हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड

(भारत सरकार का उपक्रम) पंजीकृत कार्यालय : 17, जमशेदजी टाटा रोड, मुंबई - 400 020

HINDUSTAN PETROLEUM CORPORATION LIMITED

(A GOVERNMENT OF INDIA ENTERPRISE) REGISTERED OFFICE : 17, JAMSHEDJI TATA ROAD, MUMBAI - 400 020

दक्षिण मध्य अंचल-रिटेल : परिश्रम भवन, 7 वी मंजिल, 5-9-58/बी, फतेह मैदान रोड, बशीर बाग, हैदराबाद - 500 004.

South Central Zone - Retail : Parisram Bhavan, 7th Floor, 5-9-58/B, Fateh Maidan Road, Basheer Bagh, Hyderabad - 500 004.

टेलीफोन / Telephone : 040-23251602 तार/Telegram : HINDPETCOR; फैक्स/FAX : 040-23251612

601008858

Hyderabad,
23/1/2018

BY HAND

To,

TSERC, HYDERABAD
INWARD
No. 135 Signature

The Secretary,
Telangana State Electricity Reguatory Clommission,
11-4-660, 5th Floor,
Singareni Bhavan,
Red Hills,
Hyderabad

1 of 6

Sir,

Sub: Electricity Act, 2003- Submission of comments/objections/suggestions on the Tariff proposals for the retail supply business, cross subsidy surcharge proposals and additional surcharge proposal for the financial year 2018-19.

Ref: Public Notice Displayed in the Commission's Website

Apropos to the cited subject, please find enclosed herewith our comments/ objections/suggestions on the Tariff proposals for the retail supply business, for the financial year 2018-19 for your kind consideration and for removing gas/oil storage/transfer stations operated the Respondent Corporation in the State of Telangana from the application of Sec. 8.85(iii) of the Tariff Order dated 26.08.2017 and for other reliefs.

Please acknowledge.

Thanking You,

Very Truly Yours,

Respondent

सुमीत रे / SUMEET RAY
उप महा प्रबंधक-परिवहन / Dy. General Manager - Tra
दक्षिण मध्य अंचल- रिटेल / South Central Zon
हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लि
HINDUSTAN PETROLEUM CORPORATIC

Encl: a/a
(6 sets)
Copy to:

The Chairman & Managing Director, Southern Power Distribution Company of Telangana Limited, 6-1-50, Corporate Office, Mint Compound, Hyderabad, – 500 063

BEFORE THE HONCLE TELEGANA STATE ELECTRICITY REGULATORY COMMISSION

11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad – 500 004.
Phone Nos. (040) 23397625/ 23311125 to 28 Fax No. (040) 23397489 Website
www.tserc.gov.in E mail: secy@tserc.gov.in

I.A. No. of 2018

In O.P. No. of 2018

In the matter of

ARR and Tariff proposals for the Retail Supply Business, Cross Subsidy Surcharge Proposals and Additional Surcharge Proposal for the FY 2018-19

BETWEEN:

Southern Power Distribution Company
of Telangana Limited, 6-1-50, Corporate Office,
Mint Compound, Hyderabad – 500 063.
Represented by its Chairman & Managing Director,
Tel. No. (040)-23431018 Fax No. (040) 23431082
Website: www.tssouthernpower.com ....Petitioner

AND

Hindustan Petroleum Corporation Ltd.,
Represented by the General Manager,
Operations and Distribution,
South Central Zone, 7th Floor,
Parasharam Bhavan, Hyderabad. .... Respondent

COMMENTS/OBJECTIONS/SUGGESTIONS ON THE TARIFF PROPOSALS FOR THE RETAIL SUPPLY BUSINESS, CROSS SUBSIDY SURCHARGE PROPOSALS AND ADDITIONAL SURCHARGE PROPOSAL FOR THE FINANCIAL YEAR 2018-19

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It is submitted that on 15th December, 2017, the Petitioner has filed the Tariff Applications for retail supply business for FY 2018-19, cross subsidy surcharge and additional surcharge for open access consumers for the Financial Year 2018-19 in accordance with provisions of the Electricity Act, 2003.

The Petitioner, under Clause 5 of the Tariff Application has submitted following Tariff Proposal:

" 5. *Tariff Proposals: The licensee humbly submits to retain the tariffs for FY 2018-19 as per the current tariff order i.e. as per Tariff Order for FY 2017-18 with the following modifications"*

In this regard, the Respondent Corporation submits following Comments/ Objections/ Suggestions as desired in the notice published by the Hon'ble Commission's website:

1. It is submitted that the Respondent Corporation, Hindustan Petroleum Corporation Limited, (hereinafter referred to as "the Respondent Corporation" for the sake of brevity) is a Government of India Company under the Companies Act, 1956 under Sec. 617 engaged in Petroleum business. In the course of the said business, it has established a Petroleum Product Terminal at Ghatkesar, Ranga Reddy District of Andhra Pradesh for the purpose of manufacture, storage and distribution of (i) High Speed Diesel, (ii) Motor Spirit, (iii) Gashol, (a blend between motor spirit and ethanol), (iv) B5 Diesel (a blend of High Speed Diesel & Bio Diesel) and

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(v) Kerosene. It has also established a State of Art Effluent Treatment Plant in the Unit at a capital investment of approximately Rs 2.0 Crores.

2. It is submitted that the said Unit caters to the need of the region of nine Districts namely, Hyderabad, Ranga Reddy, Mahabubnagar, Adilabad, Nalgonda, Medak, Kurnool, Nizamabad and Karimnagar. The said Unit also supplies said products to the other Public Sector Oil Companies viz., Indian Oil Corporation and Bharat Petroleum Corporation, and they in turn market the same.

3. It is submitted that the said Unit was established in the year 2002. Upon an application made for electric connection then competent authority viz., the Superintending Engineer, A.P.C.P.D.C.L., after taking into consideration various aspects of the activity of the Unit, decided that it falls under H.T. Category – I (Industry). Consequently, connection was given.

4. It is submitted that on 05-02-2004, HPCL received proceedings from then Senior Accounts Officer of the Petitioner, thereby revising the category of HPCL's Unit from H.T.Category - I to H.T.Category -II and the same was issued without any notice. Consequently, HPCL had no other option but to pay the bills as per the tariff applicable to H.T.Category – II, though the said H.T.Category - II is residuary in nature and is applicable only to those consumers who do not fall under any other categories and though it is applicable to non industrial consumers.

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5. It is submitted that Respondent Corporation received a letter dated 07-08-2006 of the Petitioner, stating that the categorization of power tariff of HPCL Unit has been revised from H.T.Category-I to H.T.Category-II with effect from 31-01-2002 and therefore HPCL Unit is liable to pay the differential amount between the tariffs for the period 31-01-2002 to 20-01-2004. Inspite of representations made to the Petitioner to revise the categorization from H.T.Category-II to H.T.Category-I and also to withdraw the demand of payment of the said amount as no action is taken, the Respondent Corporation filed complaint to Forum of Redressal of Consumer Grievances of A.P.C.P.D.C.L., (hereinafter referred to as forum). The said Complaint was registered as C.G.No. 39/2006-07. Later the said complaint was dismissed vide orders dated 01-11-2006 and questioning the same, the Respondent Corporation Unit filed Writ Petition No. 26254 of 2006 on the ground that it is violative of Principles of Natural Justice and hence void ab-initio and the High Court allowed the said Writ Petition vide orders dated 04-01-2007 quashing the orders of the Forum dated 01-11-2006 and remitted back the matter for fresh adjudication.

6. It is submitted that as the very constitution of the Forum was illegal and contrary to the Regulation of APERC, HPCL filed W.P.NO. 14980 of 2007 questioning the said constitution of the Forum and also the action of the

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Petitioner in re-categorizing the Respondent Corporation's unit in H.T. Category II instead of H.T. Category – I.

7. It is submitted that the High Court vide orders dated 02-05-2008 was pleased to allow the said Writ Petition and the operative portion of the same reads as follows :-

"For the aforesaid reasons, the writ petition is allowed. The change of classification of power connection of HPCL from HT-I category to HT-II category and consequential levy of differential bill charges, is declared as illegal. However, it is open for the Respondents to issue notice to HPCL for change of category in accordance with the existing terms and conditions of supply. If any consumption charges are collected from HPCL either on account of arrears or regular monthly consumption charges based on the revised category, the same shall be refunded to HPCL or re-adjusted against the consumption bills. There shall be no order as to costs."

8. It is submitted that pursuant to the above said orders, the Petitioner herein issued a notice dated 03-07-2008 to as to why, the Respondent Corporation's service should not be changed from H.T. Category – I to H.T. Category – II and asked, the Respondent Corporation to submit written reply. To the said show cause notice, the Respondent Corporation submitted its explanation dated 13-08-2008. Thereafter, the matter was heard by the Petitioner and same was reserved for orders.

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9. It is submitted that in spite of the orders of the High Court, the Petitioner has been billing, the unit under H.T. Category – II and the Respondent Corporation has been paying the same as no alternate source of power. However, the accounts department of HPCL unit has raised the issue of paying the electricity bill under H.T. Category – II though the action of the Petitioner in re-categorising the Unit from H. T. Category-I to H. T. Category-II Non Industrial was declared as illegal by the High Court in W.P.NO.14980 of 2007. After obtaining legal opinion, a representation dated 11-08-2011 was made to the Petitioner informing about the above said orders dated 02-05-2008 in W.P.NO.14980 of 2007 and that, the Respondent Corporation is entitled to pay electricity Bills only in H.T.Category – I and that it will be paying only in the said Category – I. Accordingly, HPCL has paid the bill in H.T. Category – I i.e., Rs.4,32,753.99/- for the month of July 2011.

10. It is submitted that again the Respondent Corporation received the bill for the month of August 2011 under HT- Category – II, therefore the Respondent Corporation once again vide its representation dated 08-09-2011 informed the Petitioner that his action would amount to violation of the orders dated 02-05-2008 in W.P.NO.14980 of 2007 and requested him to consider the above issue in view of both the Respondent Corporation and the Petitioner being the Public Sector undertakings. Further, the

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Respondent Corporation requested the Petitioner to bill its unit in H.T. Category – I only and paid the bill calculating under the H.T. Category – I.

11. It is submitted that in spite of above said two representations, the Respondent Corporation was once again issued the bill for the month of September 2011 calculating the tariff under H.T. Category – II showing the difference of amount under H.T. Category –II and H.T. Category – I paid by the Respondent Corporation with respect to the bills for the months of July and August 2011 as others/arrears. Therefore, the Respondent Corporation once again made a representation dated 22-10-2011 stating that as per the orders of the High Court dated 02-05-2008 the Respondent Corporation is not only entitled to refund of the amount paid towards electricity bills under the H.T. Category –II prior to the orders of the High Court in W.P.NO.14980 of 2007, but also the amount paid pursuant to the orders in W.P.NO.14980 of 2007 till date. Further a detailed calculation sheet as to the amounts which HPCL is entitled to refund was also enclosed and as per the said calculation sheet, the Respondent Corporation is entitled to a refund of Rs.67,40,926/-. Finally, the Respondent Corporation requested the Petitioner that from the month of September 2011 onwards to kindly adjust said Rs.67,40,926/- which the Respondent Corporation is entitled to refund, towards the future electricity bills payable by it by

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calculating the same under H.T. Category – I till the said refundable amount is exhausted.

12. It is submitted that suddenly on 31-10-2011 without any notice, the Petitioner's men disconnected the power supply to the Respondent Corporation, thereby stalling the entire process of the Respondent Corporation from where the refined HSD, MS and other lubricants are supplied to different areas as stated above. But however subsequently after some time on the same day they restored the power supply.

13. It is submitted that the Respondent Corporation once again received the bill for the month of October 2011 billing under H.T. Category –II by showing the difference of the amounts under H.T. Category II and H.T. Category I as arrears. In these circumstance the Respondent Corporation filed W.P.NO.31311 of 2011 and the High Court vide orders dated 28-11-2011 was pleased to direct the Respondents not to disconnect the power supply to the Respondent Corporation so long as it pay tariff under category –I.

14. It is submitted that in spite of the above interim orders, the Petitioner again issued notice dated 07-05-2016 to pay an amount of Rs.1,11,93,308/06 without any details as to how the said amount has been arrived at. To the same the Respondent Corporation vide its reply dated 25-05-2016 informed the Petitioner about the orders in W.P.NO.14980 of 2007 and

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interim orders in W.P.NO.31311 of 2011 and requested to issue bill under H.T. Category I. Thereafter, once again the Petitioner issued the proceedings dated 20-08-2016 in the form of final notice. Therefore, the Respondent Corporation under impression that it is a notice, again vide its reply dated 09-09-2016 reiterated the same as stated in its letter dated 25-05-2016. But from the perusal of the contents of the proceedings of the Petitioner dated 20-08-2016 it is evident that the Petitioner has rejected the contention of the Respondent Corporation to categorize its unit under Category –I. Aggrieved by the same the Respondent Corporation filed W.P.NO.3948 of 2017 and the High Court vide orders dated 06-02-2017 suspended the above said proceedings dated 20-08-2016 and the said Writ Petition is pending. In view of the orders in W.P.NO.3948 of 2017, W.P.NO.31311 of 2011 was disposed of on 21-03-2017 as nothing survives in the Writ Petition to be decided.

15. It is submitted that while matters stood thus, on 20-10-2017, the Respondent Corporation received notice dated 16-10-2017 informing *that "as per the Tariff Orders approved by TSERC for the Financial year 2017-18 (w.e.f 01-09-2017) the HT consumers who are availing electricity for the purpose of supply of gas/oil storage/transfer stations, warehouses, godowns (other than cold storage godown) storage units or of similar nature comes under HT Cateogry-II."*

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16. Further it is also informed the Respondent Corporation to pay an amount of Rs.13,67,692/- which is billed under H.T. Category II for month of September 2017 within 15 days from the date of receipt of the notice or otherwise the supply will be disconnected. Aggrieved by the said notice, HPCL filed WP. No. 37275/2017 and the Hon'ble Court by Order dtd. 07.11.2017 suspended notice dated 16-10-2017 and directed the Respondent Corporation to pay electricity charges under HT-I category.

17. It is submitted that the proceedings of the Petitioner dated 16-10-2017 is void ab-initio as it is violative of Principles of Natural Justice. A careful perusal of the "Tariff Application for Retail Supply Business for FY 2017-18 along with Cross Subsidy Surcharge for the FY 2017-18" dated 13.04.2017 filed by the Petitioner and similar application filed by the TSNPDCL and the Tariff Order dated 26.08.2017 shows that the Petitioner and the TSNPDCL filed their Tariff Applications without disclosing the above said court orders and also without disclosing the fact that the matter was ceased by the Hon'ble High Court and obtained the modifications in then existing HT-I Category, detrimental to the interest of the Respondent Corporation.

18. It is submitted that prior to Retail Supply Tariff Order 2017-18, the Definition of HT- I Industry was as follows: -

"This tariff is applicable for supply to all H.T. Industrial Consumers, Industrial purpose shall mean manufacturing, processing and/or

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preserving goods for sale, but shall not include shops, Business Houses, Offices, Public Buildings, Hospitals, Hotels, Hostels, Choultries, Restaurants, Clubs, Theatres, Cinemas, Railway Stations and other similar premises not withstanding any manufacturing, processing or preserving goods for sale. The Water Works of Municipalities and Corporations and any other Government organizations come under this category. Information Technology units identified and approved by the Consultative Committee on IT industry (CCITI) constituted by Govt. of AP also fall under this category."

The Petitioner and the TSNPDCL by their above said Tariff Applications with an ulterior motive proposed the following change to the existing HT-Categorisation.

"*All servicing & repairing centres, Bus Depots, gas/oil storage/transfer stations, warehouses/godowns/storage units (except for cold storages) etc. shall not be included in HT I(A) category".*

The Petitioner and the TSNPDCL, in their Tariff Application, for reasons best known to them, deliberately did not disclose the above said Court Orders and proceedings pending before the High Court. Otherwise also, no specific reasons for the said change were mentioned in the Tariff Applications. This fact is more amplified from the Tariff Order dated 26.08.2017 which is also silent about the reasons submitted by the Petitioner and the TSNPDCL for incorporating the said changed in the Tariff Orders. It is also pertinent to submit that despite pending litigation with the Respondent Corporation, the Petitioner failed to provide any specific notice to Respondent Corporation about the said specific changes that were detrimental to the interest of Respondent Corporation.

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19.It is submitted that under the above facts and circumstances, the Hon'ble Commission was pleased to approve the following clause:

"6.5.5 The terms and conditions for applicability of HT I consumer category approved by the Commission in this Order are as follows:

- *This tariff is applicable for supply to all HT consumers using electricity for industrial purpose. Industrial purpose shall mean manufacturing, processing and/or preserving goods for sale, but shall not include shops, Business Houses, Offices, Public Buildings, Hospitals, Hotels, Hostels, Choultries, Restaurants, Clubs, Theatres, Cinemas, Printing Presses, Photo Studios, Research & Development Institutions, Airports, Bus Stations, Railway Stations and other similar premises (The enumeration above is illustrative but not exhaustive) not withstanding any manufacturing, processing or preserving goods for sale.*
- .....
- .....
- *These shall not be included in HT I(A) category: All servicing & repairing centres other than that of TSRTC, bus depots other than that of TSRTC, gas/ oil storage/transfer stations, warehouses/ godowns/ storage units (except for cold storages), etc.*
- .....
- .....
- .....
- .....

Accordingly, the following order was passed "Chapter 8- Terms and Conditions of Tariff "of the Tariff Order Dated 26.08.2017:

"Part 'B' HT-Tariffs 8.83. These tariffs are applicable for supply of Electricity to HT consumers, having loads with a contracted demand

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of 70 kVA and above and/or having a contracted load exceeding 56 kW/ 75 HP, excluding LT-III industrial categories. For LT-III Industrial category having contracted load of more than 100 HP, the HT tariffs are applicable.

HT-I: Industry

Applicability

8.84.This tariff is applicable for supply to all HT consumers using electricity for industrial purpose. Industrial purpose shall mean manufacturing, processing and/or preserving goods for sale, but shall not include shops, Business Houses, Offices, Public Buildings, Hospitals, Hotels, Hostels, Choultries, Restaurants, Clubs, Theatres, Cinemas, Printing Presses, Photo Studios, Research & Development Institutions, Airports, Bus Stations, Railway Stations and other similar premises (The enumeration above is illustrative but not exhaustive) not withstanding any manufacturing, processing or preserving goods for sale.

8.85.This tariff shall also apply to:

i. Water Works & Sewerage Pumping Stations operated by the Government Departments or Co-operative Societies and pump sets of Railways, pumping of water by industries as subsidiary function and sewerage pumping stations operated by local bodies.

ii. Workshops (involving activity of manufacturing), bus depots of TSRTC, servicing and repairing centres of TSRTC, cold storages, flour mills, oil mills, saw mills, Ice candy, Ice manufacturing units with or without sale outlets.

iii. These shall not be included in HT I (A) category: All servicing & repairing centres other than that of TSRTC, bus depots other than that of TSRTC, gas/ oil storage/transfer stations, warehouses/ godowns/ storage units (except for cold storages), etc.

iv. The Information Technology (IT) units identified and approved by the Consultative Committee on IT Industry (CCITI) constituted by Government Telangana State.

v. Newspaper printing units.

vi. Poultry Farming Units. and

vii. Pisciculture and Prawn culture units."

20. From the above it is evident that there is no change of consumers to whom H.T. Category - I is applicable in both the tariff orders. The modification introduced by the Clause 8.85(iii) of Tariff Order 2017-18 wherein it is mentioned that Tariff order is not applicable to gas/oil Storage/transfer stations, issuing impugned notice is arbitrary and illegal more so when the said clause 8.85(iii) is not appropriate and valid.

21. It is further submitted that the activity of the said above unit of the Respondent Corporation and various other Gas/Oil storage/transfer stations in the State of Telangana squarely falls in the said H.T. Category-I (Industry). The Petitioner and TSNPDCL ought to have noticed that the activity of the said Unit of the Respondent Corporation falls within each of all the expressions used therein namely "Industry", "Process", "Process and Preserving", "Preserving for Sale" and also "Manufacturing". Hence, viewing from any angle, the activity of the said Unit falls in H.T. Category-I (Industry) and it is not mere a gas/oil storage/transfer station.

22. It is submitted that H.T. Category-I (Industry) only covers Industrial Consumers and definition of Industrial Consumers used therein is inclusive in nature and not an exhaustive one. Word **"Industry"** in the expression *"Industrial* **Consumers***"* should be, undisputedly, the true and natural meaning keeping in view the context and especially in comparison with other categories more so *"***H.T.Category-II (NON INDUSTRY)***"*. Any

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organized mode of activity with considerable deployment of money, men and equipment and the nature and volume of the products being dealt is sufficient to bring it within the fold of expression "**Industry**".

23. It is submitted that consumers with much simpler activity than that of the activity of the said Unit and though no manufacturing activity is involved, were placed in Category-I (Industry), for example, even Cold Storage Units, Rice Mills, Effluent Treatment Plants etc.,

24. It is submitted that the "H.T.Category-II (Non Industrial)" is purely for such consumers who are non industrial in nature and when the said Unit is an " Industry " it can never be placed in this " H.T.Category-II (Non Industrial) ". Even going by the scheme of classification of consumers for the purpose of tariffs chargeable either under the Tariff Notifications issued by the erstwhile APSEB or under the Tariff Orders issued by the APERC also clearly denote that the activities like that of the said Unit are categorized only as Industrial Activity.

25. It is submitted that on proper appreciation of the process involved in the said Unit, apart from the process of preserving and storing very large quantities of highly volatile Petroleum Products (Essential Commodities) like Motor Spirit High Speed Diesel and Kerosene there is also manufacturing activity involved in the said Unit. Petroleum Products

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namely (i) "Gasohol" (which is a blend between Motor Spirit and Ethanol), ii) B-5 Diesel (High Speed Diesel is blended with Bio Diesel and (iii)Blue Dye is also doped in Kerosene to detect adulteration.

26. It is submitted that the physical and chemical properties of the products handled in the said Unit requires highly sophisticated equipment and it is required to comply with provisions of several statutes to name some of them are (i) The Factories Act, 1948, (ii) The Environment (Protection) Act, 1986, (iii) The Explosives Act, 1884, (iv), The Petroleum Act, 1934, (v) The Industrial Disputes Act, 1947, (vi) The Bureau of Indian S6tandars Act, 1986 and various Rules and Regulations framed there under. The said Unit is termed as "**Most Accident and Hazardous Unit**" the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 also as **"Hazardous Process"** under the Factories Act, 1948. Therefore, there is no other alternative description or nomenclature which can be given to the activity or process of the said Unit, except "Industry".

27. Without prejudice to the above submissions, It is submitted that the activity of the said unit squarely falls within the activity of "**Preserving for Sale**" which is one of the activities described in the said definition of H.T.Category –I (Industry). In fact, then Divisional Engineer/DPE/ Hyderabad and the Assistant Divisional Engineer/DPE/Vijayawada, inspected Units of M/s. Indian Oil Corporation at Sanathnagar and HPCL

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at Kondapalli respectively, which are involved in similar activity of handling another petroleum product namely, Liquefied Petroleum Gas (LPG). Upon the said inspection, he has requested his superior Authority namely the concerned Superintendent Engineers to classify the said Unit into H.T.Category-II (Non Industrial) on the sole ground that there is no production activity involved in the said Unit. In pursuance of the said request, the said Superintendent Engineers sought clarification of the erstwhile Board of Andhra Pradesh State Electricity, part of whose functions are now entrusted to the APERC. Consequently, the said Board, examined the whole issue and held that the activity of the said Units amounts to preserving of goods for sale and distribution to various places in bulk loads and hence fall under "H.T.Category-I (Industry)" as per the Tariff Notification then existing namely B.P.Ms.No. 32 dated 29-07-1996. The APSEB has also advised the said Superintendent Engineers not to re-classify the said Units of M/s. Indian Oil Corporation Limited and HPCL as "Category-II (Non Industrial)" and directed them to continue the said units in "H.T.Category-I (Industry)". The said decision was communicated to the said Superintendent Engineers by the Member Secretary of the Board vide proceedings dated 22-06-1998.

28. It is submitted that what is required to be considered is whether pumping is part of Industrial activity or not but not what product/substance is being

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pumped and that whether such pumping comes within the expression "**Process**" used in the said definition/meaning given for the said Category-I (Industry) in the Tariff Order.

29. It is submitted that the pumping of Petroleum products over a long distance is for the purpose of preserving before and it would squarely take the said unit into the fold of the expression "**Preserving for Sale**" used in the said clause/definition and therefore the said activity of the said Unit falls within the said Category-I (Industry) in the Tariff Order.

30. It is submitted that all the expressions used are (i). "Manufacture Goods for Sale", (ii). "Processing Goods for Sale" (iii) "Manufacturing, Processing and Storing the goods for Sale" and (iv). "Preserving Goods for Sale" emphasize the main purpose namely "Sale" alone, and therefore, process of transport, storing and ultimately selling will definitely come within the said definition /meaning given for the said Category-I (Industry) in the Tariff Order.

31. It is submitted that the significance of excluding certain consumers from the said clause even if their activity involves (i). manufacturing goods for sale or (ii). processing goods for sale or (iii). preserving goods for sale or (iv). processing and preserving goods for sale clearly evidences that such

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consumers who have no remote connection with the definition of "**Industry**" have been excluded.

32. It is submitted that the entire gambit of the process undertaken and also the object for which such a definition has been provided for has to be looked into for deciding whether a particular unit is industrial or non industrial.

33. It is submitted that the factor of distance for which the product is Transported (pumped) irrespective whether it is one Kilometer or hundreds of Kilometers, is an irrelevant factor for consideration as to whether such Process involved at the said Units concerned falls within the said clause or not.

34. It is submitted that there can be more than one tariff application in one unit. But the pumping though it is integral part of the entire scheme of manufacturing process of HPCL, still it comes within the said definition/clause provided for the said Category-I (Industry) in the Tariff Order as it is also a process involving (i). Boosting the pumping of the manufactured product (ii) preserving the product for sale that is by storage (iii) adding or blending so as to produce new products and (iv). whole sale distribution of the product by special packaging to the retailers apart from sale to other Oil Companies (v) maintaining variable pressures to see that

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different products pumped do not get mixed up (vi) Constant monitoring the entire system etc.

35. It is submitted that there are Whole Sales involved at the said unit. The product tapped of or drawn from the said pipeline is stored, further processed and sold to the retailers and other oil companies in whole sale.

36. It is submitted that the electricity is consumed for the process of (i). Pumping or Boosting the pumping of petroleum products, (ii). Tapping or Drawing them form the said pipe line, (iii) Adding or blending (iv). Doping (v) Storing and (vi). Packing them in special containers or vessels and then sold in Whole Sale and therefore the said activity of the said unit of HPCL falls within the expressions of "Process for sale" or " Preserving for Sale " or "Processing and Preserving for Sale" used in the said definition/clause provided in the said Category-I (Industry) in the Tariff Order.

37. It is submitted that the Respondent Corporation had filed W.P.NO.23037 of 2012 with respect to HT S.C.No.VJA.557 at Vijayawada for the activity of above said pipe line, an oil transfer unit, questioning the action of the Respondents therein in categorizing the said HT connection in HT – II. The High Court after considering elaborately all the aspects with respect to activity undertaken, has vide orders dated 08-10-2015 allowed the same and the operative portion of the order reads as follows:

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"The Writ Petition is allowed. The Respondents are directed to reclassify HPCL's Unit at Kattubadipalem, Vijayawada, under H.T. Category-I and revise the bills w.e.f. 1-2-2005 when the Respondents have changed its category from H.T. Category-I to H.T. Category-II, and adjust the excess tariff collected from HPCL in future bills."

38. It is submitted that the above said order is followed in W.P.Nos.40634 of 2014 and W.P.NO.41004 of 2014 filed with respect to Similar HT service connections i.e., RJY 388 at Rajumundry and HT service connection VSP308 at Visakhapatnam respectively and the said Writ Petitions are allowed vide orders dated 31-10-2016 in terms of the order dated 08-10-2015 in W.P.NO.23037 of 2012. The issue in the present Objection is same as in the above Writ Petitions.

39. It is submitted that while passing the Tariff Order dated 26/08/2017 the above said aspects were not made available to the Hon'ble Commission for a proper adjudication of the Tariff applicable to the Gas and Oil installations of HPCL.

40. It is further submitted that the modifications brought under Clause 8.85(iii) of the Tariff Order dated 26.08.2017 is not in accordance with the Electricity Act, 2003. PART-VII of the Electricity Act deals with

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Electricity Tariff. Sec. 61 and 62 of the Electricity Act deals with tariff regulation and determination of tariff. Sec. 62 deals with determination of electricity tariff including tariff for retail sale of electricity. The Guiding principles for determination of tariff for customers is contained in Sec. 62(3):

"*The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required*"

It is submitted that in the Tariff Order dated 26.08.2917, the Hon'ble Commission per se has not mentioned any reasons for differentiation of Oil and Gas Stations.

41. As per Sec. 62(3), the customer may be differentiated basis the purpose for which supply is required and this has been clarified by the National Tribunal in the matter of *Association of Hospitals Vs. Maharashtra Electricity Regulatory Commission* stating that the real meaning of expression, "purpose for which the supply is required" as used in Section 62 (3) of the Act does not merely relate to the nature of the activity carried

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out by a consumer but has to be necessarily determined from the objects sought to be achieved through such activity. The purpose is the design of effecting something to be achieved or accomplished. The overt act of the person must be looked at so as to find out the effect of the transaction. Therefore, it is beyond doubt that 'purpose' has to be determined with regard to the ultimate object of the consumer for the use of electricity. While determining the purpose for which supply is required by a consumer, it is ultimately the end objective of the user that has to be ascertained. The tribunal also found that organizations providing essential services can be classified separately, favouring such organization.

42. It is submitted that HPCL is in the business of refining and supply of petroleum products which are classified as essential commodity under the Essential Commodities Act, 1955. HPCL been established as part of nation building and its Oil and Gas installations are also constructed on strategic locations for the purpose of ensuring accessibility of safe and secure fuels community in an around such installations. Such installations cater to motoring public, domestic and industrial consumer of LPG, industrial establishments, state and central government undertakings and others. It is also submitted that various establishments units mentioned under the Industrial Category in the Tariff Order dated 26.08.2017 also rely on HPCL

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and other Public Sector Oil Marketing Companies for sourcing their petroleum fuels.

43. It is also submitted under Section 62 (3) only granting of undue preference to any consumer is prohibited. However, the Commission can grant due preference to the consumer. As already submitted above, HPCL is a Government Company engaged in the business of sale of essential commodity of petroleum products. This has been endorsed by the Appellate Tribunal in *Association of Hospitals Vs. Maharashtra Electricity Regulatory Commission* Therefore, the Hon'ble Commission may be pleased consider the case of HPCL favourably.

44. It is also submitted that the Supreme Court of India ***in Hindustan Paper Corpn. Ltd. Vs Government of Kerala and Ors, AIR 1986 SC 1541,*** relating to exemption given to Govt Companies under Section 6 of Kerala Forest Produce (Fixation of Selling Price) Act, 1978, found that Government companies and private companies constitute different class for purpose of Act; exemption given to Government companies under Section 6 not discriminatory.

45. The Respondent Corporation craves the leave of the Hon'ble Commission making additional submissions and also for producing additional material documents during the course of further proceedings in the subject Petition.

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For the above said reasons it is prayed that this Honourable Commission may be pleased to issue an Order:

(i) Removing gas/ oil storage/transfer stations operated the Respondent Corporation in the State of Telangana from the application of Sec. 8.85(iii) of the Tariff Order dated 26.08.2017,

(ii) Declaring that HT-1, Industrial category tariff is applicable to gas/ oil storage/transfer stations operated by the Respondent Corporation in the State of Telangana,

(iii) Consequently, direct the Petitioner to categorize the electrical connections of gas/ oil storage/transfer stations operated by the Respondent Corporation in the State of Telangana under H.T. Category – I,

(iv) direct the Petitioner to adjust the excess amounts already paid by the Respondent Corporation under HT- category – II in the future bills.

(v) And pass such other order or orders as this Honourable Court deems fit and proper in the circumstances of the Case.

Dated: 23/1/2018

Place: Hyderabad

Respondent

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HINDUSTAN PETROLEUM CORPORATION LTD.

BEFORE THE HONCLE TELEGANA STATE ELECTRICITY REGULATORY COMMISSION

11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad – 500 004.
Phone Nos. (040) 23397625/ 23311125 to 28 Fax No. (040) 23397489 Website
www.tserc.gov.in E mail: secy@tserc.gov.in

I.A. No. of 2018

In O.P. No. of 2018

In the matter of

ARR and Tariff proposals for the Retail Supply Business, Cross Subsidy Surcharge Proposals and Additional Surcharge Proposal for the FY 2018-19

BETWEEN:

Southern Power Distribution Company
of Telangana Limited, 6-1-50, Corporate Office,
Mint Compound, Hyderabad – 500 063.
Represented by its Chairman & Managing Director,
Tel. No. (040)-23431018 Fax No. (040) 23431082
Website: www.tssouthernpower.com ....Petitioner

AND

Hindustan Petroleum Corporation Ltd.,
Represented by the General Manager,
Operations and Distribution,
South Central Zone, 7th Floor,
Parasharam Bhavan, Hyderabad. .... Respondent

Deponent

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AFFIDIAVIT OF APPLICANT VERIFYING THE ACCOMPANYING OBJECTION

I, Sumeet Ray, aged 50 years, Occupation: Dy. General Manager, Transportation, O & D Department, Hindustan Petroleum Corporation, South Central Zone, Hyderabad do Solemnly affirm and say as follows:

1. I am competent and duly authorized by Company to affirm, swear, execute and file this Objection.

2. I have read and understood the contents of the accompanying Objections drafted pursuant to my instructions. The statements made in the accompanying Objection now shown to me are true to my knowledge derived from the official records made available to me and are based on information and advice received which I believe to be true and correct.

DEPONENT

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VERFICATION

The above named Deponent solemnly affirm at Hyderabad on this day 23rd day of January, 2018 that the contents of the above Affidavit are true to my knowledge no part of it is false and nothing material has been concealed there from.

DEPONENT

सुमीत रे / SUMEET RAY
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BEFORE THE HONCLE TELEGANA STATE ELECTRICITY REGULATORY COMMISSION

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I.A. No. of 2018

In O.P. No. of 2018

In the matter of

ARR and Tariff proposals for the Retail Supply Business, Cross Subsidy Surcharge Proposals and Additional Surcharge Proposal for the FY 2018-19

BETWEEN:

Southern Power Distribution Company
of Telangana Limited ....Petitioner

AND

Hindustan Petroleum Corporation Limited .... Respondent

LIST OF DOCUMENTS FILED BY THE RESPONDENT CORPORATION

S. No.	DISCRIPTION	Page No.
1	WP. No. 10977/2009, ORDER dated 29/04/2016	1 - 4
2	WP. No. 13281/2008, ORDER dated 06/08/2014	5 -8
3	WP. No. 19496/2008, ORDER dated 06/08/2014	9 - 14
4	WP. No. 20264/2008, ORDER dated 06/08/2014	15 - 19
5	WP. No. 23037/2012, ORDER dated -8/10/2015	20 - 59

Respondent

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.10977 OF 2009

ORDER:

Heard Sri M.Ravindranath Reddy for petitioner and
Sri M.Ravindra for respondents.

The petitioner prays for Mandamus declaring the action of respondents in categorizing the petitioner's unit service connection bearing No.RJY 687 as HT Category-II, as arbitrary, illegal and unconstitutional and consequently pray for a direction to respondents to categorize petitioner's unit HT connection No.RJY 687 as Category-I.

The relevant circumstances for the disposal of the writ petition are as follows.

On 17.06.2006, the petitioner applied to 3rd respondent for sanction of HT connection to petitioner unit at Veeralankapalli Village on Gokavaram-Korukonda High Road, East Godavari District. The 3rd respondent through Lr.No.SE(O)RJY/Coml/F.HT.Doc./ No.1658/06 dated 10.10.2006 sanctioned supply of power to petitioner. Through letter dated 10.10.2006, the 3rd respondent categorized the petitioner unit as falling under HT Category-II.
The petitioner unit went into commercial production on 16.06.2008. On 17.06.2008, the petitioner made representation to 3rd respondent for conversion of petitioner from HT Category-II to HT Category-I. The 3rd respondent did not consider the representation and it is one of the submissions at the time of hearing that the representation remained unattended till date. On 22.10.2008, yet another representation was made by petitioner to 3rd respondent requesting the 3rd respondent to treat the power connection No.RJY 687 as falling under Category-I. It is matter of record that yet another representation was made on 05.01.2009 for the very same relief by the petitioner. The 3rd respondent, as already noted, did not consider the representations or pass any order either accepting or rejecting the request of petitioner for treating service connection No.RJY687 as Category-I . Hence, the writ petition.

The case of petitioner is that at Veeralankapalli unit, the petitioner has established LPG plant and the activities undertaken at the LPG unit are as follows:

i) Bulk LPG is received through road tankers and pipeline.
ii) This bulk LPG is stored in to our storage tanks
iii) Empty LPG cylinders of various capacities are received through trucks from different locations.
iv) The LPG cylinders thus received are filled with LPG taken from storage tanks through electronic carousels.
v) Filled LPG cylinders are then subject to various checks and tests through automatic machinery.
vi) At the end of the process, filled LPG cylinders are loaded into trucks and sent to various locations.

The case of petitioner is that it is required to obtain authorizations/permissions from various authorities under the following enactments:

(i) The manufacturer, storage and import of Hazardous Chemicals Rules, 1989 & 2000(MSUH Rules)
(ii) Gas Cylinder Rules including Amendment Rules, 2004
(iii) The Static & Mobile Pressure Vessels (unfired) Rules including Amendment Rules, 1997
(iv) Licence to run a factory from the Department of Factories, as per Factories Act, 1948
(v) Licence for storage of petroleum products under Petroleum Rules, 1976
(vi) Licence from the Chief Controller of Explosives (PESO) for

(a) a Filling & Storage of L.P. Gas Cylinders (b) Licence for storage of LPG in pressure vessels

(vii) The Water (Prevention & Control of Pollution) Act, 1974 and Rules, 1975 and

(viii) The Air (Prevention & Control of Pollution) Act, 1981 & Rules 1982/83

(ix) The Provident Fund Act

(x) The Standards of Weights and Measures Act, 1976 apart from several other guidelines framed by various authorities etc. In fact, the petitioner's unit is termed as Major Accident Hazard Unit (MAH Unit) under the Manufacture, Storage and import of Hazardous Chemicals Rules, 1989 framed in exercise under Sections 6, 8 and 25 of the Environment (Protection) Act, 1986 (Act No.29 of 1989).

According to the enactments referred to above, they are *per se* applicable to manufacturing units/factories. There cannot be two different classifications, one for the purpose of following the enactments referred to above as an industry/manufacturing unit and for the purpose of tariff, the same be treated as HT Category-II. The petitioner, therefore, prays for a declaration that the petitioner unit at Veeralankapalli Village be treated as HT Category-I. The tariff order dated 23.03.2006 defines HT Category-I and HT Category-II as follows:

"H.T.Category-I

This tariff is applicable for supply to all H.T Industrial Consumers. Industrial purpose shall mean manufacturing, processing and/or preserving foods for sale, but shall not include shops, Business Houses, offices, Clubs Public Buildings, Hospitals, Hotels, Hostels, Choultries, Restaurants, Clubs, Theatres, Cinemas, Railway Stations and other similar premises notwithstanding any manufacturing, processing or preserving goods for sale. The Water Works of Municipalities and Corporations and any other Government organizations come under this category. The Information Technology units identified and approved by the Consultative Committee on IT Industry (CCITI) constituted by Govt. of AP also fall under this category.

"H.T.Category-II_Non-Industrial

This tariff is applicable to all H.T consumers other than those covered under other H.T. categories.

Sri M.Ravindranath Reddy has substantially reiterated the averments made in the representations and the grounds raised in the affidavit. In addition to above, learned counsel has relied upon the decision of this Court reported in **HINDUSTAN PETROLEUM CORPORATION LTD. v. ANDHRA PRADESH SOUTHERN POWER DISTRIBUTION COMPANY LTD**[1] and an unreported judgment of the Bombay High Court in W.P.No.9455 of 2011 dated 19.01.2012 in support of his contention that the petitioner's unit at Veeralankapalli Village is required to be treated under HT Category-I, but not as HT Category-II. The operative portions on which the learned counsel has relied upon are as follows:

In **HINDUSTAN PETROLEUM CORPORATION LTD's** case (1 supra):

…..the entire process of conveyance of POL from Visakhapatnam to Hyderabad involves deployment and usage of sophisticated technology, for which purpose the petitioner has been using electricity in order to maintain proper pressure in the Pipe Line. Hence, I am of the opinion that one of the activities undertaken by the petitioner in conveying petroleum products from its storage points at Visakhapatnam and Vijayawada involves 'processing'.

In an unreported judgment of the Bombay High Court in W.P.No.9455 of 2011 dated 19.01.2012:

"In so far as the other aspect whether the activity of running a gas bottling plant is a Commercial activity or a manufacture activity, prima facie, I find that neither the CGRF nor the Ombudsman have considered the relevant provisions of the Explosives Act, 1884 and the Gas Cylinder Rules 2004. The Petitioner has elaborately explained before the Authority below that the process of the industry is not simple refilling LPG Cylinder. It is explained that the activity comprises of LPG suction, vapour distribution, degassification, compression of LPG vapour, external and internal cleaning, hydro pressure test, refilling, sealing, quality control etc. Prima facie, the aforesaid activity will contribute a "Manufacturing Activity".

Section 4 (h) of the Explosives Act, 1884 defines the word "manufacture" and the same reads thus:-

"(h) "manufacture" in relation to an explosives includes the process of-

(1) dividing the explosive into its component parts or otherwise breaking up or unmaking the explosives, or making fit for use any damaged explosive; and (2) re-making, altering or repairing the explosive"

In exercise of the power conferred by Sections 5 and 7 of the Explosives Act, 1884, the Central Government has framed the Gas Cylinder Rules, 2004. Rule 2 (XXXIII) defines the word "manufacture of gas" which reads thus:-

"(xxxiii) "manufacture of gas" means filling of a cylinder with any compressed gas and also includes transfer of compressed gas from one cylinder to any other cylinder".

The Petitioner had relied upon various Judgments before the Electricity Ombudsman, but unfortunately those Judgments have not been discussed and considered. The Petitioner had relied upon the Judgment in the case of Bharat Petroleum Corporation Ltd v/s. State of Gujarat & Others wherein Hindustan Petroleum Corporation Limited was also a party and the said Judgment is in respect of the Gas Bottling Plant. Special Civil Application No.6220 of 2001 was filed by the Hindustan Petroleum Corporation Limited. In the said Judgment, the question whether the activity of a Gas Bottling Plant is the manufacturing activity or not, was specifically raised. There the High Court had considered the provisions of The Indian Explosives Act, 1884 and the Gas Cylinder Rules 1981 (Rules which were in force prior to the making of Gas Cylinder Rules, 2004). The High Court has clearly held that the activity of a Gas Bottling Plant is a manufacturing activity. I respectfully agree with the aforesaid Judgment of the Gujarat High Court."

The respondents filed counter affidavit. It is not in dispute that what is run by the petitioner at Veeralankapalli Village is LPG bottling plant. As per the procedure, the application of petitioner dated 17.08.2006 was forwarded to the Divisional Electrical Engineer Operation, Rajahmundry for HT test report and the same forwarded through letter No.DEE/O/RJY/AE/Comml./F./D.No.64/08 dated 23.01.2008. According to respondents, the test report has clearly mentioned that the tariff that is applicable to petitioner is HT Category-II. Therefore, the release of power through letter dated 10.10.2006 is based on the test report and after entering into agreement on 04.01.2008 for a contracted maximum load of 300 KVA, a representation was made on 22.10.2008 seeking conversion of HT connection from Category-II to Category-I. According to 3rd respondent, the petitioner unit is an industrial unit and it is involved in various processing activities and comes within the definition of industrial purpose as defined in the schedule of retail tariff and terms and conditions, is denied. The nature of activities of petitioner company is petitioner receives LPG gas through road, tankers/pipeline, filling the same in cylinders and repairing cylinders and the same do not fall within the definition of industrial purpose as defined in the schedule industrial tariff and terms and conditions. Since the release of power was as Category-II, the petitioner cannot now seek conversion of category from Category-II to I.

Learned counsel Mr.M.Ravindra tried to distinguish the decisions relied upon by the petitioner in support of its assertion that the petitioner shall have to be treated as Category-I.

I have heard learned counsel appearing for the parties and perused the material available on record.

The definition of HT Category-I and the implication of the definition of HT Category-I is attracted to manufacturing process and/or preserving goods for sale. But the industrial purpose is not attracted to shops, business houses, offices, public buildings, hospitals, hotels, hostels, choultries, restaurants, clubs, theatres, cinemas, railway stations and other similar premises notwithstanding any manufacturing process or preserving goods for sale. The water works of municipalities and corporations and other Government organizations come under this category. The information technology units identified and approved by the Consultative Committee on IT industry constituted by the Government of A.P also fall under this category. Therefore, if the definition is divided into three portions, the first portion deals with industrial purpose meaning - manufacturing, processing and/or preserving goods for sale.
The second part deals with shops, business houses, public buildings, etc. Even if they undertake manufacturing, processing or preserving goods, they do not come under the meaning of industrial purpose. Likewise, the third limb refers to waterworks of municipalities and corporations, information technology units identified and approved by the Consultative Committee. In my considered view, the activity of petitioner certainly falls within

the definition of processing and/or preserving goods for sale.

The activity of petitioner at Veeralankapalli Village is directly falling within the definition of either manufacturing or processing under all the enactments referred to above. It is because of this reason as the activity attracts either the definition of manufacturing or processing, the petitioner is required to take authorizations/ licences/ permissions from various statutory authorities, including the authorities under the Explosives Act. I am also persuaded by the view taken by my learned brother Justice C.V.Nagarjuna Reddy in the first cited judgment and also the reasoning in an unreported decision of the Bombay High Court. For the above two reasons,

I am of the view that treating the petitioner as Category-II by reference to test report is unsustainable.

The writ petition is, accordingly, allowed. The respondents are directed to treat petitioner as HT Category-I and from now on, take appropriate steps as are required in this behalf. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

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S.V.BHATT, J

Date: 29.04.2016
Lrkm

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[1] 2016(2) ALT 349

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.13281 of 2008

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ORDER:

Heard the learned counsel for the petitioner and the learned Advocate General for respondents.

2. In this writ petition, the petitioner alleges that the 3rd respondent issued proceedings on 17.09.2005 re-categorising the electrical connection of the petitioner Unit located at Rajahmundry, East Godavari District, bearing Consumer Service No.RJY 388 from HT Category-I (Industrial) to HT Category-II (Non-Industrial). Challenging the same, the petitioner filed a complaint before the Forum for Redressal of Consumer Grievances of Eastern Power Distribution Company Ltd., Visakhapatnam, which was registered as CG No.40 of 2006 and the same was rejected on 03.06.2006. Challenging the same, the petitioner filed an Appeal No.17 of 2006 before the Vidhyuth Ombudsman, Hyderabad, who disposed of the same on 18.12.2006 rejecting the appeal. Challenging the same, the petitioner filed WP No.2697 of 2008. The said writ petition was disposed of by this Court on 16.04.2008 holding that similar writ petition in WP No.2185 of 2008 was disposed of on the said date and in terms of the said order, the said WP No.2697 of 2008 was also disposed of. WP No.2185 of 2008 was disposed of with the following terms:

> "1. Within a period of four weeks from the date of receipt of a copy of this order, respondent No.3 shall give notice to the petitioner against the proposed change of classification.
> 2. Within a period of two weeks thereafter, the petitioner shall file its objections.
> 3. On receipt of objections, respondent No.3 shall dispose of the same before taking a final decision on the proposed reclassification.
> 4. Since the action of reclassification is declared void, the respondents shall adjust the excess amount paid by the

petitioner towards differential tariff in the immediate future electricity bills.

Subject to the above directions, the writ petition is disposed of."

3. The grievance of the petitioner is that even before the order in WP No.2185 of 2008 could be received, the petitioner received proceedings dated 07.05.2008 on 12.05.2008 calling upon the petitioner Unit to show cause with regard to re-categorisation and collection of differential amount. The petitioner submitted a representation on 16.05.2008 seeking time, as the order in WP No.2185 of 2008 was not received and also sought personal hearing. But without passing any orders in the said representation, the 3rd respondent issued proceedings 09.06.2008 rejecting the petitioner's request as well as passing final order holding that there is no reason to revise the assessment as directed in the notice dated 07.05.2008.

4. Thus, it is clear that no proper opportunity was given to the petitioner and the learned Advocate General also fairly concedes that the petitioner is entitled for a fair opportunity to represent his case.

5. In the circumstances, the impugned proceedings of the 3rd respondent in D.No.104/08 dated 09.06.2008 are set aside and the petitioner is given liberty to submit an explanation to the re-categorisation from HT Category-I to HT Category-II from the date of release of the supply i.e., 06.03.1999 pursuant to the notice issued by the 3rd respondent, within a period of two weeks from the date of receipt of a copy of this order and the 3rd respondent shall consider the explanation and after affording personal hearing to the petitioner, pass appropriate orders in accordance with law, within a period of four weeks thereafter.

6. The writ petition is allowed accordingly to the extent indicated above. Pending miscellaneous petitions in this writ petition, if any, shall stand closed in consequence. No order as to costs.

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A. RAMALINGESWARA RAO, J

Date: 06.08.2014
BSS

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HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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WRIT PETITION No.13281 of 2008

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Date: 06.08.2014

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HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.19496 of 2008

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ORDER:

Heard the learned counsel for the petitioner and the learned Advocate General for respondents 1 to 3.

2. The petitioner is a public sector undertaking and it established a huge petroleum refinery unit in an extent of Ac.511.00 cents of land at Malkapuram, Gullalapalem and Kancharapalem villages of erstwhile Visakhapatnam taluk and presently Visakhapatnam Mandal and District. The units of Visakha Terminal, Tadepalli and Sanathnagar were originally established in the year 1965 and they were planned and designed for catering the demand exiting as on that date. The electrical connection of the said three units were categorised as HT-I (Industrial). The present dispute relates to the unit at Visakhapatnam and the total extent of land in which Visakha Unit established is Ac.22.41 cents and it is located within the premises/area of the above Refinery. The petitioner made an application to the 2nd respondent for electrical connection in April, 1998. Though the application was submitted under HT Category-II, the 3rd respondent after examining the process involved in the Unit and after considering the tariff notification of the erstwhile the Andhra Pradesh State Electricity Board (APSEB), categorised the Unit as HT Category-I (Industry). While so, the 3rd respondent issued letter on 25.05.2005 unilaterally and without any notice, converted and re-categorised the Visakha Unit from HT Category-I (Industry) to "HT Category-II (Non Industrial)" and intimated that an amount of Rs.3,66,34,746.84 is arrived at as difference of billing between HT Category-I (Industry) and HT Category II (Non-Industrial) from 24.06.1998 to April, 2005 and directed that the said amount should be paid within 30 days. After receipt of the said letter, the petitioner

submitted a representation on 31.05.2005 requesting the 3rd respondent to categorise the Unit under HT Category-I and to desist from categorizing it under Category-II. However, the differential amount was paid along with the consumption charges in the month of May, 2005 under protest by letter dated 14.06.2005. When no action was taken pursuant to the said two representations, another representation was submitted on 14.06.2005 to the Chairman & Managing Director of the 1st respondent Company and requested the 2nd respondent herein to consider its grievance and pass appropriate orders, retaining the petitioner Unit in HT Category-I (Industry). Another representation was submitted to the Chairman, Public Grievances on 15.01.2006 followed by a complaint dated 31.01.2006 lodged with the Forum for Redressal of Consumer Grievances of Eastern Power Distribution Company of A.P., Ltd., which was registered as CG No.16 of 2006. The said complaint was rejected by the Forum by proceedings dated 02.06.2006. Challenging the same, an appeal was preferred to the Vidyut Ombudsman and it was registered as Appeal No.17 of 2006. The said appeal was disposed of by order dated 18.12.2006 partly allowing the same and the copy of the said order was received on 23.12.2006. By the said order, the Vidyut Ombudsman confirmed the action of the 3rd respondent in so far as re-categorisation is concerned, but in so far as back billing is concerned, it was held to be bad in law and was set aside. In those circumstances, the petitioner filed WP No.2185 of 2008 questioning the action of the 3rd respondent in re-categorising the said unit from HT Category-I (Industrial) to HT Category-II (Non-Industrial) as confirmed by the 4th respondent and the Ombudsman. The said writ petition was disposed of on 16.04.2008 with the following directions:

> "1. Within a period of four weeks from the date of receipt of a copy of this order, respondent No.3 shall give notice to the petitioner against the proposed change of classification.
>
> 2. Within a period of two weeks thereafter, the petitioner shall file its objections.

3. On receipt of objections, respondent No.3 shall dispose of the same before taking a final decision on the proposed reclassification.

4. Since the action of reclassification is declared void, the respondents shall adjust the excess amount paid by the petitioner towards differential tariff in the immediate future electrical bills."

3. Pursuant to the said orders in the above writ petition, the 3rd respondent issued notice on 05.05.2008 seeking explanation on the following two aspects namely,

(A) To change category from HT-1 to HT-II from date of release of supply i.e., 24.06.1998 and

(B) To collect the tariff difference amount of Rs.3,66,34,747.00 from the period from 24.06.1998 to April 2005.

4. The petitioner submitted its explanation on 05.07.2008 and on the same day, personal hearing was given. The 3rd respondent issued proceedings on 23.07.2008 without considering the explanation, reiterating his earlier orders of re-categorising the Unit of the petitioner in HT Category-II. Challenging the said proceedings dated 23.07.2008, the petitioner filed a complaint before the 4th respondent on 06.08.2008. The petitioner also sought for suspension of the said order and the petitioner did not receive any intimation from the 4th respondent with regard to hearing of the appeal. The Senior Manager of the petitioner Unit went to the office of the 4th respondent on 27.08.2008 and submitted representation with a request to pass orders on the interlocutory application. By the time the said Officer returned to the office, the office of the petitioner unit received a fax copy of the proceedings dated 20.08.2008 disposing of the main complaint itself. It appears that the 4th respondent passed an order basing on the written submissions made by the 3rd respondent, without affording any opportunity to the petitioner. Challenging the same, the present writ petition was filed.

5. Learned counsel for the petitioner brought to the notice of this Court the order passed by the 4th respondent, which reads as follows:

> "In view of the written submission of the Superintending Engineer Operation/Visakhapatnam i.e.3rd respondent and after going through the material evidence available in record, the Forum directs that there is nothing to interfere into the action of the Superintending Engineer/ Operation, Visakhapatnam i.e. 3rd respondent. Since he finalised the case in compliance with the directions of the Honourable High Court in W.P.No.2185/08.
>
> Accordingly, C.G.162/2008 is disposed off.
>
> This order is signed on the 20th day of August, 2008."

6. It is clear from the above averments that the Vidyut Ombudsman partly allowed the complaint by setting aside the back billing and sustaining the order of re-categorisation passed by the 3rd respondent. By notice dated 05.05.2008 the 3rd respondent asked explanation of the petitioner on two issues, i.e., (1) re-categorisation and (2) collection of tariff difference amount. The 3rd respondent passed an order on 23.07.2008, virtually, setting aside the partial order of Vidyut Ombudsman allowed in favour of the petitioner. The 4th respondent passed the above order without affording any opportunity to the petitioner.

7. In the circumstances, the orders passed by respondents 3 and 4 are set aside and the petitioner is given liberty to submit an explanation to the re-categorisation from HT Category-I to HT Category-II from the date of release of the supply i.e., 24.06.1998 pursuant to the notice issued by the 3rd respondent, within a period of two weeks from the date of receipt of a copy of this order and the 3rd respondent shall consider the explanation and after affording personal hearing to the petitioner, pass appropriate orders in accordance with

law, within a period of four weeks thereafter.

8. The writ petition is allowed accordingly to the extent indicated above. Pending miscellaneous petitions in this writ petition, if any, shall stand closed in consequence. No order as to costs.

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A. RAMALINGESWARA RAO, J

Date: 06.08.2014
BSS

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HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.19496 of 2008

Date: 06.08.2014

BSS

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.20264 of 2008

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ORDER:

Heard the learned counsel for the petitioner and the learned Advocate General for respondents.

2 . The case of the petitioner is that on 16.05.2001, the petitioner entered into an HT Agreement with the 1st respondent for supply of electricity at specified voltage for the Unit of the petitioner Corporation called "Despatch Terminal, Vizag LPG Import Facility" near Sunken Ship Area, Lova Garden, Malkapuram, Visakhapatnam. As per the said agreement, the petitioner has to take a maximum load of 1000 KVA in phased manner as described hereunder:

Sl. No.	Description	Duration from the date of charging
01	100 KVA	0 to 6 months
02	200 KVA	6 – 12 months
03	500 KVA	12-24 months
04	750 KVA	24-36 months
05	1000 KVA	After 36 months

3. Pursuant to the said agreement, the 2nd respondent has released the first phase of CMD 100 KVA on 12.10.2001 and 2nd phase of 100 KVA on 12.04.2002, totalling 200 KVA. Thereafter, the petitioner did not take the balance CMD of 800 KVA. The petitioner was paying charges in accordance with the bills raised by the 2nd respondent i.e., tariff applicable to the load of 200 KVA. While so, the 2nd respondent without issuing any show cause notice, issued a demand notice on 15.02.2005 to pay an amount of Rs.39,45,624/- for the other phases of CMD, which was neither requested by the petitioner nor released to it. The petitioner submitted explanation on 07.03.2005 informing the 2nd respondent that due to the reasons beyond its control, balance 800 KVA was not taken and requested for

withdrawal of the demand. Thereafter, the petitioner addressed a letter dated 28.06.2005 requesting the 2nd respondent to enhance the existing contracted demand from 200 KVA to 750 KVA and further requested to advise them the formalities to be completed in this regard. The 2nd respondent, in response to the request of the petitioner, issued letter dated 22.07.2005 directing the petitioner to pay an amount of Rs.8,25,000/- towards security deposit charges for the increase in demand to 750 KVA and requested to enter into a fresh HT Agreement. The 2nd respondent also requested the petitioner to pay the minimum charges for the deferment in taking the phased demands. In response to the same, the petitioner requested the 2nd respondent to adjust the said amount of Rs.8,25,000/- from the deposits available with them representing the purported short fall between the billed amount and the minimum charges corresponding the CMD. The 2nd respondent replied on 17.08.2005 stating that there is no such excess amount lying with them to be adjusted and requested the petitioner to pay the said security deposit for the release of the additional 550 KVA, over and above the existing 200 KVA. The 2nd respondent also demanded to pay an amount of Rs.51,41,134/- up to May, 2005 towards the monthly minimum charges for the deferred phased demands. While so, when the said correspondence was going on, the 2nd respondent erroneously started raising bills from the month of August, 2005 for load of 1000 KVA. The petitioner by letter dated 31.10.2005 formally surrendered 250 KVA and requested to intimate the balance amount available in their account to enable them for paying the security deposit for 750 KVA. A fresh agreement was entered for supply of maximum load of 750 KVA on 13.07.2006. Again when the 2nd respondent issued a demand notice for Rs.92,32,064/- for the period from October, 2002 to July, 2008 against the minimum charges for the deferred phased demand, the present writ petition was filed.

4. Leaned counsel for the petitioner submits that though initially an agreement was entered for taking 1000 KVA, only 200 KVA was utilised and released to the petitioner and the petitioner has been paying the amounts for the bills raised by the respondents. Thereafter, the petitioner made a request on 28.06.2005 to enhance the CMD from 200 to 750 KVA and when the correspondence was going on with regard to the same, it ultimately ended in a fresh agreement on 13.07.2006 for supply of CMD for 750 KVA. The 2nd phase CMD for 100 KVA was released to the petitioner originally on 12.04.2002 and thereafter, no additional load was released to the petitioner. 200 KVA was released pursuant to the agreement entered on 16.05.2001 and it was superseded by a fresh agreement dated 13.07.2006, but the 2nd respondent issued a demand for Rs.92,32,064/- for the period from October, 2002 to July 2008 against the minimum charges for the deferred phased demand without issuing any show cause notice. Learned counsel for the petitioner further submits that such course of action is unwarranted and violative of principles of natural justice.

5. Learned Advocate General for the respondents submits that since demand was made unilaterally by the 2nd respondent without issuing show cause notice to the petitioner, the demand can be set aside by giving liberty to the 2nd respondent to issue a show cause notice to the petitioner for any proposed demand and the petitioner can submit its explanation.

6. In the facts and circumstances of the case, the impugned demand notice issued by the 2nd respondent is set aside and the 2nd respondent is directed to issue a show cause notice to the petitioner, if the 2nd respondent desires to collect any amount from the petitioner in connection with either of the agreements dated 16.05.2001 or 13.07.2006, within a period of four weeks from the date of receipt of a

copy of this order and the petitioner is given liberty to submit its explanation to the said show cause notice within a period of two weeks from the date of receipt of such show cause notice and the 2nd respondent shall pass final orders after hearing the petitioner personally and considering explanation submitted by it, within a period of four weeks thereafter in accordance with law.

7. The writ petition is accordingly allowed. Pending miscellaneous petitions in this writ petition, if any, shall stand closed in consequence. No order as to costs.

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A. RAMALINGESWARA RAO, J

Date: 06.08.2014
BSS

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HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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WRIT PETITION No.20264 of 2008

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Date: 06.08.2014

BSS

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.No.23037 of 2012

Date : 08-10-2015

Between:

Hindustan Petroleum Corporation Ltd.,
Represented by its Chief Manager –
Operations, Visakha-Vijayawada-
Secunderabad Pipeline (VVSPL),
Mr. B. Ramakrishna, Visakhapatnam
.. Petitioner

And

The Andhra Pradesh Southern Power
Distribution Company Ltd., represented
By its Vice Chairman & Managing Director,
Renigunta, Tirupati,
Chittoor District and 2 others ..
Respondents

Counsel for petitioner : Mr. M. Ravindranath Reddy
Counsel for respondents : Mr. P. Vinod Kumar

The Court made the following :

JUDGMENT:

This Writ Petition is filed for a mandamus to declare the proceedings of respondent No.3 in reference No.S.E/O/VJA/SAO/JAO-HT/R2.A3/D.No.616/12, dated 1-7-2012, whereby he has recategorised the electrical connection of the Unit of the petitioner at Vijayawada bearing Consumer Service No.VJA 557 from HT Category-I to HT Category-II, as illegal and arbitrary.

Evolution of the petitioner company:

The petitioner averred that the Government of India has taken over M/s. Esso Standard Eastern Inc., (a foreign company) under Esso (Acquisition of Undertakings in India) Act 1974, to cater to the needs of public in the country of petroleum products; that in September 1974 the name of the said company was changed to Hindustan Petroleum Corporation Limited (HPCL); that thereafter some more oil companies, including M/s. Caltex Oil Refiding (India) Limited, were taken over and merged with HPCL by the Government of India; and that HPCL is a Government of India Company under Section 617 of the Companies Act, 1956. It was

further averred that the petitioner and its predecessor, apart from certain other units in other parts of the country, has established a huge Petroleum Refinery Unit in an extent of Ac.511-00 at Malkapuram, Gullalapalem and Kancharapalem villages of the erstwhile Visakhapatnam Mandal, Visakhapatnam District. That the said Refinery which was originally established with a capacity of 0.675 Million Metric Tonnes (67.5 crore Kgs.) per annum has been expanded from time to time to its present capacity of 7.5 MMTs (750 crore Kgs) per annum at a cost of Rs.1000 crore, making it the largest Refinery on the East coast; that the petitioner has also spent Rs.700 crores towards environmental friendly measures; and that the upgradation of the petitioner-company has resulted in huge revenue earnings to the Government at the Centre, State and Visakhapatnam Port in terms of port and wharfage charges on crude imports and product dispatches. The petitioner has given certain details regarding the quantum of Sales Tax, Excise Duty, Customs Duty, Income Tax etc., paid for the year ending 31-3-2007, the number of persons employed by it either directly or indirectly and its contribution towards development of the areas surrounding its Refinery at Visakhapatnam Port.

Products, Retail Regional offices and Transportation

The petitioner further averred that the basic products of its Refinery are (i) Petroleum Oils and Lubricants (POL)

and (ii) Liquefied Petroleum Gas (LPG). That with an object to distribute the products of POL to various parts of the State of Andhra Pradesh, the petitioner has established three marketing divisions, namely, (i) Visakha Retail Regional office; (ii) Vijayawada Retail Regioinal Office; and (iii) Secunderabad Retail Regional Office; that the supplies of POL with respect to the area under the control of the Visakha Retail Regional office were being made from the Unit called Visakha Terminal, which is appurtenant to the Refinery; that the supplies to the area covered by the Vijayawada Retail Regional Office were being made from the Unit located at Tadepalli, Vijayawada Rural, Krishna District and the supplies to the area covered by the Secunderabad Retail Regional Office were being made from the Unit located at Sanathnagar, Hyderabad. That the supplies of POL to the Visakha Terminal were being made from the Refinery through a Pipe Line; that the supplies to the Units at Tadepalli and Sanathnagar were being made from the Visakha Terminal by Tank Wagons (Railway Wagons with mounted Tanks); and that at the said three locations, POL is stored in huge tanks and further distributed by Tank Trucks (Tanker lorries) to the various retail outlets for further distribution to the consumers.

Handling of products and statutory compliances

It was further averred that in view of the highly inflammable and volatile nature of the products (Hydro

Carbons), sophisticated equipment is required to be deployed at every stage starting from the Refinery to the end user; that huge quantities of POL are being handled by way of transport, storage, addition or blending, and packing in special containers so as to make it feasible for the Retail Dealers and the customers; and that all the Units of the petitioner-company are required to comply with the various provisions of both the Central and State enactments viz., The Factories Act, 1948, The Environment (Protection) Act, 1986, The Explosives Act, 1884, The Petroleum Act 1934, The Industrial Disputes Act 1947, The Bureau of Indian Standards Act, and various Rules and Regulations framed thereunder. That the Units of the petitioner-company are classified as “Most Accident and Hazardous Units” under the Manufacture, Storage and Import of Hazardous Chemical Rules 1989 and as involving “Hazardous Process” under the Factories Act 1948. It was further averred that the Units of Visakha Terminal, Tadepalli and Sanathnagar were originally established in about 1965 and they were planned and designed for catering to the demand existing at that time; and that the electrical connection of the said three Units were categorized as HT Category-I (Industrial).

Demand for products and surface transportation-disadvantages

The petitioner has given certain details of the

facilities and the infrastructure at the Tadepalli and Sanathnagar locations. It was averred that the Visakha Terminal serves the area of the Visakha Retail Regional Office and it is equipped for loading of Tank Wagons and Tank Trucks. That the said three Units were not in a position to cater to the increased demand and the projected demand in future; that the equipment has become old and outdated and more sophisticated equipment and technology has come into vogue; that conveyance of the product from Visakha Terminal to Sanathnagar and Tadepalli Depots was by Tank Wagons; that the supply from these two Units to the retail outlets was again by Tank Trucks; that the distances to be covered by the Tank Trucks to various retail outlets was also considerable; that the surface transport by Tank Wagons or by Tank Trucks was leading to considerable cost, delay, pollution, risk of accidents, adulteration, pilferages etc., that due to strikes, bandhs, floods, cyclones etc., the supply was getting interrupted; and that the surface transport mode was also not meeting the sudden spurt in demand for the products;

Opening of new Units

That keeping in view the above mentioned disadvantages in surface transport and various other reasons, the petitioner-company has conceived a proposal and forwarded the same to the Government of India for approval prior to the year 1997; that as per the

said proposal, the Units at Tadepalli and Sanathnagar were to be closed and four new Units have been planned at Rajahmundry, Vijayawada, Suryapet and Ghatkesar to cater to the needs of the areas covered partly by Visakha Retail Regional Office and the whole of the Vijayawada and Secunderabad Retail Regional Offices.

Pipe Line & activities

That the said proposal included laying of a Pipeline spanning 572 KMs. connecting Visakha Refinery with the proposed four new Units at Rajahmundry, Vijayawada, Suryapet and Ghatkesar; that as per the proposal the activities involved at each of the said terminals include drawing the products for further distribution in bulk or wholesale; storage (preservation for future deliveries), tapping the products in bulk and packaging in special containers convenient for distribution in bulk to the retail dealers and also for usage of the consumers; blending of certain other products with POL; and doping Kerosene oil for differentiating the same for domestic and commercial uses. That the entire process involved in pumping and movement of the products from Visakhapatnam to Ghatkesar is a highly technical process. That Motor Spirit (Petrol), High Speed Diesel (Diesel) and Superior Kerosene Oil (SKO) are proposed to be pumped through the same Pipe Line, which is a highly technical operation and requires continuous monitoring; that any variation in the procedure may lead to disastrous effects and that the

entire pumping activity is being undertaken by the internationally recognized and accepted procedures. That the said proposal was approved in the years 1995 and 2000 at a combined estimated cost of Rs.899 crores, which was provided by the Government of India as a developmental fund and that the approval of the said proposal by the Government of India is a step towards upgradation as it has more advantages than the conventional mode of transport.

That the said project was taken up in two phases; that the first phase consisted of Visakha Dispatch Unit, Rajahmundry and Vijayawada Terminals and the pipe line connecting Vizag Dispatch Unit with the Vijayawada Terminal; and the second phase involved establishment of Terminals at Suryapet and Ghatkesar with a Pipe Line connecting them with the Vijayawada Terminal, eliminating the need for loading and movement of Tank Wagons in the State of Andhra Pradesh in respect of POL; that the first phase was completed in the year 1998 and the second phase in 2002; that the Unit at Vijayawada ("the subject Unit") has been established in Ac.207-00 with a total investment of Rs.164 crores; that it employs 45 direct employees and 161 contract labourers; and that its storage capacity is 2,19,400 Kilo Litres (21.94 Crore Litres) and the average volume of stock dealt per day is 9000 Kilo Litres (90.0 Lakh Litres).

Electricity connection, billing and the dispute:

It was further averred that upon establishing the subject Unit in April 1998, the petitioner made an application to respondent No.2 for electrical connection; that respondent No.3 categorised the subject Unit as H.T. Category II (Non-Industry) without considering the process involved therein and the tariff notification of the erstwhile A.P. State Electricity Board (APSEB) in vogue then and commenced supply of power on 24-8-1998. Realising that the said categorization as H.T. Category-II is not correct, the subject Unit of the petitioner submitted a representation dated 6-8-1999. That respondent No.3 considered the said representation vis-à-vis the process involved in the subject Unit and the then Tariff notification and issued proceedings re-categorising the same as H.T. Category-I (Industrial) from September 1999 and that since then the subject Unit has been functioning and was regularly paying the consumption charges under the said category.

That inasmuch as the pumping activity requires coordination between the Refinery, Visakha Unit and all other terminals, and for other administrative reasons, the manning of pumping equipment starting from Visakha Unit ending with Ghatkesar Unit, has been formed into one administrative unit called “Visakha-Vijayawada-Secunderabad Pipe Line” (VVSPL).

It was further averred that the provision governing the H.T. Category-I (Industrial) remained the same during

the regime of the erstwhile APSEB and there was no change even after the A.P. Electricity Regulatory Commission (APERC) came into existence in the year 1999; that subsequently, the APERC issued Tariff Orders for the years 2000-01 to 2004-05 and the Tariff Order 2004-05, which governs the present case, was issued on 23-3-2004.

The petitioner specifically averred that without issuing any notice to it, respondent No.3 issued letter dated 1-2-2005 re-categorising the subject Unit as H.T. Category-II (Non-Industrial) w.e.f. 22-12-2004 and issued bills from January 2005 by applying the tariff pertaining to the said category. On receipt of the said letter and the bill for the month of January 2005, the petitioner submitted a representation dated 7-2-2005 requesting respondent No.3 to treat the subject Unit under H.T. Category-I explaining the reasons therefor. That when no action was taken pursuant to the said representations, the petitioner submitted another representation dated 24-2-2005 to the Chairman and Managing Director of respondent No.1 for considering its grievances and passing necessary orders retaining the subject Unit under HT Category-I. That when the respondents have not considered the representations of the petitioner, another representation dated 27-6-2005 was submitted to respondent No.2; that the petitioner learnt that respondent No.2 addressed letter dated 1-7-2005 to the APERC and that the latter has not responded

to the same; that the petitioner made another representation dated 4-10-2005 to respondent Nos.2 and 3 for redressal of its grievance; that as there was no response the petitioner lodged a complaint dated 18-2-2006 with the Forum for Redressal of Consumer Grievances of Southern Power Distribution Company of A.P. Ltd., Tirupati, which was registered as C.G.No.72 of 2006-2007 and that the said complaint was rejected by proceedings dated 11-5-2006. That respondent No.3 by letter dated 29-5-2006 informed the petitioner that respondent No.2 issued orders to bill the Gas Filling and Oil Filling Stations under HT Category-II instead of HT Category-I and instructed to back bill the services and sent a bill for Rs.1,02,62,722-42 for the period from March 2000 to December 2004; that thereupon the petitioner by letter dated 23-6-2006 protested the arbitrary recategorisation and back-billing by the respondents; that questioning the same, the petitioner preferred an appeal to the Vidyuth Ombudsman which was registered as Appeal No.16 of 2006; that the said appeal was disposed of by order dated 14-12-2006 confirming the action of respondent No.3 in so far as recategorisation is concerned, but however setting aside the back billing; that in the said circumstances the petitioner was constrained to file W.P.No.2468 of 2008 questioning the proceedings of respondent No.3 in Lr.No.SE/O/VJA/SAO/JAO/HT(R)/R2/D.No.147/2005,

dated 1-2-2005; that this Court by order dated 16-4-2008 allowed the said Writ Petition to the effect that respondent No.3 shall give notice to the petitioner against the proposed change of classification within four weeks from the date of receipt of the order; that within two weeks thereafter, the petitioner was permitted to file its objections; that on receipt of objections, respondent No.3 shall dispose of the same before taking a final decision on the proposed reclassification; and that since the action of reclassification is declared void, the respondents shall adjust the excess amount paid by the petitioner towards differential tariff in the immediate future electricity bills. That pursuant to the said order, respondent No.3 issued notice dated 23-8-2008 to the petitioner seeking explanation within two weeks with regard to change of category from HT-I to HT-II from September 1999 consumption month and for collecting the tariff difference amount of Rs.1,02,67,722-42 from February 2000 to December 2004. That the petitioner submitted its explanation dated 11-9-2008 to the said notice; that on 17-3-2012 personal hearing was held in the office of respondent No.3; and that respondent No.3 vide proceedings dated 1-7-2012 rejected the contentions of the petitioner and decided to bill the subject Unit under HT Category-II from the date of issue of notice i.e., 23-8-2008 and withdrawn the proposal to back bill the service under HT Category-II from March 2000 to December 2004.

The petitioner further averred that the activity of the subject Unit falls within each of the expressions used under HT Category-I of the Tariff Order issued by the APERC viz., “Industry”, “Process”, “Process and Preserving”, “Preserving for sale” and also “Manufacturing”; and that therefore respondent No.3 has wrongly reclassified the subject Unit by misconstruing the said definition. That the supply under HT Category-I (Industry) covers only industrial consumers and the definition of ‘industrial consumers’ used therein is inclusive in nature and not an exhaustive one; that the word ‘industry’ in the expression “Industrial consumers” should be undisputedly the true and natural meaning keeping in view the context and especially in comparison with other categories, more so HT Category-II (Non Industry). That any organized mode of activity by spending considerable money, employing men and equipment and the nature and volume of the products being dealt with, is sufficient to bring the same within the fold of the expression ‘industry’. The petitioner specifically averred that consumers with much simpler activity than that of the subject Unit and with no manufacturing activity, have been included by the respondents under HT Category-I (Industry), viz., Cold Storage Units, Rice Mills, Effluent Treatment Plants etc.; that respondent No.3 ought to have noticed that HT Category-II (Non Industrial) is purely for the consumers whose activities are non-

industrial in nature and when the subject Unit is an ‘industry’ it can never be placed under HT Category-II (Non Industrial); and that even under the scheme of classification of consumers for the purpose of tariffs chargeable either under the Tariff Notifications issued by the erstwhile APSEB or under the Tariff Orders issued by the APERC, the activities being undertaken by the subject Unit are categorized only as industrial activity. That apart from the process of preserving and storing very large quantities of highly volatile petroleum products like Motor Spirit, High Speed Diesel and Kerosene Oil, the subject Unit also manufactures and produces ‘Gasohol’, which is a blend of Motor Spirit and Ethanol; ‘Power’, which is a variant of Motor Spirit; and ‘Turbojet’, which is a variant of High Speed Diesel; and that the subject Unit also undertakes the activity of doping of Kerosene Oil to detect adulteration of petrol and diesel.

