IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 149 of 2018

Dated : 24th March, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Hindustan Petroleum Corporation Limited
Through its Manger
171-172, SIDCO Industrial Estate,
Kappalur Post, Madurai - 625008 … Appellant

Versus

1. **Tamil Nadu Electricity Regulatory Commission**
Through its Secretary
No. 19-A, Rukmini Lakshmipathy Salai,
Marshalls Road, Egmore,
Chennai, Tamil Nadu – 600 008

2. **Tamil Nadu Generation and Distribution Corporation Ltd.**
Through its Managing Director
No. 144, Anna Salai,
Chennai – 600 002 … Respondent

Counsel for the Appellant(s)	:	Harsha V. Rao Anand K. Ganesan Swapna Seshadri Rhea Luthra for App.1
Counsel for the Respondent(s)	:	Sethu Ramalingam for Res. 1 Anusha Nagarajan for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In this appeal the tariff order dated 11th August, 2017 passed by the 1st Respondent, Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as "Commission") in Tariff Petition No. 1 of 2017, has been assailed to the limited extent in so far as the bottling plant of Appellant has been re-categorised from HT I (Industrial Category) to HT III (Commercial Category) along with other commercial establishments such as malls and multiplexes, hotels etc.

2. The Appellant, Hindustan Petroleum Corporation Limited (in short HPCL) is a Government of India Enterprise and comes under the administrative control of the Ministry of Petroleum and Natural Gas. It is operating Liquified Petroleum Gas (LPG) bottling plants across the country including the one at Plot No. 171-172 SIDCO Industrial Estate, Kappalur, Madurai, Tamil Nadu. The Appellant is engaged in bottling and supplying of filled LPG cylinders across the state of Tamil Nadu.

3. The 1st Respondent is the Electricity Regulatory Commission constituted for the State of Tamil Nadu.

4. The 2nd Respondent Tamil Nadu Generation and Distribution Company (TANGEDCO) is the Distribution Licensee engaged in supply of electricity to the consumers in the State of Tamil Nadu.

5. It appears that in pursuance to the order dated 2nd April, 2008, passed by the Commission in Appellant's petition bearing MP No. 15 of 2007, the Appellant's bottling bottling plant was categorized at HT IA (Industrial) and continued to be treated as industrial consumer till passing of the impugned tariff order dated 11th August, 2017 whereby it was re-categorised to HT III (Commercial).

6. We may note that vide the impugned tariff order dated 11th August, 2017, the Commission has determined the retail supply tariff for generation and distribution of electricity in the State of Tamil Nadu for the year 2017-18. Paragraph No. 6.1.2 and 6.1.2.1 of the order are relevant for the purposes of instant appeal and are extracted herein below :-

"6.1.2 ***High Tension Tariff I A:***

Tariff category	***Commission Determined Tariff***	
	Demand Charge in Rs/kVA/ month	***Energy charge in Paise per kWh (Unit)***
High Tension Tariff I A	*350*	*635*

6.1.2.1 This Tariff is applicable to:

1. *All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants. However, registered factories such as LPG bottling Units which are of non-manufacturing nature are not to be included in this tariff category.*

2. *Common effluent treatment plants, Industrial estate's water treatment/supply works,*

3. *Cold storage units"*

7. What led the Commission to change the tariff category applicable to LPG bottling plants has been explained in paragraph nos. 5.2.2.14 & 5.2.2.15 of the impugned tariff order which are reproduced herein below :-

5.2.2.14 TANGEDCO submitted that according to provisions of the SMT Order dated December 11, 2014, HT IA Tariff is applicable to all manufacturing and industrial establishments and registered factories including tea estates, textiles, fertilizer plants, steels plants, heavy water plants, chemical plants. This Tariff is meant for manufacturing and industrial establishment only and not for service units and commercial establishments such as hotel and bottling plants, which are also considered as 'registered factories'. LPG bottling plants were classified under HT Tariff IA based on being 'registered factories'. The Hon'ble APTEL, in its Order dated September 8, 2016 in Appeal No.265 of 2014, ordered that LPG bottling plants are 'Commercial Establishments'. In order to avoid service/commercial units from being classified under HT Tariff IA based on the term 'Registered Factories', TANGEDCO requested the Commission to omit the word 'Registered Factories' under HT Tariff IA.

Commission's View

5.2.2.15 The Commission is of the view that the term 'Registered Factories' signifies factories registered under the Factories Act, 1948. As omission of the term 'Registered Factories' under HT Tariff IA may have some unintended consequences, the Commission is not inclined to accept TANGEDCO's proposal. The Commission has addressed the issue of LPG bottling plants not being classified under HT IA, by including a clarification to this effect in the Tariff Applicability under HT IA. It is also clarified that while other activities such as Hotel industry or Tourism industry may qualify as 'industries' for other purposes and classification under other Acts, for the purpose of charging for electricity consumed, they are classified as commercial activities and not as industrial activities, and are hence, not eligible to be charged under HT IA Tariff. In case TANGEDCO identifies the need for specifically excluding any other activity, then TANGEDCO should submit the necessary proposal for the same, along with necessary justification, along with its next Tariff Petition.

