

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

Thiru S.Akshayakumar

.... **Chairman**

and

Thiru G.Rajagopal

.... **Member**

I.A.No.1 of 2012

in

D.R.P.No.22 of 2012

and

D.R.P.No.22 of 2012

M/s.International Institute of Bio Technology
and Toxicology
Survey Nos.571/30 & 572/381
Padappai 601 301.

... Petitioner
(M/s.Ramachandran & Associates
Advocate for the Petitioner)

Vs.

The Superintending Engineer
Tamil Nadu Electricity Board
Chengalpet Distribution Circle
Chengalpet – 631 603.

...Respondent
(Thiru M.Gopinathan
Standing Counsel for Respondent)

Dates of hearing : **21-11-2012; 27-11-2012; 27-02-2014;
29-04-2014; 21-07-2014 and 25-09-2018**

Date of Order : **10-12-2018**

The above I.A.No.1 of 2012 in D.R.P.No.22 of 2012 and D.R.P.No.22 of 2012 was heard and reserved on 21-07-2014 by the earlier Commission and as one of the Members demitted office before pronouncement of the order, the case was reopened

for refreshing the case for Member I and Chairman and arguments were heard. The Commission upon perusal of the petition, counter and connected records and after hearing the submissions of both the parties passes the following:-

ORDER

1. Prayer of the Petitioner in D.R.P.No.22 of 2012:-

- (i) The prayer of the Petitioner in the above D.R.P.No.22 of 2012 is to –
 - (a) quash the impugned order passed by the Respondent in Letter No.SE/TANGEDCO/CGL/DFC/RCS/AS/F.HT.SC.No.365/D.No.246/12, dated 12-03-2012 and Letter No.ACE/TANGEDCO/CGL/DFC/RCS/AS/AS3F.BOAB Audit/D.No.711/2012 dated 19-10-2012;
 - (b) stay the operation of the impugned order No.ACE/TANGEDCO/CGL/DFC/RCS/AS/AS3F.BOAB/Audit/D.No.711/2012, dated 19-10-2012 till such time the Commission hears and adjudicates upon the matter finally;
 - (c) direct the Respondent to grant to the Petitioner the benefit of concessional tariff rate in terms of the Tamil Nadu Electricity Regulatory Commission Tariff Order No.3 of 2010 dated 31-07-2010;
 - (d) post this petition for personal hearing;
 - (e) pass any other order or orders that may be necessary in the circumstances of the case and render justice.

The Petitioner has also filed an I.A. in the said D.R.P.No.22 of 2012 with the following prayer namely:-

- (a) to grant a stay of collection of the disputed amount of Rs.71,49,467/- till the present Dispute Resolution Petition is heard and disposed of;

- (b) to grant a stay of operation of the impugned communication dated 12-03-2012 in letter No. SE/TANGEDCO/CGL/DFC/RCS/AS/F.HT.SC.No.365/D.No.246/12 and 19-10-2012 in Letter No. ACE/TANGEDCO/CGL/DFC/RCS/AS/AS3/F.BOAB Audit/D.No.711/2012.
- (c) to direct the Respondent to collect from the Petitioner current consumption charges on the basis of the concessional rate in HT Tariff II A as per Tariff Order No.3 of 2010 dated 31-07-2010;
- (d) to post this petition for personal hearing;
- (e) to pass any other order or orders that may be necessary in the circumstances of the case and render justice.

2. Facts of the Case:-

The Petition has been filed to direct the Respondent TANGEDCO to collect current consumption charges on the basis of the concessional rate in H.T. Tariff II A as per Tariff Order No.3 of 2010 dated 31-07-2010.

3. Contentions of the Petitioner:-

3.1. The Petitioner is a Society registered under the Societies Registration Act, 1975. The main object of the Society concern Research & Development in the areas of Pesticides, Agro Sciences, Toxicology etc. The Petitioner is also engaged in providing training to students in the fields of agriculture, agro sciences, plant protection and other related areas.

3.2. The Petitioner has been following Good Laboratory Practices (GLP) as mandated by the Treaty to which India is a signatory Treaty with the Organization for

Economic Corporation and Development (OECD). One of the parameters deal with uninterrupted power supply. The Petitioner has been adhering to all the norms prescribed in regard to the conduct of lab and field work and is an Institution that has acquired a high reputation in its chosen field of operation. It is engaged wholly in research and development that would contribute to Nation and State building and recognized by the Government by way of grant of Registration by the Registrar of Society as well as the Department of Scientific and Research. (Ministry of Science and Technology, New Delhi) that it is an entity that is not for profit wholly engaged in Research & Development.

