

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi**

Appeal No. 50 of 2007 & IA No. 90/07

And

Appeal No. 80 of 2007

Dated this 16th day of August, 2007

**Coram : Hon'ble Mr. H. L. Bajaj, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member**

IN THE MATTER OF:

A.No. 50/07 & IA NO. 90/07:

M/s. Kailas Cashew Exports

Peethukonam, Cheerankavu,
Ezhukone, Kollam – 691 505.
Kerala State.

... Appellant

Versus

- 1. The Kerala State Electricity Board**
Vydyuthi Bhavan,
Thiruvananthapuram,
Kerala State.
- 2. The Kerala State Electricity Regulatory Commission**
K.P.F.C. Bhavanam,
C. V. Raman Pillai Road,
Vellayambalam,
Thiruvananthapuram – 695 010
Kerala State

3. The Assistant Engineer, (KSEB)

Electrical Section, Ezhukone,
Kollam – 691 505,
Kerala State.

... Respondents

Appeal No. 80/07:

1. Cashew Manufacturers & Exporter's Association

Nethaji Nagar – 7, Pankaja Sadanam,
Kollam 691 002
Kerala State

2. Jayaprakash, Proprietor M/s. Prakash Cashew Co.

Paruthanpara,
Karuvilil P.O.,
Ezhukone, Kollam 691 505

... Appellants

Versus

1. Kerala State Electricity Board

Vydyuthi Bhavan,
Thiruvananthapuram,
Kerala State.

2. The Kerala State Electricity Regulatory Commission

K.P.F.C. Bhavanam,
C. V. Raman Pillai Road,
Vellayambalam,
Thiruvananthapuram – 695 010,
Kerala State.

3. The Assistant Engineer, (KSEB)

Electrical Section, Ezhukone,
Kollam - 691 505
Kerala State.

... Respondents

For the Appellant : Mr. Johnson Gomez, Advocate
Mr. Anand K. Ganeshan, Advocate

For Respondents : Mr. M. T. George, Advocate
Ms. Bina Madhavan, Advocate
Mr. Biju K. Naik, Advocate
Mr. Hemal K. Sheth, Advocate

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

These two appeals are both directed against the order of the Kerala State Electricity Regulatory Commission (herein referred to as the Commission) dated August 11, 2006, whereby the Commission ruled that the packing units of cashew kernels should pay electricity charges applicable to LT VII(A) tariff category as per bills raised on these units by the respondent No.1 namely, Kerala State Electricity Board, in line with tariff orders in force from time to time, from 01.04.2003 onwards, the effective date of commission's order on ARR and ERC of the Board for the FY 2003-04. By the impugned order the Commission also ruled that the respondent No.1 was entitled to collect the charges as per tariff revisions and orders applicable before 01.04.2003 also. The appellant in Appeal No.50 of 2007 is the Proprietor of M/s. Kailas Cashew Exports and is (manufacturer) Exporter of cashew kernels. The first appellant in appeal No. 80 of 2007 is a registered

association of manufacturers and exporters of cashew kernels. The 2nd appellant in this appeal is a Proprietor of M/s. Prakash Cashew Company which is a processing unit (factory located at Pavithreshwaram Kottarakkara and Nooranad in Alappuzha District) and also the cashew kernels packing unit at Paruthanpara, Karuvelil P.O., Ezhukone. The appellant in appeal No. 50 of 2007 and the 2nd appellant in appeal No. 80 of 2007 are both engaged in similar activities. The appeal is concerned with the processing and packaging units of these two appeals as well as others who are members of the first appellant in appeal No. 80 of 2007. The appellant in appeal No. 50 of 2007 draws electricity vide consumer No. 8979 and consumer No. 11161 at its establishment which is a packing unit at Cheerancavu, Ezhukone in Kollam. The 2nd appellant in appeal No. 80 of 2007 is drawing power as consumer No. 111417.

2. Both the appeals are taken up together as they involve the same question of law and fact. The arguments were addressed with reference to appeal No. 50 of 1007 and in this judgment we refer to the facts and pleadings of judgment in appeal No. 50 of 2007.

3. The Kerala State Electricity Board, the respondent No.1, issued a Notification dated 07.08.2001 applicable w.e.f. 10.08.2001, thereby classifying low tension consumers under various categories. The appellant was billed according to LT IV category of tariff. LT IV

category related to industrial tariff and was described as “general purpose industrial loads (single or 3 phase)”. This category is then illustrated by putting a number of industrial units which can be billed under LT IV category. The category LT IV is extracted below:

“General purpose industrial loads (single or 3 phase) viz. Grinding mills, Flour Mills, Oil mills, Rice mills, Saw Mills, Ice Factories with or without cold storage, rubber smoke house, prawn peeling units, floriculture activities tyre vulcanizing / rethreading units, workshops using power mainly for production and / or repair, pumping water for Non Agricultural purpose, Public Water Works, Sewage Pumping, Power laundries, Hatcheries, Screen Printing of glassware or ceramic, Printing laundries, Hatcheries, Screen Printing of glassware or ceramic, Printing Press, ilk Chilling Plant, Freezing Plant, cold Storage, Bakeries (where manufacturing process and sale are carried out in the same premises), Stone Crushing Units, diamond Cutting, Book binding and allied activities, Garment making, electric Crematorium, Pyrolators installed by local bodies, Mushroom farms, Shrimp farms, SSI units engaged in computerized colour photo printing, computer consultancy services with SSI registration engaged in Software services and data processing activities and Desk Top Printing, Audio/Video cassette recording/Duplication, CD recording/Duplication, Software development for recording/duplication purpose, manufacture of

audio/video cassette, Software Technology/information Technology, Diary farms Agricultural Nurseries (without sale) and marble cutting”.

4. The LT VII(A) was a category of commercial tariff. This category was illustrated again by mentioning various establishments which could be billed in that category. They were as under:

“Display lights, Cinema Studios, Commercial premises, Hotels and restaurants (having connected load exceeding 2000W), showrooms, Business House, Private Hotels/Lodges./Guest/Rest Houses, commercial cold storages, bakeries (without manufacturing process), vehicle repair stations, petrol/diesel bunks, construction works (residential, industrial, non domestic or commercial), installations of cellular mobile communications, installations of cable TV network, Satellite Communication offices/telephone exchanges under BSNL and Agricultural Nurseries doing sales in the premises in addition to water pumping for nurseries.”

5. The respondent No.1, however, started charging the appellant at the rate applicable for LT VII(A) (which were substantially higher than that for LT IV). Some time in 2003, the Respondent No.1 took shelter under the new Circular dated 19.04.2003 for charging the

appellant in the category of LT VII(A). This led to filing of a Writ Petition, being No. 17970 of 2003 of the High Court of Kerala. The Single Judge Bench dismissed the writ petition but the Division Bench allowed the same and set aside the Circular dated 09.04.2003 and directed the respondent No.2, namely the Commission, to pass appropriate orders in accordance with law. The 1st respondent filed a petition before the Commission for approval of the categorization of the packing units of Cashew kernels under LT VII(A) category. The Commission vide the impugned order dated August 11, 2006 directed that the cashew packing units shall pay electricity charges applicable to LT VII(A) category, as per bills raised by these units on the respondent No.1, from 01.04.2003 onwards.

6. The appellant contends that the centralized packing unit of the appellant is a manufacturing and processing unit and not a simple commercial establishment of the type falling under category LT VII(A) and therefore it should have been billed in the LT IV category. It is further contended that no commercial activity is going on in the appellant's packing unit. It is explained that kernels undergo grading and hygienic packing.

7. In the counter affidavit filed by respondent No.1, the appeal is opposed on the ground that the appellant has not challenged the tariff orders notified on 07.08.2001 and 24.10.2002 and therefore

the present appeal is not maintainable. The respondent No.1 denies that any manufacturing or processing activity is going on in the cashew packaging unit of the appellant. According to them cashew and kernels gets packed in the packing unit for the purpose of export or sale in the local market and this process cannot be treated as a manufacturing process.

8. The Commission has also filed a brief counter affidavit to explain its stand. We have heard the counsel for the appellant, for the respondent No.1 as well as for the Commission. Before proceeding further it would be appropriate to study the inspection report prepared after a joint inspection conducted by the Commission and the respondent No.1 in the presence of the appellant. Since the report is quite revealing about the nature of activity being done at the centralized packing unit of the appellant, it would be worthwhile to extract the true English translation of the entire report:

“Report on Joint Inspection held on 7th July 2006 at 2 PM by the Kerala State Electricity Regulatory commission and the Kerala State Electricity Board in the presence of Sri P Somarajan, Proprietor, ‘Kailas Cashew Exports’, Kaithakodu, Edavattom, pavithreswaram Village, Kollam District, regarding the electrical equipments in the establishment.

The said establishment functions as a cashew-packing unit only. It is having 2 LT connections with consumer numbers 8979 and 11161.

Power is also consumed for an office room through an electric connection with consumer number E 394.

In Consumer Number 8973 and 11161 there are separate meters for light and power

(A) Details of the connected load of Consumer Number 8979

(1)	Sieving Machine	2 HP	1 nos.
(2)	Vacuum Pump	1.5 HP	1 Nos.
(3)	Compressor	2 HP	1 nos.
(4)	Sealing Machine	0.25 HP	2 nos.
(5)	Compressor	2 X 1HP	1 nos.
(6)	Tine Packing Machine	5 HP	1 nos.
(7)	Freezer (Small Size)	100 watts	1 nos.
(8)	Computers	300 watts	5 nos.
(9)	A/C Window	1 ton	2 nos.
(10)	A/C split	1.5 ton	1 nos.
(11)	Light (tube)		24 nos.
(12)	Fan		16 nos.

(B) Details of the connected load of Consumer Number 11161

(1)	Sieving Machine	1 HP	1 nos.
(2)	Metal Detector	0.75 HP	1 nos.
(3)	Compressor	5 HP	1 nos.
(4)	Sealing Machine	0.25 HP	2 nos.
(5)	Sealing Machine	3.0 HP	1 nos.
(6)	Sealing Machine	1.5 HP	1 nos.
(7)	Vacuum Pump	1.5 HP	1 nos.
(8)	Conveyor Motor (unserviceable)		2 nos.

(9)	Water Pump	1.5 HP	1 nos.
(10)	Water Pump	1 HP	1 nos.

(C) Quality Control:

(1)	Roasting Machine	3 HP	1 nos.
(2)	Oil Suction	2 HP	1 nos.
(3)	Lamination	0.1 HP	1 nos.
(4)	Gas filing	2 HP	1 nos.
(5)	Borma Drive Motor	2 HP	2 nos.
(6)	Fuel Pump	0.75 HP	1 nos.
(7)	Borma Heating Element	3 to 5 KW	approx.
(8)	Lights		24 nos.
(9)	Fans		12 nos.
(10)	HD Exhaust Fan	470 watts	2 nos.

(C) Consumer Number 394:-

It cannot be clearly identified as to which load the connection from this meter is made.

Sd/-	Sd/-	Sd/-	Sd/-	Sd/-
KSERC	P.Somarajan	DCE/TRAE	EE/Kundara	Johnson Jacob

07/07/06
CE (C&T) KSEB”

9. It is clear from the report that there are more than a dozen machines performing several functions for various purposes including quality control. Some machines may be exclusively run for simple sealing of containers / packets. But there are several

other machines performing functions like sealing, roasting, oil suction, lamination, gas filling etc. These functions are some thing more than a simple function of packaging as we normally understand. It has been explained before us by the learned counsel of the appellant that in order to control the quality of the product – cashew kernels – and to standardize the product, the appellant has to dry the cashews at a particular level so that every grain of cashew contains the same level of moisture. Roasting is also a process that cashew kernels have to undergo. There are several stages of sieving as to remove foreign particles. Garnishing is done by adding spices. Extraction of oil is also necessary to maintain the required level of oil content in the cashews.

10. The learned counsel for the respondent No.2 does not dispute that the cashew packing and processing unit of the appellant runs with the help of the aforesaid machines. Nor is it disputed that the process of roasting, sieving, lamination, gas filling etc. are being carried out by the appellant No.1. Accordingly, it is clear that the nature of activity in the unit of the appellant is quite distinct from the nature of activities carried out by those consumers who fall under category of LT VII(A). To recall the category LT VII(A) includes only commercial activity and consume electricity only for the purpose of running their office or showroom, eg. Hotels & restaurants, showrooms, business house, hostel, bakeries (without manufacturing process) etc. who have very little or no

manufacturing or processing activity. The respondent No.1 has made no effort to show that any of the units falling under the category of LT VII(A) are performing activities similar to that of the appellant. The appellant's activity is in fact manufacturing, processing activity and similar to those falling in LT IV category.

11. The learned counsel for respondent No.1 has referred to a judgment in the case of *Sham Oil Vs. Collector of Excise, Jaipur (2005) 1 SCC 264* to explain what is manufacturing activity. We do not find this judgment applicable to our facts. That judgment was rendered in the context of Central Excise Act 1944 and the question was whether the appellant therein was conducting any manufacturing activity which made it liable for payment of excise duty. The question before this Tribunal is at what rate the appellant should pay for the electricity consumed by it. Nonetheless, it is pointed out by the appellant that the appellant has been treated as a manufacturing unit for the purpose of Excise Act and is being charged excise duty for its activity.

12. We find from the impugned order that the Commission has extensively referred to United Nations International Industrial Classification in which what constitutes manufacturing has been explained. According to this literature manufacturing comprises of units engaged in physical or chemical transformation of material substances or components into new products. The Commission

has not explained how this literature is applicable to the fixation of rates for electricity consumption in the appellant's unit. However, even if this definition of manufacturing is accepted the activity of the appellant can be said to be akin to that of manufacturing. The appellant describes the process as processing. The fact remains that the appellant receives the cashew kernels from some outside sources in a very raw form and in the processing unit they are roasted, standardized and made marketable and exportable. The process has already been described above.

13. The appellant's were initially being charged at the rate of LT IV. Only in 2003, the respondent No.1 started charging the appellant at a different rate. It is true that the appellant did not challenge the tariff order. However, that does not bring any infirmity in the present appeal. The appeal does not challenge the tariff order in any way. All it challenges is the placement of the appellant in LT VII(A) category. For this challenge, it is not necessary to challenge the tariff order and accordingly the objection to the maintainability of the appeal is totally ill founded.

14. In view of the above findings, we are constrained to allow both the appeals and set aside the impugned order. We hold that the processing and packing units of cashew kernels with activities, as described in Para 9 above, shall be placed in category LT IV for the purpose of electricity charge as was being done by the respondent

No.1 before coming into force of the tariff order dated 01.04.2003. As per this judgment the respondent No.1 may issue revised bills to the appellants. Keeping in view the possible adverse impact on the cash flow and ARR of the respondent No.1, we further direct that excess sum received, if any, from the cashew kernel packing units be adjusted against future bills in twelve equal monthly installments.

Pronounced in open court on this 16th day of August, 2007.

(Mrs. Justice Manju Goel)
Judicial Member

(Mr. H. L. Bajaj)
Technical Member

The End