8. We have heard the Learned Counsel for the Appellant and the Learned Counsels for the Respondents. We have also perused written submissions filed by the Learned Counsels.

9. Learned Counsel for the Appellant would argue that re-categorization of LPG bottling plants from HT I to HT III cannot be sustained as there was no relevant legal or factual basis for such re-categorization and there is no reasonable nexus between activities grouped under the same category i.e. HT III where LPG bottling plants have been placed. He submitted that the Commission has failed to consider that by virtue of its own previous order dated 2nd

April, 2008 in Petition MP No. 15 of 2007 LPG bottling plants were categorized as HT I for the reason that these were termed as a factory registered under the Factories Act, 1948. Relying upon the recent decision of this Tribunal dated 9th September, 2024 in *Appeal No. 230 of 2024 in M/s Dilip Bildcon Limited Vs. MERC & Anr.* Learned Counsel argued that unless there is a change in legal or factual situation, the tariff category must not be changed.

10. It is further submitted by the Learned Counsel that the Commission has erroneously relied on the judgment of this Tribunal in *APL 265 of 2014 in Hindustan Petroleum Corporation Ltd. v. Kerala State Electricity Regulatory Commission & Anr*. dated 8th September, 2016 for the reason that the said decision was rendered in the context of retail supply of tariff in the State of Kerala for the financial year 2014-15 and it does not set out a universal basis for consumer categorization. He submitted that the classification for consumers is in terms of Section 62(3) of the Electricity Act, wherein each State Commission follows different criteria for classification of consumers and as per the settled law, the consumer categorization lies within the domain of the State Commissions. He pointed out that the different States have categorized the bottling plant differently. For

example, in the State of Maharashtra and Karnataka LPG & CNG bottling plants have been held to constitute industrial activity.

11. Learned Counsel further submitted that the Commission has erred in selectivity treating the LPG bottling plants as commercial in nature on the ground that these are not undertaking any manufacturing activity whereas various other consumers such as water treatment plants, Information Technology services, processing services, software services, hardware support, airports and aeronautical services etc. which also are not undertaking manufacturing activities have been placed under industrial category. According to the Learned Counsel, recategorization of LPG bottling plants as commercial HT III appears to have been done by the Commission on patently extraneous considerations and smacks of arbitrariness, which cannot be countenanced. He cited the judgement of this Tribunal in dated 20th October, 2011 in *Association of Hospitals v MERC & Anr. (Appeal No. 110 of 2009 & batch)* in support of his submissions.

12. It is further argued by the Learned Counsel that the Commission ought to have considered and dealt with the documents submitted by the Appellant Association which show that the Appellant's plant is undertaking an industrial activity in the State of

Tamil Nadu. He pointed out that the bottling plant of the Appellant is located in the Industrial Estate of Tamil Nadu Small Industries Development Corporation Limited (SIDCO) in Madurai and, therefore within the industrial area, is required to obtain all clearances and permits akin to other industries and operates under the Factories Act, 1948. He further submitted that LPG is manufactured from natural gas or from petroleum refinery process. LPG, unlike other manufactured goods, cannot be processed and bottled in the same premises. According to the Learned Counsel, the raw product is transported through pipelines from across the country and the final processing and bottling happens in locations near to the end users. He would further submit that significant investments is made to develop the infrastructure required for transportation and processing of raw material and it is not possible for such industrial activity to change its location once it is set up. It is his submission that LPG bottling plant of the Appellant is engaged in manufacturing process with the aid of power and thus comes within the definition of the term (Factories) envisaged under Section 2(m)(i) of the Factories Act.

13. On these submissions, Learned Counsel has sought setting aside the impugned order of the Commission and to direct

categorization of Appellant's LPG bottling plant in HT I (Industrial) category.

14. On behalf of the 1st Respondent i.e. Commission, its counsel has supported the impugned order in entirety. He submitted that the LPG bottling plants have been replaced under HT III (Commercial) category on the basis of judgement dated 8th September, 2016 of this Tribunal in Appeal No. 265 of 2014, in which, after adverting to and discussing various tests prescribed by Apex Court in its judgement dated 7th May, 2015 in *Civil Appeal No. 583 of 2005, Servo-Med Industries Private Limited Vs. Commissioner of Central Excise, Mumbai [(2015) 14 SCC 47]*, held that the bottling of LPG gas is a non-manufacturing activity. He argued that the previous order of the Commission dated 2nd April, 2008 in MP No. 15 of 2007 lost its relevance after the said subsequent judgement dated 8th September, 2016 of this Tribunal.

15. Learned Counsel further argued that the Appellant's contention that the transfer of LPG from container to the cylinders is also part of manufacturing process does not merit any consideration for the reason that such process for bottling LPG does not alter the character of the product and does not provide any value addition to

it. According to the Learned Counsel, the impugned findings of the Commission does not suffer from any infirmity.

16. Learned Counsel for 2nd Respondent, TANGEDCO also submitted that the Commission's reliance upon the judgement of this Tribunal in Appeal No. 265 of 2014 is totally justified and well placed. He argued that the LPG bottling activity involves refilling of LPG cylinders which does not include any manufacturing process/production of any new item from raw material/transformation of input material into a new project. He pointed out that in the plant of the Appellant Liquified Petroleum Gas is transferred from bulk containers into small cylinders for easy retail distribution which does not involve any manufacturing process at all. According to the Learned Counsel, this process is akin to re-packaging of bulk items into smaller units for market consumption and it is a pure commercial activity. In order to buttress his submissions, Learned Counsel cited judgement of the Hon'ble Supreme Court in *Union of India & Anr. Vs. Delhi Cloth and General Mills Co. Ltd. AIR 1963 SC 791*, *Satnam Overseas Ltd. Vs. CCE, (2015) 13 SCC 166, Servo-Med Industries (P) Ltd. Vs. CCE (2015) 14 SCC 47* and the judgement of Gujarat High Court in the *State of Gujarat Vs. Kosan Gas Co., 1991 SCC Online Guj 216.*

17. Learned Counsel further argued that the entities like the Appellant, which are engaged in the business of bottling and selling LPG cylinders on commercial basis, operate with the primary objective of earning profits and conduct their activities with the sole aim to achieve financial gain as opposed to non-commercial or non-profit based operations. He argued that such distinction is significant in the context of categorization of electricity consumers and, therefore, the business entities with profit motive like the Appellant need to be subjected to different classification under the regulatory considerations as compared to those engaged in purely non-commercial activities.

18. Thus, on these contentions, Learned Counsel has sought dismissal of the appeal.

Our Analysis :-

19. The issue which arises for our determination in the appeal is whether the Commission was correct in re-categorizing the LPG bottling plants in the State of Tamil Nadu to HT III (Commercial category) from HT I (Industrial category).

20. The Appellant is operating LPG bottling plants across the country including the one in SIDCO industrial Estate Kappalur, Madurai in the State of Tamil Nadu. The case of the Appellant is that

since its bottling plant is located in the industrial Estate of Tamil Nadu by virtue of which it is required to obtain all clearances/permits akin to other industries and operates under Factories Act, 1948, it ought to be placed in HT I category. However, it is the admitted case of the Appellant that LPG is processed and manufactured from natural gas in the petroleum refinery and is then bottled in the bottling plants as the LPG cannot be processed and bottled in the same premises. It is also contended on behalf of the Appellant that raw product is transported through pipelines from across the country and the final processing and bottling happens in the locations near the end users. Therefore, what can be inferred from the contentions of the Appellant itself is that :-

(a) Bulk LPG is transported from the Petroleum refineries either though pipelines or through road tankers, bobtail tankers and is received in the bottling plant;

(b) At the bottling plant, the LPG is unloaded/collected and re-filled /bottled in LPG cylinders of different sizes by compressing the same;

(c) LPG Cylinders are capped and sealed after which they are dispatched to the market for sale.

21. Thus, what the Appellant is doing at its bottling plants is re-filling the finished product LPG into different sizes of cylinders meant for use by different consumers (smaller ones for domestic use and larger ones for commercial use by hotels, restaurants etc). Therefore, it is difficult to say that any manufacturing activity is carried on by the Appellant at its bottling plants.

22. The Hon'ble Supreme Court, way back in 1968, in the case of *Union of India & Anr. Vs. Delhi Cloth and General Mills Co. Ltd. AIR 1963 SC 791* has carved out distinction between "processing" and "manufacturing" while observing that processing may be involved at an intermediate step in a transformation process but cannot be equated to "manufacture". The relevant portion of the judgement is extracted herein below :-

> *"13. The other branch of Mr Pathak's argument is that even if it be held that the respondents do not manufacture "refined oil", as is known to the market they must be held to manufacture some kind of "non-essential vegetable oil" by applying to the raw material purchased by them, the processes of neutralisation by alkali and bleaching by activated earth and/or carbon. According to the learned counsel "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change.* ***To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to***

produce some change in a substance", however minor in consequence the change may be. *This distinction is well brought about in a passage thus quoted in Permanent Edn. of Words and Phrases, Vol. 26, from an American judgment. The passage runs thus:*

> *"Manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."*

16. This consideration of the meaning of the word "goods" provides strong support for the view that "manufacture" which is liable to excise duty under the Central Excise and Salt Act, 1944 must be the "bringing into existence of a new substance known to the market". "But," says the learned counsel, "look at the definition of 'manufacture' in the definition clause of the Act and you will find that 'manufacture' is defined thus: "Manufacture includes any process incidental or ancillary to the completion of a manufactured product." [Section 2(f)). *We are unable to agree with the learned counsel that by inserting this definition of the word "manufacture" in Section 2(f) the legislature intended to equate "processing" to "manufacture"* *and intended to make more "processing" as distinct from "manufacture" in the sense of bringing into existence of a new substance known to the market, liable to duty. The sole purpose of inserting this definition is to make it clear that at certain places in the Act the word "manufacture" has been used to mean a process incidental to the manufacture of the article. Thus in the very item under which the excise duty is claimed in these cases, we find the words; "in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power". The definition of "manufacture" as in*

Section 2(f) puts it beyond any possibility of controversy that if power is used for any of the numerous processes that are required to turn the raw material into a finished article known to the market the clause will be applicable; and an argument that power is not used in the whole process of manufacture using the word in its ordinary sense, will not be available. ***It is only with this limited purpose that the legislature, in our opinion, inserted this definition of the word "manufacture" in the definition section and not with a view to make the mere "processing" of goods as liable to excise duty.....****It is only with this limited purpose that the legislature, in our opinion, inserted this definition of the word "manufacture" in the definition section and not with a view to make the mere "processing" of goods as liable to excise duty.*

(Emphasis supplied)

23. Thus, where no change occurs to the commodity and the commodity maintains a substantial and continuous identity throughout the processing stage, it cannot be regarded as manufacturing. To qualify as “manufacturing’, there must be some transformation in the original commodity and this transformation should bring out a distinctive or different article known in the market.

24. In the case of *Servo-Med Industries (supra),* the Hon’ble Supreme Court has laid down following tests to ascertain if any process of manufacturing is involved:-

“1) Where the goods remain exactly the same even after a particular process, there is obviously no manufacture involved, Processes which remove foreign matter from goods complete in themselves and/or

processes which clean goods that are complete in themselves fall within this category,

2) Where the goods remain essentially the same after the particular process, again there can be no manufacture. This is for the reason that the original article continues as such despite the said process and the changes brought about by the said process.

3) Where the goods are transformed into something different and/or new after a particular process, but the said goods are not marketable. Examples within this group are cases where the transformation of goods having a shelf life which is of extremely small duration. In these cases also no manufacture of goods takes place.

4) Where the goods are transformed into goods which are different and/or new after, a particular process, such goods being marketable as such. It is in this category that manufacture of goods can be said to take place."

(Emphasis supplied)

25. The essential test, thus, is whether the goods are transformed into something different and/or new after a particular process and such goods being marketable as such. Where the goods remain essentially the same even after that particular process, manufacture of goods cannot be said to have taken place.

26. In another judgement dated 16th September, 2008 in *Civil Appeal No. 4363 of 2002 titled "Commissioner of Central Excise, Mumbai vs. Aeropack Products,"* the Hon'ble Supreme Court has refused to interfere in the findings of the fact recorded by this Tribunal

to the effect that re-packaging of the product from bulk to small containers does not amount to manufacture.

27. In the instant case, it cannot be gainsaid that the LPG does not undergo any transformation into something different and /or new product at the bottling plants of the Appellant which would alter its original nature. The LPG remains the same product as it was when received in the bottling plant even as it is transferred to different sizes of cylinders. There is admittedly no change in its commercial composition and inherent properties from the process of bottling. The preservation of its original character during the bottling process clearly indicates that the activity does not involve the creation of a new product and, therefore, cannot be stated to be a manufacturing activity.

28. In *Satnam Overseas Ltd. V. CCE, (2015) 13 SCC 166* (supra) the Hon'ble Supreme Court had held that where the essential character of the product has not changed, there being no manufacture. In that case, the product was a combination of raw rice, dehydrated vegetables and spices in the name of rice and spices. It was held that the said product in its primary and essential character was sold in the market as rice only, despite the addition of dehydrated vegetables and certain spices and therefore, does not

involve any manufacturing activity. The relevant portion of the judgement is quoted herein below :-

“12. Though the authorities below had decided against the assessee, this Court reversed the said view holding that the said process would not amount to "manufacture" as the process involving manufacture does not always result in the creation of a new product. In the instant case notwithstanding the manufacturing process, it could not be said that a transformation had taken place: resulting in the formation of a new product. The relevant portion of the judgment is reproduced below: (Crane Betel Nut Powder Works case [(2007) 4 SCC 155: (2007) 210 ELT 171], SCC p. 162, para 31)

"31. In our view, the process of manufacture employed by the appellant Company did not change the nature of the end product, which in the words of the Tribunal, was that in the end product the 'betel nut remains a betel nut'. The said observation of the Tribunal depicts the status of the product prior to manufacture and thereafter. In those circumstances, the views expressed in Delhi Cloth & General Mills Co. Ltd. [Union of India v. Delhi Cloth & General Mills Co. Ltd., AIR 1963 SC 791] and the passage from the American Judgment [Anheuser-Busch Brewing Assn. v. United States, 52 L Ed 336 : 207 US 556 (1908)) become meaningful. The observation that manufacture implies a change, but every change of not manufacture and yet every change of an article is the result of treatment, labour and manipulation is apposite to the

situation at hand. The process involved in the manufacture of sweetened betel nut pieces does not result in the manufacture of a new product as the end product continues to retain its original character though in a modified form."

What is to be highlighted is that even after the betel nuts which had been cut to different sizes and had undergone the process, the Court did not treat it as "manufacture" within the meaning of Section 2(f) of the Act on the ground that the end product was still a betel nut and there was no change in the essential character to that article even when it was the result of treatment, labour and manipulation. inasmuch as even after employing the same it had not resulted in the manufacture of a new product as the end product continued to retain its original character.

15. The last judgment to which we would like to refer to is CST v. Pio Food Packers [1980 Supp SCC 174 : 1980 SCC (Tax) 319 : (1980) 6 ELT 343]. In that case, the process undertaken by the assessee was to wash the pineapple, after purchase, and then remove inedible portion, the end crown as well as skin and inner core. After removing those inedible portions the pineapple fruit used to be sliced and the slices were filled in cans after adding sugar as preservative. Thereafter, cans would be sealed under temperature and then put in a boiled water for sterilisation. ***Identical question was posed viz. whether this process amounted to "manufacture". Giving the answer in the negative, the***

Court held that even when with each process suffered, the original commodity experienced a change, such a change would not amount to "manufacture" unless it ceased to be the original commodity and a new and distinct article was produced therefrom.

This is explained in detail in paras 5 and 6 of the said judgment and therefore we would like to reproduce the same as under: (SCC pp. 176-77)

"5. Section 5-A(1)(a) of the Kerala General Sales Tax Act envisages the consumption of a commodity in the manufacture of another commodity. The goods purchased should be consumed, the consumption should be in the process of manufacture, and the result must be the manufacture of other goods. There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a

manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity.

16. Another important aspect which needs to be highlighted from this judgment is that the argument of the Revenue that the sale of pineapple slices after the aforesaid process, was at a higher price in the market than the original fruit and, therefore, it constituted a different commercial commodity. The Court negatived this contention as well by observing that the process undertaken by the assessee may have made value addition to the product but the essential character of the product did not undergo any change, which is the determinative factor, inasmuch as pineapple remained the pineapple; albeit in slice form and continued to be known as pineapple in the market. For this proposition the Court decided [1980 Supp SCC 174 : 1980 SCC (Tax) 319 : (1980) 6 ELT 343] to rely upon a foreign judgment where the US Supreme Court had held [East Texas Motor Freight Lines v. Frozen Food Express, 100 L Ed 917 : 351 US 49 (1956)] that dressed and frozen chicken was not a commercially distinct article from the original chicken. Detailed discussion of the said judgment appears in paras 8-13 which reads as follows: (Pio Food Packers case [1980 Supp SCC 174 : 1980 SCC (Tax) 319 : (1980) 6 ELT 343], SCC pp. 177-78)

"8. While on the point, we may refer to East Texas Motor Freight Lines v. Frozen Food Express [East Texas Motor Freight Lines v. Frozen Food Express, 100 L Ed 917 : 351 US 49 (1956)], where the US Supreme Court held that dressed and frozen chicken was not a commercially distinct article from the original chicken. It was pointed out: (L Ed p. 923)

'... Killing, dressing and freezing a chicken is certainly a change in the commodity. But it is no more drastic a change than the change which takes place in milk from pasteurizing, homogenizing, adding vitamin concentrates, standardizing and bottling.'

9. It was also observed: (Frozen Food Express case [East Texas Motor Freight Lines v. Frozen Food Express, 100 L Ed 917 : 351 US 49 (1956)), L Ed p. 923)

... there is hardly less difference between cotton in the field and cotton at the gin or in the bale or between cottonseed in the field and cottonseed at the gin, than between a chicken in the pen and one that is dressed. The ginned and baled cotton and the cottonseed, as well as the dressed chicken, have gone through a processing stage. But neither has been "manufactured" in the normal sense of the word.

10. Referring to Anheuser-Busch Brewing Assn. v. United States [Anheuser-Busch Brewing Assn. v. United States, 52 L Ed 336 : 207 US 556 (1908)] the Court said: (Frozen Food Express case [East Texas Motor Freight Lines v. Frozen Food Express, 100 L Ed 917 : 351 US 49 (1956)), L. Ed p. 923)

".... Manufacture implies a change, but every change is not manufacture and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary.... There must be transformation; a new and different article must emerge, 'having distinctive name, character, or use'. (Anheuser-Busch Brewing Assn. case [Anheuser-Busch Brewing Assn. v. United States, 52 L Ed 336 : 207 US 556 (1908)], L Ed p. 338)"

11. And further: (Frozen Food Express case [East Texas Motor Freight Lines v. Frozen Food Express, 100 L Ed 917 : 351 US 49 (1956)], L Ed p. 924)

'At some point processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing stage we cannot say that it has been "manufactured"....'

17. It follows from the above that mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of "manufacture" unless its original identity also undergoes transformation and it becomes a distinctive and a new product.

18. When we apply the aforesaid principle to the facts of this case, it is clear that mere addition of dehydrated vegetables and certain spices to the raw rice, would not make it a different product. Its primary and essential character still remains the same as it is continued to be known in the market as rice and is sold as rice only. Further, this rice, again, remains in raw form and in order to make it edible, it has to be cooked like any other cereal. The process of cooking is even mentioned on the

pouch which contains cooking instructions. Reading thereof amply demonstrates that it is to be cooked in the same form as any other rice is to be cooked. Therefore, we do not agree with CEGAT that there is a transformation into a new commodity, commercially known as distinct and separate commodity.

19. Since we are holding that the activity undertaken by the assessee does not amount to manufacture, this appeal is liable to succeed on this ground itself inasmuch in the absence of any manufacture there is no question of payment of any excise duty. We may, however, remark that even otherwise the classification of the product by the Revenue under Sub-Heading No. 21.08 may not be correct. In fact, CEGAT has accepted that classification only on the ground that the product after mixing of raw rice with dehydrated vegetables and spice, has become a new product as it amounts to "manufacture" and on that basis it has held that it no longer remains product of milling industry. ***As we have held that it does not amount to "manufacture" as the essential characteristics of the product, still remains the same, namely, rice, a natural corollary would be that it continues to be the product of the milling industry*** *and would be classifiable under Sub-Heading No. 11.01. Rate of duty on this product, in any case, is "nil".....”*

(Emphasis supplied)

29. It is well settled that categorization and re-categorization of consumers for the purposes of electricity tariff lies within the domain of

the State Electricity Commissions under the Electricity Act, 2003. Section 62(3) of the Act empowers the Commissions to categorise consumers based, inter alia, on the purpose for which the supply is required. It is beyond the realm of dispute that the Appellant is engaged in the business of selling LPG cylinders on commercial basis and thus operates with the objective of earning profits. Patently, it is conducting its activities with a view to achieve financial gain as opposed to non-commercial or non-profit bases operations. Therefore, the reliance placed by the Appellant's counsel upon the judgement of this Tribunal in *Appeal No. 110 of 2009 and batch, Association of Hospitals case* is totally mis-placed. In that case, this Tribunal observed that the Appellant i.e. Association of Hospitals is providing essential education services to the society, which are basically functions of State, and thus cannot be equated with purely commercial activities carried out by other consumers categorized under commercial category. We find it pertinent to quote here the relevant paragraphs of the said judgement

> *"47. The Commission has ignored the obligation cast upon it. One of the reasons indicated by the Respondent Commission for re-categorising the Appellant in HT-Commercial Category is that within the existing categories created by the Respondent Commission, the*

Appellant could have come only under the Commercial category since it did not fall under the industrial or Residential category. It is the intent or the object and not the motive behind the action. It is submitted that it is absolutely clear that the object for which electricity is required by the Appellant is to perform the essential educational services or essential health services. The motive behind the same can be profit or no-profit. However, the Appellant has not sought its re-categorisation on the basis of profit or no profit. The Appellant is seeking re-categorisation of Appellant on the basis of purpose for which electricity is consumed by the Appellant i.e. essential educational services or essential health services. The Hon'ble Tribunal in the case of Udyog Nagar Factory Owner Association Vs. BRPL held that the differential tariff can be fixed for the railway traction and DMRC as they stand on different footing than other class of consumers i.e. the railway and DMRC draw power to satisfy the needs of masses. Therefore, there can be separate category for Railways and DMRC. Similarly, the Appellant is providing essential educational services and the same cannot be equated with purely commercial activities carried out by other consumers categorised under HT Commercial category.

48. The State Commission cannot create a residuary category such as non domestic or non-industrial and group some categories not otherwise dealt elsewhere, particularly, in the background that the

State Commission had proceeded to impose excessive tariff on such category.

49. A discretionary power must be exercised on relevant and not on extraneous considerations. It means that power must be exercised taking into account the considerations mentioned in the statute. If the statute mentions no such considerations, then the power is to be exercised on considerations relevant to the purpose for which is conferred. On the other hand, if the authority concerned pays attention to, or takes into account, wholly irrelevant or extraneous circumstances, events or matters or considerations then the action taken by it is invalid and will be quashed.

50. Even though an authority may act in its subjective satisfaction, there must be cogent material on which the authority has to form its opinion. In the purported exercise of its discretion must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations, must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter and to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously".

51. The Commission has completely ignored the obligation cast upon him. One of the reasons indicated by the Respondent Commission for recategorising the Appellant in HT-Commercial category is that within the existing categories created by the Respondent

Commission, the Appellant could have come only under the Commercial category since it did not fall under the Industrial or Residential category. It is to be stated that such a simplistic approach adopted by the Respondent Commission is not only discriminatory, but it also shows failure of the Respondent Commission to discharge its functions under section 62 (3) of the Act.

52. The word 'may' used in second part of Section 62(3) does not provide absolute discretion upon the Respondent Commission to take those factors into account or not. The term 'may' is used to indicate that as and when the situation arise the Respondent Commission in exercise of its judicial discrimination can utilise certain or all the criterias specified under Section 62(3) of the Electricity Act, 2003. However, once the discretion has been exercised by the Respondent Commission, it has to be exercised in a proper manner having regard to all relevant facts and circumstances to ensure that no undue preference is given to any consumer and no discrimination is made against any consumer. It is submitted that Section 62 (3) embodies the same principle which is enunciated in Article 14 of the Constitution of India.

53. Once the Respondent Commission chooses to have different tariff u/s 62 (3), it is incumbent upon the Respondent Commission to fix different tariff on the basis of criteria specified u/s 62 (3). The failure on the part of the Respondent Commission to properly

exercise the discretion vested in it is violative of Article 14 of the Constitution.

54. As mentioned above, the purpose for which supply is required by the Appellant cannot be equated to that of malls and multiplexes along with which, the Appellant has been categorised in the HT Commercial category. Therefore, the Respondent Commission has failed to take into consideration the differentiating factor of "the purpose for which the supply is required" for the purpose of categorising services similar to the Appellant."

(Emphasis supplied)

30. We wonder how the above noted judgement of this Tribunal advances the case of the Appellant. In fact, the observations of this Tribunal in the said judgement repel each and every contention raised on behalf of the Appellant in this appeal. In the instant case, the purpose for which the supply of electricity is required by the Appellant is same as that in shopping malls/multiplexes/hotels etc. i.e. commercial purpose and therefore has been rightly categorized in HT III category. In the impugned order, the Appellant's bottling plant has been correctly treated differently from the Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants which are involved in manufacturing activities.

31. In the other judgement of this Tribunal in *Appeal No. 230 of 2024 – M/s Dilip Buildcon Limited & Anr. Vs. MERC,* cited by the Appellant's counsel, this Tribunal has explained the doctrine of stare decisis as under :-

> *"Relying on Union of India v. Azadi Bachao Andolan, (2004) 10 SCC 1, State of Gujarat v. Mirzapur Moti Kuresh, (2005) 8 SCC 534, and Maganlal Chaganlal v. Municipal Corporation of Greater Bombay, (1974) 2 SCC 402, this Tribunal, in Bharti Airtel Ltd. v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 30, held that the State Commission has since the year 2008 taken a conscious view that the Mobile/Broadcasting Towers would be placed under the Industrial category without going into whether they would fall under the Government of Maharashtra Policy or not; the said position has held forth for a very long time namely more than 10 years, and there is no change whatsoever in the factual or legal position; the principle of stare decisis applies squarely; as held in Indian Metal and Ferro Alloys Ltd. v. Collector of Central Excise, 1991 Supp (1) SCC 125, a consistent practice followed should not be changed; in Spencers' Retail Limited v. MERC, (Appeal No. 146 of 2007 dated 19.12.2007) it has been held that regulatory certainty should be maintained; and when the State Commission has given a dispensation for all these years which has been fully accepted by the*

licensee, there being no change in the factual or legal position, there was no occasion for the State Commission to hold to the contrary.

The doctrine of stare decides is expressed in the maxim stare decisis et non quieta movere, which means "to stand by decisions and not to disturb what is settled". The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible. (Shankar Raju v. Union of India, (2011) 2 SCC 1329; Bharti Airtel Ltd. v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 30). A decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs, should not lightly be disturbed by a superior court not strictly bound itself by the decision. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transaction which might have been entered into in faith of these decisions. (Rajarai Pandey v. Sant Prasad Tiwari, (1973) 2 SCC 35; Bharti Airtel Ltd. v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 30).

32. Relying upon the said judgement of this Tribunal, the Appellant's counsel has sought application of the said doctrine of stare decisis to the order dated 2nd April, 2008 of the Commission

whereby Appellant's bottling plant was categorized as HT I (Industrial) category. It is further submitted that in the State of Maharashtra and Karnataka, the LPG and CNG bottling plants have been held to constitute industrial activity and, therefore, placing all LPG bottling plants in commercial category by the Tamil Nadu Commission violates the principle of stare decisis.

33. We are unable to accept the submissions of the Learned Counsel for the Appellant. The mere fact that the State Commissions of Maharashtra and Karnataka have chosen to treat the LPG bottling plants in industrial category would not disable the Tamil Nadu Commission for including it in commercial category provided such inclusion is justified on the criteria stipulated for classifying the consumers of electricity under HT III(commercial) category. We have already explained and held that no manufacturing activity is being carried out by the Appellant in its LPG bottling plants justifying their inclusion in HT I (industrial) category and, therefore, the same have been rightly placed under HT III(Commercial) category by the Commission in the impugned order.

34. In so far as, the order dated 2nd April, 2008 of the Commission passed in MP No. 15 of 2007 is concerned, whereby the Appellant's bottling plant was categorized as HT I (Industrial), we may note that

the same is cryptic order devoid of reasoning. Further, the same gets eclipsed and over shadowed by the subsequent judgements of the Hon'ble Supreme Court referred to here in above.

35. With regards to the judgement of this Tribunal in *APL 265 of 2014 in Hindustan Petroleum Corporation Ltd. v. Kerala State Electricity Regulatory Commission & Anr*. dated 8th September, 2016 which has been relied upon by the Commission in the impugned order, it may be said that the said appeal had arisen from the order dated 14th August, 2014 Kerala State Electricity Regulatory Commission wherein the LPG Cylinder bottling plants were categorized under HT-IV(Commercial) category along with other commercial establishments such as malls/multiplexes/hotels etc. This Tribunal observed that since the operations of the Appellant HPCL involve the process where the goods remained essentially un-changed as it primarily involved in refilling LPG cylinders and not production of new items or the transformation of raw material into a new product, no manufacturing activity is involved. This Tribunal had based its decision upon the judgement of Hon'ble Supreme Court *Servo-Med Industries case* which has already been noted herein above. The said judgement of this Tribunal was assailed before the Hon'ble Supreme Court by way of Civil Appeal No. 11150 of 2016

which was disposed off vide order dated 19th December, 2016 directing the Kerala Commission to consider certain additional documents placed on record by the Appellant HPCL. The order passed by the Hon'ble Supreme Court is extracted herein below :-

> *"1. We have heard Shri Mukul Rohatgi, learned Attorney General. We have also taken into account the additional documents filed in Court on 6th December, 2016.*
>
> *2. In view of the aforesaid additional documents we are of the view that the matter should be reconsidered in the light of the said documents by the primary fact finding authority i.e. Kerala State Electricity Regulatory Commission. Hence without expressing any opinion on merits we leave to the said body to go into the matter afresh on an approach being made by the appellant along with the documents and information filed before this Court.*
>
> *3. The appeal is disposed of in the above terms."*
>
> *(Emphasis supplied)*

36. It has been submitted that on behalf of the 2nd Respondent that upon remand, the Kerala Commission passed fresh order dated 1st August, 2018 observing that additional documents i.e. Gas Cylinder Rules, 2004 presented before the Hon'ble Supreme Court had already been placed on record before the Commission as well as before this Tribunal and had been duly considered by the Commission as well as by the Tribunal. Hence, the Commission again reiterated its findings contained in its previous order dated 14th August, 2014 as affirmed by this Tribunal vide judgement dated 8th

September, 2016 holding the LPG bottling plant as an non-manufacturing unit and to be classified under commercial category. Therefore, the Tamil Nadu Commission, in this case, has not committed any error in relying upon the said judgement of this Tribunal in Appeal No. 265 of 2014 dated 8th September, 2016.

Conclusion

37. In the light of above discussion, we conclude that the Commission has not committed any error in re-categorizing the Appellant's LPG bottling plant from HT I (Industrial) category to HT III (Commercial) category vide the impugned tariff order dated 11th August, 2017. The appeal is sans any merit and hereby dismissed.

Pronounced in the open court on this 24th day of March, 2025.

(Virender Bhat) Judicial Member	(Sandesh Kumar Sharma) Technical Member (Electricity)

✓

REPORTABLE / ~~NON REPORTABLE~~

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