3.3. The Tamil Nadu Electricity Regulatory Commission had issued an order in Tariff Order No.3 of 2010 dated 31.07.2010 which came into effect from 01.08.2010 determining the tariff, for generation of electricity, intrastate transmission and distribution. The Tariff Order provided for a concessional tariff in H T II A which provided for a concession in the tariff rate for electricity for certain designated users. The relevant portion of the Order read as follows:-

“

Tariff Category	Tariff	
	Demand Charge in Rs/KVA/month	Energy charge in Paise per kWh (Unit)
HT Tariff II A	200	400

The tariff is applicable to Government and aided educational institutions Hostels run by such educational institutions, Government Hospitals, Hospitals under the control of Panchayat Unions, Municipalities or Corporations, Veterinary Hospitals, Leprosy Sub-Centres, Primary Health Centres. Health Sub-Centres, Orphanages, Public Libraries, Water works, Public Lighting, Public Sewerage Works by Government/local Bodies, Public Water Supply by New Tirupur Area Development Corporation, Electric Crematorium by local bodies, Laboratories, Research institutions, , Ministry of defence and Avadi CRPF establishment, Desalination plant at Kudankulam Nuclear power plant. If the HT consumer under this category needs to extend LT supply within their area of operation for any commercial purposes, they shall inform TNEB

suitably and separately meter such consumption and pay at the applicable LT Commercial tariff.”

3.4. The Petitioner, being recognized by the Government as well as various departments as a Research Institution with laboratory facilities was advised to apply for the tariff as per Tariff Order No.3 of 2010 which specifically provides for a concessional rate of tariff for laboratories and research institutions. An application dated 20th July 2008 was submitted by the Petitioner before the Respondent seeking a change of tariff from HT Tariff III being Commercial Tariff to HT Tariff II A. The application dated 20th July, 2008 highlighted the status of the Petitioner as a Research Institution and also referred to the recognition from the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India to this effect. After due consideration of the application submitted by the Petitioner, the Respondent accepted the eligibility of the Petitioner to concessional tariff rate vide its communication dated 13th August 2008. The order stated that the tariff of the High Tension connection had been changed from HT III to HT II A from 01-04-2006. Consequently, the order stated that the excess of electricity charges collected for the period from 01-04-2006 till the date of order, that amounted to a sum of Rs.40,34,848/-, is liable to be refunded through adjustment against the current consumption bills from August, 2008 onwards. The order also confirmed that the tariff in respect of the period August 2008 onwards would be the applicable concessional rate under HT Tariff II A.

3.5. The Respondent vide communication dated 28-01-2012 sought a confirmation from the Petitioner that the certificate issued by the Department of Scientific and Industrial Research, Ministry of Science and Technology was current and in force.

The communication noted that due recognition had been accorded to the Petitioner by the Ministry of Science and Technology vide its letter dated 05-05-2009 recognizing the Petitioner as “in-house R&D Unit”. In so far as the recognition was due to expire on 31-03-2012, the Respondent called upon the Petitioner to produce a renewal of the recognition certificate prior to expiry of the present certificate. In the alternative, the Respondent threatened termination of the beneficial tariff rate under HT Tariff II A and also future billing in terms of HT Commercial Tariff III with effect from 01-04-2012. The Petitioner replied vide communication dated 01-02-2012 stating that its application for renewal before the Ministry of Science and Technology for the period 01-04-2012 onwards was being filed and pending before the Ministry. A copy of the application for renewal filed by the Petitioner was furnished. Thereafter, the Petitioner confirmed that recognition had, in fact, been renewed by the Department of Science and Technology for the period 01.04.2012 to 31.03.2015 and a copy of the certificate of renewal was furnished to the Respondent under cover of the Petitioner's communication dated 07.06.2012.

3.6. The Petitioner also reliably understands that prior to grant of the concessional tariff, the Respondent had directed the Jurisdictional Executive Engineer to inspect the high tension connection and confirm the position as to whether the power supplied was being utilized only for research and developmental activities or otherwise. The jurisdictional authority had, pursuant to a personal inspection on 04.08.2008, duly confirmed to the Respondent that the power was being utilized solely for research and development activities alone.

3.7. The Petitioner was shocked to receive a communication from the Respondent dated 12-03-2012 stating that the Respondent would be withdrawing the benefit of concessional tariff with effect from March 2012 on the erroneous basis that only high tension service to Government Institutions and organizations and service connection to public welfare works by Government / local bodies are eligible for concessional tariff under II A. The Respondent erroneously concluded that since the R.& D facility of the Petitioner was a private organization, the benefit of High Tension Tariff II A could not be extended to the Petitioner. The aforesaid communication was unilateral and issued even without an opportunity to the Petitioner. No Show Cause notice was issued to the Petitioner calling upon it to furnish objections/an explanation prior to the issue of letter dated 12.03.2012.

3.8. The Petitioner further stated that on enquiry with the Respondent, it was confirmed that in so far as the Petitioner had been granted the concessional tariff after due application of mind and all circumstances remain identical till date, there would be no withdrawal of the benefit granted and the Petitioner would continue to be eligible to the rate as per HT Tariff II A on a concessional basis. The Respondent however requested that the Petitioner may remit the electricity charges on a commercial basis for a few months till the official withdrawal of letter dated 12-03-2012 and duly assured the petitioner that the excess charges collected would be adjusted against future bills.

3.9. The Petitioner has been duly complying with the aforesaid request of the Respondent while awaiting the official withdrawal of letter dated 12.03.2012 as assured by the Respondent herein.

3.10. While this is so, the Petitioner was shocked to receive the impugned letter in Letter No.ACE/TANGEDCO/CG/DFC/RCS/AS/AS3/F.BOAB Audit/D.No.711/2012, dated 19-10-2012 arbitrarily confirming the position, based on an objection by the Audit that the Petitioner is not entitled to the concession in the tariff rate. The impugned letter dated 19-10-2012 has been passed in violation of the principles of natural justice and calls upon the Petitioner herein to pay an amount of Rs.71,49,467/- within 15 days from the date of issue of the letter, on the erroneous assumption that there has been an incorrect application of tariff for the period August, 2010 to February, 2012. In the alternative, the Respondent has threatened further course of action as he deems fit.

3.11. The Petitioner submitted that the aforesaid communication dated 19-10-2012 is wholly contrary to law, violative of the principles of natural justice and is liable to be reversed, since no opportunity has been provided to the Petitioner prior to the passing of the orders and this renders the impugned orders wholly erroneous and incorrect.

3.12. The Respondent erred in concluding erroneously in letter dated 12.03.2012 that the benefit of concessional tariff in HT II A is available only to Government institution and organization and service connection of Public Welfare works by Government or Local Bodies. This interpretation of Tariff Order No.3 of 2010 dated 31-07-2010 is wholly incorrect and contrary to law as well as fact.

3.13. Tariff Order No.3 of 2010 extends the benefit of concessional tariff specifically to a Research Organisation and a Laboratory and the Petitioner being a recognized research institution is entitled to the benefit of the same.

3.14. The Respondent erred in rejecting the benefit of concessional tariff to the Petitioner under HT II A on the ground that it is a private organization, in so far as Tariff Order No.3 of 2010 does not contain any embargo to this effect.

3.15. The Respondent erred in not noting that the benefit of concessional tariff in terms of HT II A was granted to the Petitioner as early as from August, 2010, after due application of mind by the Respondent and confirming the position, after a personal inspection by the jurisdictional authority, that the Petitioner is engaged in Research & Development. Having thus satisfied itself, the Respondent erred in passing the impugned orders that are wholly illegal and seek to deny the Petitioner a benefit that has been correctly granted and to which it is entitled.

3.16. The Respondent erred in relying upon an Audit Note by BOAB without even furnishing a copy thereof to the Petitioner herein for its response / rebuttal.

3.17. The impugned orders do not take note of the position that the Petitioner has been granted recognition by the Department of Science and Industrial Research, Ministry of Science and Technology, Government of India and the said approval is valid upto 31-03-2015. The status of the Petitioner as a Research Organization cannot thus be disputed.

4. Hearing held on 27-11-2012:-

In the hearing held on 27-11-2012, the petition has been admitted. The Commission has also ordered that the letter of the Respondent dated 19-10-2012 regarding the recovery of arrears shall be kept in abeyance till the disposal of the case.

5. Contentions of the Respondent:-

The contention of the Respondent in its counter filed on 27-03-2013 is as follows:-

5.1. The above petition is not all maintainable before the Commission in view of the binding decision of the Supreme Court reported in AIR 2008 SC 1042. Besides, the petition is not maintainable, among other things, in view of laches and sustainability of the impugned orders in law.

5.2. The Tamil Nadu Electricity Regulatory Commission by its Tariff Order dated 15-03-2003 has ordered to adopt the concessional tariff of HT Tariff II A to Laboratories and Research Institutions and based on the above tariff order of the Commission, the High Tension Tariff of HT Tariff II-A was adopted for all the category of Laboratories & Research Institutions and R&D Units.

5.3. As per the Commission Order dated 15-03-2003 and also Tariff Order No.03 of 2010, dated 31-07-2010, the category of HT consumers to which the concessional tariff of High Tension Tariff II A is applicable where in the nature of either-

(i) Government or Government aided institution.

(or)

(ii) Service oriented organisations such as hospitals that too hospitals under the control of Government and Government oriented bodies.

(or)
(iii) Non-profit oriented organizations purely engaged in service related activities such as the orphanages (may be maintained by Charitable trusts) and Public libraries.

(or)
(iv) Essential services such as the Public lighting, Water Supply and other such essential commodities to be provided by the Government.

The only category of consumer standing as a separate entity without any relation to any one of the classifications stated above is the category of consumers of Laboratories and Research Institutions.

The Laboratories and Research Institutions may be classified as either

(a) Commercial Medical diagnostic laboratories engaged in the testing of human and animal samples in large scale on payments made by the individuals for that purpose.

(b) Laboratories attached with R& D units or Research Institutions.

(c) The R&D units and Research Institutions attached with that laboratory in turn may either an individual organisation who are making research (analysis) on payments or a R&D Unit which is attached with an industrial organisation involved in production activities. The research in that laboratory will be in support of the industrial or production activity carried out in that industry.

From the grounds stated supra, it may be observed that the Laboratories and Research Institutions are either completely and explicitly involved in commercial activity or they are associated with an organization involved in production related industrial activity. The research activity in that laboratory or research institute supports the industrial activity of the organisation to which they are associated. Hence, non-governmental private Laboratories & Research Institutions are not entitled for availing the concessional tariff of HT Tariff II A. Adoption of HT Tariff II A

for non-governmental private laboratories and research institutions will create a imbalance in the classification of the consumer categories under the tariff head HT Tariff II A. Except this category of consumers of non-governmental private laboratories and research institutions, all the other category of consumers including the category of government laboratories and research institutions are mostly associated with non-commercial, non-production oriented service activity. So it will be truly irrational if the category of consumers of non-governmental private laboratories and research institutions are assigned with the concessional tariff of HT Tariff II A. Though the term Government may be absent as a prefix before the category of consumers of laboratories and research organisations in the issued tariff orders of 15-03-2003 and Tariff Order No.03 of 2010 under the tariff head HT Tariff II A, the term should be imbibed for proper balance of the classification of the consumer categories under that tariff head.

5.4. The High Tension Service Connection No.365, standing in the name of M/s.International Institute of Bio-Technology and Toxicology, Padappai (formerly called as “Fredrick Institute of Plant Protection and Toxicology) was effected on 18-07-2001. Being a non-industrial organization as per the information provided by the consumer in the utility column of the service connection application form, the service connection was assigned with commercial tariff (HT Tariff –III) and the current consumption bills were rendered under HT commercial tariff rates from the date of effecting of the service connection.

5.5. Meanwhile by a representation dated 20-07-2008, the consumer requested for tariff change of the service connection from HT Tariff III to HT Tariff II A stating that

they are a registered non-profit society engaged in research activities as a research institution with the power is being fully utilized for research purposes. In support of this they have produced copies of the documents of registration as a society issued by the Registrar of Societies and also recognition certificate from the Department of Scientific and Industrial Research, the Ministry of Science and Technology, Government of India. In considering their representation, the Executive Engineer/O&M/Maraimalai Nagar was requested to inspect the premises of the service connection to ascertain the utilization activity of the electricity power. The Executive Engineer /O&M/Maraimalai Nagar has reported the utilization activity as research and development. Hence, based on the report along with the supporting documents produced by the consumer, the tariff of the service connection was changed from commercial tariff (HT Tariff-III) to concessional tariff (HT Tariff – II A) from 01-04-2006 onwards.

5.6. But later analyzing the Tariff Order dated 15-03-2003 and also Tariff Order No.03 of 2010 dated 31-07-2010 with reasoning based on the grounds stated supra, it was observed that the adoption of HT Tariff II A for the HT Service Connection No. 365, M/s.International Institute of Bio-Technology and Toxicology was incorrect. Hence, the concessional tariff of HT Tariff II A was withdrawn from March 2012 onwards and the consumption was being billed undue HT Tariff III (Commercial) till now. The tariff change was implemented only after due intimation to the consumer vide Lr.No.SE/TANGEDCO/CGL/DFC/RCS/AS/F.HT SC No.365/D.No.246/12, dated 12-03-2012.

5.7. The BOAB Audit Party while on review of the HT current consumption bills for the year 2011-2012 has also raised an audit objection (Audit Slip No.84/dated 03-09-2012) in respect of the HT Service Connection No.365, regarding the application of concessional tariff of HT Tariff II A to that service connection. They have stated that since the service connection has been utilized to carry out research under laboratory and field conditional purposes and there is no manufacturing activity, it should be billed under HT Tariff III (Commercial) as per the Commission's Order No.3 of 2010.

5.8. Based on the above said ground, the audit party has revised the current consumption bills rendered under HT Tariff II A from 08/2010 CC to 02/2012 CC with adoption of Commercial Tariff (HT Tariff III) until the rendered bill of 02/2012 CC, and they raised a short levy of current consumption charges for an amount of Rs.71,49,467/-. The consumer was intimated about the audit slip for payment of the short fall amount vide Lr.No.ACE/TANGEDCO/CGL/DFC/ RCS/AS/AS3/F.BOAB Audit/D.No.711/2012, dated 19-10-2012 along with a copy of the Audit Slip containing the workings regarding the arrears. The consumer (Petitioner) has not paid the arrears amount pointed out by the audit party for the change of tariff for the previous period even though the current consumption bills under HT Tariff III (Commercial) until now were being paid by the Petitioner. As per the Interim Order dated 27-11-2012 in this D.R.P.No.22 of 2012 the recovery of arrears was being kept in abeyance.

5.9. In the Commission's Order No.01 of 2012, dated 30-03-2012 (para 10.4), it was very clearly stated that the High Tension Tariff II A is applicable for the

mentioned category of consumers (Educational Institutions, Hospitals, Orphanages, Research Laboratories and Institutions etc.) who are under the control of Central / State Governments, Local Bodies/ TWAD Board / CMWSSB. The relevant portion of the order is reproduced below:-

“10.4 High Tension Tariff II-A”

<i>Tariff Category</i>	<i>Tariff</i>	
	<i>Demand charge in Rs./KVA/Month</i>	<i>Energy charge in paise per KWh (Unit)</i>
<i>High Tension Tariff II A</i>	<i>300</i>	<i>450</i>

10.4.1. This tariff is applicable for the following services under the control of Central / State Governments / Local Bodies / TWAD Board / CMWSSB.

- 1. Educational Institutions including Government aided Educational Institutions and Hostels run by such Educational Institutions Hospitals, Veterinary Hospitals, Leprosy sub-centres, Primary Health Centres and Health sub-centres, Orphanages, Public Libraries, Public Water works and sewerage works, Public Lighting, Residential colonies and Housing complexes, senior citizens communities, Electric Crematorium Research Laboratories and Institutions, Ministry of Defence and Avadi CRPF establishment, Dairy Units, Hospitals and Rehabilitation centres run by Charitable trusts which offers totally free treatment for all categories of patients on par with Government hospitals, Desalination plants and Art Galleries.*
- 2. Desalination plant at Kudankulam Nuclear Power Plant and Minjur Desalination plant of Chennai Water Desalination Ltd.*
- 3. Single point supply to co-operative group housing society as specified in “The Electricity Eighth Order 2005”.*
- 4. Actual places of Public worship.”*

From the above said order, it is very clear that the Petitioner is not entitled to be extended with the benefit of the concessional tariff of HT Tariff II A. Possessing of a certificate of recognition issued by the Department of Scientific and Industrial Research, Government of India with validity for any period and availing exemption from various State and Central authorities including Customs, Central Excise and Income Tax Department also not makes the Petitioner entitled to be extended with

the benefit of the concessional tariff of HT Tariff II A inasmuch as the Petitioner is not entitled to the same as stated supra.

5.10. In this connection, it has also been stated that the APERC, in its Tariff Order on Retail Supply Business for FY 2007-08 (Page 89 & 90) has also ordered that the classification of electricity consumers should be based on the purpose of use of the electricity and the classification of electricity consumers should not be related to the classification made by the other departments of State Government / Central Government for some other purposes and the classification made by the other department is not a guiding principle for fixation of tariff for electricity consumers.

5.11. In view of the position stated above, particularly the disentitlement to claim Tariff II A, the impugned orders are maintainable in law. Further, the tariff of the Petitioner was, admittedly, changed as early as during March 2012 itself with due intimation to the Petitioner vide Respondent's letter dated 12-03-2012. The Petitioner has also accepted the same and has been playing the charges under Tariff III (Commercial). Had the Petitioner is really aggrieved, it should have raised a dispute before the appropriate Forum at the earliest point of time, but it has failed to do so, thereby the petition is hit by latches. The other impugned order, dated 19-10-2012 is a consequential order revising the past period. Therefore, having accepted the earlier order, dated 12-03-2012 and paid the charges accordingly, the Petitioner cannot agitate the said consequential order dated 19-10-2012 on various untenable grounds. Further, the Petitioner cannot agitate the impugned order on some technical grounds to avoid the payment without there being any merit to claim Tariff II A inasmuch as such technical grounds are not straight jacket formula and

such of those averments / grounds are untenable in view of disentitlement to the Tariff II A.

5.12. It has been further stated that the Commission would be aware that the above petition is not maintainable before the Commission in view of the decision of the Hon'ble Supreme Court in Maharashtra State Electricity Distribution Co. Ltd. – Vs. Lloyds Steel Industries Limited in Civil Appeal No.3551 of 2006 dated 14-08-2007 reported in AIR 2008 SC 1042 wherein it was categorically held that by virtue of sub-section (5) of section 42 of the Electricity Act, 2003, all the individual grievances of consumers have to be raised before the Grievance Redressal Forum and Ombudsman only; that wherever a Forum / Ombudsman have been created the consumers can only resort to these bodies for Redressal of their grievances; that State Commission, under section 86 (1) (f), does not encompass within its domain complaints of individual consumers; that the said provision only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration; that it does not include an individual consumer; and that the proper forum for that is section 42(5) and thereafter section 42 (6). This decision of the Hon'ble Supreme Court will squarely applicable to the case on hand. In view of the position stated above, the main petition itself is not maintainable. As such, the interim relief as also the main petitions are liable to be dismissed.

6. Reply filed by the Respondent:-

In its reply dated 27-02-2014 to the counter, the petitioner has contended as follows:-

6.1. The Petition is not maintainable before the Commission in view of the judgment of the Supreme Court reported in AIR 2008 SC 1042 is erroneous and objected to. Further, there have been no latches in the present case and the present appeal is wholly maintainable.

6.2 The contentions of the respondent proceeds on the basis that the word "Government" is to be read as a prefix before the relevant entry dealing with "Laboratories and Research Organisations". Thus, the Respondent seeks to introduce a word into the entry which is wholly impermissible in law. In order to interpret an entry the same has to be read as it stands and as introduced by the Government. It is impermissible in law to introduce terms or words in the entry that would change the colour of the entry totally so as to bring about a meaning wholly different from the original entry and that does not form part of the original intended entry at all. Further, the allegation of the Respondent that the Petitioner is associated with non-production oriented activity is a mere assumption, erroneous in full and is not borne out by any fact or evidence produced by it and is categorically denied. Tariff Order No.3 of 2010 (Para 9.1.1.4) extends the benefit of concessional tariff specifically to a Research Organization and a Laboratory and the Petitioner herein being a recognized research institution is entitled to the benefit of the same. The Petitioner further submits that the activities of the Petitioner institution are recognized by the Government by way of registration by the Registrar of Society as well as the Department of Scientific and Research (Ministry of Science and Technology) that is an entity is not for profit or not associated with an organization involved in production related industrial activity. Thus, the research activities of the Petitioner herein are not connected or support the industrial activities and the same

has been thoroughly examined by the Government prior to granting of certification. In so far as all requirements have been complied with by the Petitioner as per the Government Order No.3 of 2010, the concessional rate of tariff for laboratories and research institutions has been rightly claimed by it and is liable to be granted.

6.3. The Respondent admits that the impugned action is based on an objection raised by the Audit Party. This is an erroneous basis and wholly contrary to law in so far as no reasoning has been adduced to justify the objection. In any event, a mere objection by Audit Party cannot form the basis for a review of tariff, particularly since it is not justified on facts. The authorities note the position that the activities of the Petitioner are wholly geared to R & D and no manufacturing is carried out. In the light of this admitted position, the impugned action is liable to fail in full. The Petitioner confirms that dues in respect of the current period are being remitted “under protest” on concessional basis.

6.4. The Petitioner states and submits that the interpretation made by the Respondent with respect to Tariff Order No.1 of 2012 dated 30-03-2012 is wholly incorrect and contrary to law, apart from being wholly irrelevant to the position in the present appeal wherein the Tariff Order No.3 of 2010 is under interpretation.

6.5. The Petitioner states and submits that it was given to understand by the Respondent that upon remittance of electricity charges in commercial rate for a few months, the letter dated 12-03-2012 would be revoked and excess charges collected adjusted against future bills. Therefore, it is unfair on the part of the Respondent to state that the tariff itself was accepted by the Petitioner herein. The same has never

been accepted and further the Petitioner has approached the Hon'ble Tribunal at the earliest instance. There is thus no latch and the allegation is stoutly refuted.

6.6. The Petitioner confirms that the petition is maintained before the Commission. The judgment relied on by the Respondent is wholly distinguishable and not relevant to the instant case. The Petition is maintainable in view of the provisions of the Act and connected Regulations.

6.7. Further, the specific ground before the Commission to the effect that no opportunity has been afforded to the Petitioner prior to passing of the impugned orders has been accepted by the Respondent in so far as the same has not been countered.

7. Written Submission filed by the Petitioner:-

In the Written Submission dated 13-08-2014, the Petitioner has contended as follows:-

7.1. Tariff Order No.3 of 2010 extends the benefit of concessional tariff specifically to a "Research Organisation" and a "Laboratory" and the Petitioner herein being a recognized research institution is entitled to the benefit of the same.

Documents produced in support thereof:-

- (a) Memorandum of Association & Bye-Laws of the Petitioner Society.
- (b) Renewal Certificate of Recognition issued to the Petitioner Society by Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India, valid upto 31-03-2015.

7.2. In so far as all requirements have been complied with by the Petitioner as per Government Order No.3 of 2010, the concessional rate of tariff for laboratories and research institutions has been rightly claimed and is liable to be granted. The impugned order is based on an audit objection raised by the Audit Party. A preliminary objection was raised to the effect that the Audit objection cannot form the basis for review of tariff that was fixed by the Authorities after confirming the position that the Petitioner is wholly engaged in Research and Development activities. The Board of Audit Branch (BOAB) has the power to review only computation and arithmetical errors and not issues concerning interpretation of tariff. The power to fix tariff is vested only in the Commission vide Tariff Orders and the interpretation of the same can be done only by the Commission upon request. In this connection, the Petitioner relies upon Notification No.TNERC/SC/7/1, dated 21-07-2004 in Tamil Nadu Electricity Supply Code (hereinafter referred to as "Supply Code") dated September 1, 2004 and the judgment of the Hon'ble High Court, Madras in the case of T.M.R. Rajeswaran Vs.Junior Engineer, Tamil Nadu Electricity Board, Aruppukkottai and Others [(2008) 6 MLJ 1145].

7.3. The judgment of the Hon'ble Division Bench of the High Court is to the effect that prior to the coming into force of the Electricity Act in 2003 power to review classification of tariff vested in the Respondents. The judgment specifically refers to Cl.25.3 of the Terms and Conditions of the Supply Code (in force prior to 2003) that granted power to the Respondents in this regard. However, subsequent to 2003, when the Electricity Act came into force and the Electricity Regulatory Commissions were formulated, such power is granted only to the Commissions. This is also apparent on a comparison of the Supply Code pre 2003 and post 2003 wherein the

latter does not grant power to review to the Respondents. Thus, and at the threshold, it is submitted that the assumption of such power to review the classification Tariff of the Petitioner is wholly contrary to law and an abuse of power.

7.4. The Departmental Representative relied upon the order of this Commission in the case of “Orchid Chemicals & Pharmaceutical Ltd. Vs. The Chief Engineer” (TNERC Chennai). The decision is distinguishable for the reason that it relates to the interpretation of Tariff Order No.1/2012 wherein the relevant entry for interpretation is wholly different from the one in question in the present appeal. The question raised therein was whether the institution was a “Private entity” or “Government aided”. In the present case, relevant entry bring within its ambit institutions such as the Petitioner’s that is wholly engaged in “Research and Development” in Laboratory and field conditions. Thus, the Petitioner is entitled to concessional rate of tariff on an apparent reading of the relevant tariff entry as confirmed by the authorities after thorough personal inspection report dated 05-08-2008.

8. Written Submissions filed by the Respondent:-

In their Written Submission dated 16-09-2014, the Respondent has reiterated their contention made in their counter in addition to the following points, namely:-

In the order dated 04-06-2013 of the Commission in M.P.No.27 of 2012 (the case of M/s.Orchid Chemicals & Pharmaceuticals Ltd., Vs.TANGEDCO) it was very clearly stated that the recognition by the Central Government will not amount to ownership or control by the said Government. The relevant portion of that order is reproduced below:-

“..... A recognition by the Central Government will not amount to ownership or control by the said Government. Recognition so granted may be coupled with conditions which are relatable only to the recognition granted. In

fact, the same recognition when it deals with taxes etc. leaves those issues to be decided in accordance with the relevant laws in these fields....”.

Para (10) of the order dated 04-06-2013 in M.P.No.27 of 2012.

9. Findings of the Commission:-

9.1. The petitioner is a Research Institution recognized by the Ministry of Science and Technology, Government of India. Initially, power supply was given on 18.07.2001 under HT-III meant for commercial and other purposes. Subsequently on 20.7.2008, the petitioner has represented to SE/Chengalpet EDC that their institution is a Research Institution recognized by the Government of India and therefore the tariff shall be classified under the concessional tariff namely HT-IIA. After due verification and the recommendation by the Executive Engineer, Maraimalai Nagar, Chengalpet EDC, the tariff was revised from HT-III to concessional tariff HT-IIA with effect from 01.04.2006 onwards.

9.2. Subsequently, in March 2012, the SE/Chengalpet EDC, in the impugned letter dt. 12.03.2012 has informed the petitioner that as per the tariff order No. 3 of 2010 dt. 31.07.2010 issued by this Commission, the petitioner was not eligible for the concessional tariff namely HT-IIA and therefore revised the tariff from HT-IIA to HT III from March 2012. Again, the SE/Chengalpet EDC in the impugned letter dt. 19.10.2012 has informed the petitioner that as per their Internal Audit Department (IAD) report, the tariff was revised retrospectively from August 2010 to February 2012 from HT-IIA to HT III and directed the petitioner to pay a sum of Rs.71,49,467/- towards arrears of short levy.

9.3. The petitioner has filed this DRP against the above revision of tariff and also filed IA for stay of the impugned orders. During the hearing of the above petition on 27.11.2012, the petitioner has contended that they continued to be eligible for the concessional tariff HT-IIA even though it is not a Government Institution because the word "Government" is not attached to research institution falling under HT-IIA and therefore the revision of tariff from HT-IIA to HT III and the consequent direction to make payment of the arrears of Rs.71,49,467/- is not warranted and requested this Commission to stay the impugned orders from collecting arrears of short levy of Rs.71,49,467/- till the final disposal of the case. After hearing the parties, the Commission has directed in its interim order dated. 27.11.2012 that the letter of the respondent, TANGEDCO dated 19.10.2012 regarding recovery of arrears shall be kept in abeyance till the disposal of the case.

9.4. During the course of subsequent hearings the petitioner has contended that their institution is a Research Institution recognized by Government of India and therefore it is eligible for concessional tariff HT-IIA and that is why the TANGEDCO has revised the tariff from HT III to the concessional tariff namely HT-IIA with effect from 01.04.2006, after due verification and recommendation by the territorial engineer of the respondent for the same. The petitioner further contended that this position continued without any hindrance even under the provisions of the Tariff Order 3 of 2010 dt. 31.7.2010. The petitioner has vigorously contended that the word "Government" is not attached to the research institutions to be eligible for HT-IIA.

9.5. *Per contra*, the respondent TANGEDCO has contended that even though the term "Government" may be absent as a prefix before the category of consumers of

laboratories and research organization in Tariff Order 3 of 2010 dated 31.10.2010 under the tariff head HT-IIA, the term should be imbibed for proper balance of the classification of the consumers categories under the tariff head. TANGEDCO has further contended that this Commission does not have jurisdiction on consumer matters as it squarely falls under the scope of Consumer Grievance Redressal Forum and Electricity Ombudsman. TANGEDCO has cited the judgment of Hon'ble Supreme Court in Maharashtra State EDC Co. Ltd. vs. Lloyds Steels Industries in AIR 2008 Supreme Court 1042 for the same. TANGEDCO has further contended that the petition is not maintainable because it is hit by laches. The respondent TANGEDCO has elaborately cited the provisions of Tariff Order No. 1 of 2012 dt. 30.03.2012 and the decision of this Commission in its Order dt. 04.06.2013 in MP 27 of 2012 pertaining to Orchid chemical and pharmaceuticals Ltd. vs. TANGEDCO wherein it is clearly stated that the Government research institutions only are eligible for the concessional tariff HT-IIA.

9.6. After going through the contentious claims of both the parties, the Commission makes it clear that this is an issue falling under determination of proper applicability of tariff categorization and therefore it is well within the jurisdiction of this Commission. It is also not hit by delay and laches as the petition was filed in October 2012 itself against the impugned order issued in March 2012.

9.7. Both the petitioner and the respondent have cited the provisions of the same tariff order No.3 of 2010 dt. 31.07.2010 to establish their stand and hence the above provisions contained under HT tariff-IIA are extracted below for detailed analysis;

“The tariff is applicable to Government and aided educational institutions, Hostels run by such educational institutions, Government Hospitals, Hospitals under

the control of Panchayat Unions, Municipalities or Corporations, Veterinary Hospitals, Leprosy Sub-centres, Primary Health Centres. Health Sub-centres, Orphanages, Public Libraries, Water works, Public Lighting, Public Sewerage Works by Government/local Bodies, public Water Supply by New Tirupur Area Development Corporation, Electric crematorium by local bodies, Laboratories, Research institutions, Ministry of defence and Avadi CRPF establishment, Desalination plant at Kudankulam Nuclear Power Plant.

9.8. On a plain reading of the above provision, it is clear that the starting word “Government” is not attached to the laboratories, research institutions and therefore the Research Institution of the petitioner is eligible for concessional tariff HT-IIA under the provisions of Tariff Order 3 of 2010 dt. 31.07.2010.

9.9. The elaborate contentions of TANGEDCO citing Tariff Order 1 of 2012 dt. 30.03.2012 and the decision of this Commission in its Order dt. 04.06.2013 in MP 27 of 2012 pertaining to Orchid chemical and pharmaceuticals Ltd. vs. TANGEDCO cannot be applied to cases like the one in hand as the present case is covered by an earlier tariff order of 2010 for which the provisions of that tariff order will alone apply during the respective period of operation of that order. The relevant provision in the T.O.No.1 of 2012 dated 30-03-2012 is as follows:-

“10.4.1 This tariff is applicable for the following services under the control of Central/State Governments /local bodies/TWAD Board/CMWSSB:-

Educational institutions including government aided educational institutions and Hostels run by such educational institutions, Hospitals, Veterinary Hospitals, Leprosy Sub-Centres, Primary Health Centres and Health Sub-Centres, Orphanages, Public Libraries, Public Water works and sewerage works, Public Lighting, Residential colonies and Housing complexes, Senior citizens communities, Electric crematorium, Research Laboratories and institutions, Ministry of Defence and Avadi CRPF establishment, Dairy units , Hospitals and Rehabilitation centres run by charitable trusts which offers totally free treatment for all categories of patients on par with government hospitals, Desalination plants and Art Galleries.”

x x x x

9.10. From the above, it is clear that the T.O.No.1 of 2012, the provision is that HT– II-A is applicable to the Research Laboratories and institutions which are under the control of Central / State Governments / Local Bodies / TWAD Board / CMWSSB only. No such specific provision which states that HT II-A Tariff is applicable to only Government owned or controlled Research Institutions is available in the T.O.No.3 of 2010 dated 31-07-2010. However, the provisions of the Tariff Order 1 of 2012 dated 30.03.2012 will apply prospectively for tariff classification as per applicability clause of the said Tariff Order i.e. from 01.04.2012 and hence TANGEDCO can revisit the tariff classification of the petitioner with effect from 01.04.2012 but not for the prior period covered under Tariff Order 2010 and hence both the impugned orders of the TANGEDCO dated 12.03.2012 and 19.10.2012 are hereby set aside. The interim order of this Commission dated 27.11.2012 is merged with this order.

With the above orders, this petition is finally disposed of.

10. Appeal

An appeal against this Order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act 2003, within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd.....)
(G.Rajagopal)
Member

(Sd.....)
(S.Akshayakumar)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission