

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

Present : **Shri S. P.Nanda, Chairperson**
 Shri S. P. Swain, Member
 Shri A. K. Das, Member

Case No. 30/2014

M/s. Sponge Udyog Pvt. Ltd.	Petitioner
- Vrs. -		
WESCO & Others	Respondents

IN THE MATTER OF: **An Application under S.142 of the Electricity Act, 2003 for non implementation of Retail Supply Tariff Order for FY2012-13 & 2013-14 passed by the Commission.**

For Petitioner: Shri Birendra Gandhi, Director, M/s. Sponge Udyog Pvt. Ltd.
 Shri S. Choudhury, M/s. Sponge Udyog Pvt. Ltd.

For Respondents: Shri P. K. Mohanty, Sr. Advocate,
 Shri K. C. Nanda, DGM (F), WESCO.

ORDER

Date of Hearing: 30.05.2014

Date of Order: 10.06.2014

The petitioner M/s Sponge Udyog Pvt. Ltd. is a large industrial consumer of WESCO has filed this case u/S. 142 of the Electricity Act, 2003 as the licensee has violated the tariff orders of the Commission. The Petitioner pointed out that WESCO in addition to levying penalty for overdrawal of power as per tariff order has also made an assessment treating the the petitioner's overdrawal as unauthorized use under Section 126 of the Act. The Petitioner while giving details of alleged violation of Tariff Order by WESCO has further stated that WESCO on 11.02.2014 has issued a provisional assessment order u/S. 126 of the Electricity Act, 2003 to the petitioner. In that order WESCO has pointed out that Maximum Demand of the petitioner company has exceeded 120 % of the Contract demand (600 KVA) between September, 2012 to January, 2014 and such consumption is to be treated as un-authorized use of electricity in terms of Section 126 of the said Act. During the pendency of the present proceeding in the Commission WESCO has also issued a disconnection notice to the

Petitioner on 16.05.2014 u/S. 56 (1) of the Electricity Act. This action of WESCO is directly in conflict with the provision of the Tariff Order and Supply Code laid down by the Commission.

2. The learned Counsel appearing on behalf of the Respondent submitted that the present case is not maintainable before the Commission as the present dispute is coming under the ambit of Section 126 of the Electricity Act, 2003 and there is a separate appellate forum available under Section 127 of the Act for that matter. The Petitioner in order to avoid depositing 50% of the final assessment as pre-requisite for appeal under Section 127 has adopted this tactics of invoking the jurisdiction of the Commission under Section 142 of the Act. The Petitioner had been persistently overdrawing beyond its contract demand during a long period between September, 2012 to January, 2014.
3. The learned Counsel for Respondent further stated that though the Petitioner has paid over drawl penalty for the excess drawal as per the Retail Supply Tariff order of OERC, it would also be liable to be assessed u/S. 126 of the Act as the permission has been granted and agreement has been executed for supply of power to the unit of the petitioner for a contract demand of 600 KVA only. Continuous overdrawal is not authorised under the agreement made with the Petitioner. Since, this overdrawal is in violation of Tariff Order and Regulation 106 of OERC Supply Code a letter had been issued to the Petitioner on 25.06.2013 cautioning it to restrict its drawal within the contract demand failing which assessment under Section 126 might be attracted. In spite of that reminder the Petitioner continued drawing over its contract demand. Such over drawl of power in excess of the sanctioned contract demand amounts to breach of the terms and conditions of the power supply agreement executed between the petitioner and the Respondent. The said over drawal of power constitutes unauthorized use of electricity in terms of the provision u/S. 126 of the Act, 2003 and accordingly has been assessed. But the petitioner has challenged the provisional assessment order before this Commission thereby has deviated from the law as well as the jurisdiction of the competent authority established the Electricity Act, 2003. In the meantime, the final assessment order of assessing authority has been served on the Petitioner. If the Petitioner is aggrieved by that order and in view of the landmark judgment dated 30.10.2011 of the Hon'ble Supreme Court of India in Civil Appeal No. 8859 of 2011 in case of the Executive Engineer (Elect.), SOUTHCO Vrs. Shri

Setaram Rice Mill, it may prefer an appeal before the Appellate Authority constituted u/s.127 of the Act,2003.

4. After hearing the parties and perusal of the case records, we observe that, Section 126 prescribes procedure for assessment for unauthorised use of electricity. In a recent judgement Apex Court in Civil Appeal No. 5466 / 2012 (UP Power Corporation Ltd. vrs. Anish Ahmed) has held that *after notice of provisional assessment to the person indulged in unauthorised use of electricity, the final decision by an Assessing Officer who is a public servant on the assessment of unauthorised use of electricity is a 'quasi judicial' decision.* In the present case the Petitioner was also entitled to file objection against the provisional assessment before the Assessing Officer who could have passed a final order after affording a reasonable opportunity to the Petitioner under Section 126 (3) of the Act. Instead the Petitioner has moved the Commission under Section 142 of the Act. As per the Submission of the respondent in the meantime the final assessment order has been passed. Once the final order of the assessment is passed by the assessing officer the Petitioner is expected to pay the said assessed amount or if he is aggrieved by the said order, he should prefer an appeal u/S. 127 of the Act, 2003 against the said final assessment order. When one proceeding under particular section of the Act is already initiated before a quasi judicial authority it should reach its logical conclusion. Initiating parallel proceeding for same cause of action is not permissible and hit by principle of *Res Judicata*. Therefore, we are not inclined to interfere in the final assessment order of the Assessing Officer at this stage. The Petitioner is at liberty to agitate this matter through statutory appeal under Section 127 of the Act within one month from today and the Appellate Authority is directed to accept the appeal if filed by the petitioner within 30 days from today and adjudicate same in accordance with law.
5. Accordingly, the case is disposed of.

Sd/-
(A .K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson