
Vrs.		
M/s Utkal Vegetable Storage Pvt. Ltd.	....	Respondent

In the matter of:
Change of Tariff Structure.

Case No. 90/2009

Western Orissa Cold Storage Assn.	....	Petitioner
Vrs.		
CESU & Others	....	Respondents

In the matter of:
An application for review of RST order dated 20.03.2009 for FY 2009-10 in Case No.66, 67, 68 & 69 of 2008.

Parties present: Mr. Banoj Kumar Pattnaik, Advocate, on behalf of the Petitioner in Case Nos. 38, 39, 40, 40 & 41 of 2009 & for the respondents in Case No. 90/2009 and Shri R. P. Mahapatra, the authorized representative of the Petitioner in Case No. 90/2009 and on behalf of respondents in the above other cases.

ORDER

1. OERC vide Notification dtd. 11.09.2007 introduced a new class of consumer namely Agro Industrial Consumer by way of amendment, by inserting a new sub-clause (1) under Clause 80(5) "Irrigation Pumping and Agriculture" of the OERC Distribution (Condition of Supply) Code, 2004, which read as thus:-

80(5) (i) Agro Industrial Consumers:

This category relates to supply of power for Pisciculture, Horticulture, floriculture, Sericulture and other allied agricultural activities including animal husbandry, Poultry and cold storage (i.e. a temperature controlled storage where flowers, fruits, vegetables, meat, fish and food, etc. can be kept fresh or frozen until it is needed).

2. A tariff for the first time was assigned to the newly created Agro Industrial Consumers in the Retail Supply Tariff Order for FY 2008-09. The Commission in the same Order in Para 442 clarified that Agro-Industrial consumers who were earlier billed in general purpose category would now be billed in a reduced tariff similar to that of Irrigation Pumping and Agriculture category.
3. When WESCO did not allow the reduced tariff to 'Cold Storages' they moved GRF at Burla and Rourkela who directed WESCO to revise the bill of cold storage units as per rate mentioned in Para 442 of Tariff Order for FY 2008-09. Being aggrieved by the orders of GRF of Burla and Rourkela, WESCO filled five writ petitions before Hon'ble Orissa High Court praying for stay of operation of GRF Order. Hon'ble High Court in its Order dtd. 03.02.2009 passed in WP(C) No. 17092, 17006, 16726, 17304 & 16016 of 2008 directed as follows:

"4. In view of the aforesaid facts and as agreed by the parties, this Court disposes of the above Writ Petitions directing the petitioner to approach the Odisha Electricity Regulatory Commission within four weeks hence. If an application is filed the said Commission shall take a decision as to under which tariff category, opposite party No.2 unit shall be placed. It is needless to say that the orders passed by the GRFs in the aforesaid cases would be subject to result of the decision to be taken by the OERC. Before taking any decision the OERC shall also give an opportunity of hearing to Op. No.2 Unit."

4. According to the above direction of the Hon'ble High Court WESCO filed petitioned before OERC which were registered as Case No. 38, 39, 40, 41 & 42 of 2009. When the matter was being heard by the Commission analogously Hon'ble High Court further stayed the proceeding in Case No. 42 of 2009 (WESCO Vrs. Lingaraj Feeds) vide their Order in Misc Case No. 6106 of 2009 arising out of WP(C) No. 16016 of 2008 dtd. 21.05.2009.
5. In another development Hon'ble Orissa High Court in their Order dtd. 26.08.2009 passed in WP(C) No. 6516 of 2009 in (M/s Prutwiraj Diary Products Vrs. State of Odisha & Others) while setting aside Para 252 and 258 of Commission's RST order for FY 2009-10 had directed the Commission to consider the feasibility of creating an additional tariff category for Agro-based industries applicable to non-agriculturist consumers and fix appropriate tariff for that category which seems to be the real intention of the Regulation 80 (5). The Commission had also in their Retail Tariff Order in 2009-10 in Para 255 has also stated to bring about necessary amendment in the Regulation to clarify the matter.
6. Western Orissa Cold Storage Association in the meantime also sought to review para 253, 254, 255 and 258 of Retail Supply Tariff Order of the Commission for FY 2009-10 in Case No. 90/2009 which also deals with definition of Agro Industrial Consumers as stated in Supply Code, 2004
7. Accordingly, for bringing about better clarity to Regulation on Agro Industrial Consumers the Commission by their Notification published in Odisha Gazette on 26.10.2009 substituted the following in Clause 80(5) of the OERC Distribution (Condition of Supply) Code, 2004 by way of amendment.

“80 (5)

(i) Irrigation Pumping and Agriculture : *This category relates to supply of power for pumping of water in lift irrigation, flow irrigation and for lifting of water from wells/bore-wells, dug-wells, nallahs, streams, rivulets, rivers, exclusively for agricultural purposes.*

ii) Allied Agricultural Activities: *This category relates to supply of power for Aquaculture (which includes Pisciculture/ Prawn culture), Horticulture, Floriculture, Sericulture, Animal Husbandry and Poultry. Activities such as ice factories, chilling plants, cold storages, cattle/poultry/fish feed units and food /agri products processing units are excluded.*

iii) Allied Agro-industrial Activities: *This category relates to supply of power to “Cold Storages (i.e. a temperature controlled storage where flowers, fruits, vegetables, meat and*

fish can be kept fresh or frozen until it is needed) and includes chilling plant for milk and only the cold storages attached to processing units for meat, fish, prawns, flowers, fruits and vegetables”.”

The new tariff was also assigned to all the sub-categories of consumers under Clause 80(5) with effect from 09.11.2009.

8. The matter was again re-heard by the Commission on 28.05.2013. The Petitioner WESCO submitted that the Opposite parties i.e. Cold Storages operate on commercial basis, therefore, does not come within the purview of definition of agriculture or related activities. If the prayer of the cold storages is allowed it would get concessional tariff which is not the intention of the Tariff Policy and on the other hand it would earn huge profit on commercial basis due to low tariff resulting from less cost of production.
9. The Respondent Cold Storages including Western Orissa Cold Storage Association appearing in the case submitted that the observation of the Commission in Para 253, 254, 255 on Cold Storages should be reviewed. The applicability of the Tariff for Agro Industrial Consumers for the year 2009-10 is not to be effected by the observation of the Commission in those paras of the Order where the Commission had observed that only on farm cold storages are eligible in terms of the Regulation.
10. The representative of M/s. Lingaraj Feeds (in Case No. 42/2009) submitted that since their appeal is pending before Hon'ble High Court and Hon'ble High Court has stayed the proceeding in the Commission in their case, the Commission should wait for its disposal.
11. The discussion above clearly indicates that the Commission has framed a Regulation in the FY 2007-08 with regard to inter alia determination of tariff for Cold Storages coming under the category of Agro Industrial Consumers. In the said Regulation there is no distinction between cold storage maintained for storing products of farmers and cold storage operated in commercial line. Therefore, the DISCOMs is not justified in not granting concessional tariff to the cold storage units as per rate mentioned in Para 442 of RST Order 2008-09. WESCO is accordingly directed to do so.
12. For the financial year 2009-10 the new Regulation which created two new categories of consumers such as Allied Agricultural Activities and Allied Agro Industrial Activities put Cold Storages in the later category and excluded it from Allied Agricultural Activities. The tariff for Allied Agro Industrial Activities is higher than Allied Agricultural Activities.

Though there were some observation in the RST Order for FY 2009-10 with regard to exclusion of cold storages used for commercial purpose from Allied Agricultural Activities, the earlier Regulation has however not been changed and remained in force. This new Regulation referred in Para 7 comes into effect from 26.10.2009 and consequent to this a new tariff was assigned to cold storage on 09.11.2009.

13. Accordingly, the Cold Storages shall pay as per the tariff under General Purpose category till the end of FY 2007-08. Thereafter, they are required to pay tariff under 'Agro Industrial Consumer' category for the complete financial year 2008-09. They would also continue to pay the same Agro Industrial Consumer tariff till 08.11.2009. From 09.01.2009 onwards the Cold Storage consumers would be categorised under Allied Agro Industrial Activities or General Purpose depending upon their eligibility to be checked by DISCOMs and pay the tariff accordingly.
14. With this direction, the Case Nos. 38, 39, 40, 41 & 90 of 2009 are disposed of.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson

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