The petitioner further averred that the physical and chemical properties of the products handled in the subject Unit requires highly sophisticated equipment; that the sub Unit is termed as “Most Accident and Hazardous Unit” under the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989 and as “Hazardous Process” under the Factories Act 1948; that the Deputy Chief Inspector of Factories, Visakhapatnam District, has placed the subject Unit under “Most Hazardous Units” in the area under his jurisdiction; and that therefore there is no other

alternative description or nomenclature which can be assigned to the activity or process undertaken by the subject Unit, except “Industry”.

That the activities of the subject Unit squarely fall within the definition of “preserving for sale” contained the description of HT Category-I (Industry); that the Divisional Engineer/DPE/Vijayawada inspected the Units of the petitioner at Sanathnagar and Kondapalli which are involved in handling of Liquefied Petroleum Gas (LPG) and requested the Superintending Engineers to classify the same into HT Category-II (Non Industrial) on the only ground that there is no production activity being carried on therein; that in pursuance of the said request, the Superintending Engineers sought clarification of the erstwhile APSEB; that the APSEB examined the whole issue and held that the activity of the petitioner’s Units amounts to ‘preserving of goods for sale’ and distribution to various places in bulk loads and hence fall under HT Category-I (Industry) as per the then Tariff Notification i.e., B.P.Ms.No.32, dated 29-7-1996; that the APSEB has also advised the Superintending Engineers not to reclassify the Units of the petitioner as Category-II (Non Industrial) and directed them to continue the said Units in HT Category-I (Industry); and that the said decision was communicated to the Superintending Engineers by the Member Secretary of the APSEB vide proceedings dated 22-6-1998.

The petitioner specifically averred that a similar activity pertaining to M/s. Indian Oil Corporation fell for consideration before the Tamil Nadu Electricity Regulatory Commission, Chennai, which, by its order dated 23-8-2005 categorically held that the activity of the said Unit is 'industrial activity' and squarely falls under "H.T. Industrial Tariff" and not under "H.T. Commercial Tariff".

That respondent No.3 ought to have noticed that in order to fall under HT Category-I, what is required to be considered is whether the pumping activity undertaken by the subject Unit is part of industrial activity or not, and not the product/substance being pumped; that the pumping of petroleum products over a long distance is for the purpose of storage before sale and the expression "preserving for sale" used in the HT Category-I of the Tariff Order takes the petitioner's activity into its fold; that the classification of Municipality under HT-I Category (Industry) is because of its activity of pumping of water/sewerage and the same is recognized as "industrial activity" though the same is unconnected with "industry"; that all the expressions viz., 'manufacture goods for sale', 'processing goods for sale', 'manufacturing, processing and storing the goods for sale' and 'preserving goods for sale' emphasize the main purpose as 'sale' and therefore the process of transporting, storing and ultimately selling the LOP will definitely come within the definition of HT Category-I of the Tariff Order; and that the exclusion of certain consumers

from HT Category-I is based on the fact that the activities of such consumers have not even remote connection with the definition of 'industry'.

It was further averred that though the activity of pumping is integral part of the entire scheme of manufacturing process of the subject Unit, it falls under HT Category-I (industry) category and that the process involves (i) boosting the pumping of the manufactured product; (ii) preserving the product for sale by storage; (iii) adding or blending so as to produce new products; (iv) whole sale distribution of the product by special packaging to the retailers apart from sale to other oil companies; (v) maintaining variable pressures to see that different products pumped do not get mixed up and (vi) constant monitoring of the entire system process with hydraulics like Downstream/back pressure control at dispatch/receiving end in order to have a Title Line operation, which helps to minimize the inter-mixing of products and keep inter-phase to the minimum. That the Tight Line operation also helps to prevent hydraulic surging by minimizing the vapourization of products in the Line. That the following are the minimum back pressures (station inlets) maintained at each of the locations based on the elevation and to have Tight Line operation in VVSPL:

Vizag Dispatch end – 65 Kg/cm^2 (in parallel)
Rajahmundry (inlet) – 4.0 Kg/cm^2
Rajahmundry (outlet) – 65 Kg/cm^2 (in parallel)

Vijayawada (inlet) – 6.5 Kg/cm^2
Vijayawada (outlet) – 65 Kg/cm^2 (single pump)
Suryapet (inlet) – 4.0 Kg/cm^2 (when pump is on)
Suryapet (outlet) – 60 Kg/cm^2 (when pump is on)
Secunderabad – 2.0 Kg./cm^2 etc.

The petitioner further averred that electricity is consumed for the processes of (i) pumping or boosting the pumping of petroleum products; (ii) tapping or drawing them from the said Pipe Line; (iii) adding or blending; (iv) doping, (v) storing and (vi) packing the petroleum products in special containers or vessels; that the product tapped or drawn from the said Pipe Line is stored, is further processed and sold to the retailers and other oil companies in wholesale and that therefore the said activities fall within the expressions 'process for sale' or 'preserving for sale' or 'processing and preserving for sale' used in the definition/clause in HT Category-I (Industry) in the Tariff Order. It was further averred that it is not necessary that there should be some new product coming out of the said process; that the interpretation given by respondent No.3 to the expression 'preservation' is without any basis; that terming the movement of the petroleum products as 'transport' and to treat the same as transport activity on the ground that there is no separate classification for the same is arbitrary and illegal; that respondent No.3 has approached the issue in general terms without any reference to the exact activity of the subject Unit; that respondent No.3 has relied on the order

of the Vidyut Ombudsman which has merged in the order dated 16-4-2008 of this Court in W.P.No.2468 of 2008 and hence the impugned action of respondent No.3 is violative of principles of natural justice as he is required to consider the issue and decide the same independently. That the present Writ Petition is filed despite the availability of alternative remedy of appeal against the impugned action of respondent No.3 to the Fourm for Redressal of Consumer Grievances of Southern Power Distribution Company of A.P. Ltd., at Tirupati and a further appeal to the Vidyut Ombudsman, as respondent No.3 has not considered the issue independently and has rejected the contention of the petitioner by taking irrelevant factors into consideration and referring to the findings of the Vidyut Ombudsman in Appeal No.16 of 2006, which this Court has set-aside vide order dated 16-4-2008 in W.P.No.2468 of 2008; that with respect to a similar issue of another Unit of the petitioner at Visakhapatnam, the Forum has decided against the claims of the petitioner; that in W.P.No.19496 of 2008 filed against the said decision, the categorization of the petitioner Unit under HT Category-II was suspended and the said Writ Petition is pending adjudication; and that a similar issue with respect to Rajahmundry Unit is pending in W.P.No.13821 of 2008 and the categorization of the said Unit under HT Category-II has been suspended. The petitioner claimed that it is entitled to refund of an amount of Rs.80 lakhs

from respondent No.3.

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The respondents' pleading:

On behalf of the respondents, respondent No.3 has filed a counter affidavit, wherein it was averred that the category of the subject Unit has been changed from HT Category-I to HT Category-II taking into consideration the guidelines issued by the APERC for the financial year 2007-08 as the activities of oil filling and gas filling at Vijayawada Retail Regional office are for commercial use and not for industrial use; that the impugned proceedings is valid as the HT supply to the subject Unit at Kattubadipalem, is for transport of POL over long distances through Pipe Line for marketing purposes, bulk storage and filling of tanker lorries and the same cannot be considered as industrial activity. It was further averred that according to the petitioner's case, the activity at Vijayawada Retail Regional Office is for distribution and marketing; that the said activities are commercial activities and that as per the Tariff Order of the APERC, electricity supply will be extended to the refining point of the petitioner's Unit under HT Category-I and to the marketing point under HT Category-II; and that the fact that the petitioner's Refinery is located at Visakhapatnam from where the POL is supplied, cannot form the basis for classification of the category. It was further averred that

electricity consumer classification and categorization for the purpose of levy of electricity charges are made on the basis of the purpose of the use of electricity and the same are not related to the classification made by various Governments for the purposes such as the products being hazardous in nature, safety precautions etc; and that as per the Tariff conditions, there is neither manufacturing activity nor the activity of processing of material in the subject Unit. That usage of sophisticated imported machinery or maintenance of stringent standards may be required for storing the petroleum products, but the same is not relevant for classification of category for the purpose of usage of electricity; that the activity undertaken by a producer or a manufacturer for movement of goods for marketing purposes assumes the character of transport activity and not manufacturing, or processing, or preservation and hence such activity deserves to be treated on par with transport activity and as no separate classification exists for such activity, the same falls under HT Category-II as per Tariff conditions.

It was further averred that the activity at the subject Unit at Kattubadipalem is not preservation of goods for sale, but it is only transportation of goods for sale as the main activity of the plant is transport of POL through Pipe Line and storage in huge tanks for onward filling in Tanker lorries and their dispatch to various petrol bunks for sale to consumers; that mere mixing of doping agent for

distinguishing the Kerosene Oil meant for commercial use and domestic use does not amount to processing; and that though there is some process, where the main activity is marketing, all the processing Units cannot be categorized under HT-I by the APERC. That in the Circular issued in 1998 by the erstwhile APSEB, where the activity is preservation of goods, instructions were issued to categorise the services under industrial category; that as utilization of the supply by the subject Unit is not for preservation of goods and the same is for bulk storage of POL and filling of Tankers like petrol bunks without involving any process and only through Pipe Line operation, the said Circular does not support the cause of the petitioner and that the said position is clarified by the Vidyut Ombudsman, who is appointed considering his specialized knowledge, experience and qualifications in the field, in Appeal No.16 of 2006.

It was further averred that the supply under HT Category-I is applicable to all H.T. industrial consumers. That 'industrial purpose' shall mean manufacturing, processing and/or preserving goods for sale, but the same is not applicable to shops, business houses and other similar premises notwithstanding any such activities undertaken therein; that the word 'preservation' is commonly understood as the activity of protecting any material from perishing/decay/damage and that the storage of POL or LPG in the depots will not come under

the activity of 'preservation' laid down in the Tariff condition. That no manufacturing, processing and/or preservation activity takes place at the subject Unit at Kattubadipalem, but it is only a storage and sale point. It was specifically averred that the pumping activity undertaken by the petitioner for movement of petroleum products over long distances across the State for marketing purpose does not find place in the description of HT Category-I.

That in December 2004, the CMD, SPDCL, Tirupathi has reviewed all the H.T. services engaged in oil/gas filling activity and issued instructions vide D.No.520, dated 28-12-2004 to reclassify them under HT Category-II from HT Category-I immediately as the said activities are commercial in nature and the same cannot be interpreted as industrial activities; and that accordingly respondent No.3 has issued C.C. bill for January 2005 for the period from 22-12-2004 to 21-5-2005 under HT Category-II duly informing the petitioner vide letter D.No.147, dated 1-2-2005 about the change of category. The respondents have referred to the proceedings before the Consumer Grievance Redressal Forum vide C.G.No.72/2006-2007/Vijayawada Circle, wherein the request of the petitioner to consider its case for conversion of the subject Unit from HT Category-II to Category-I was negatived. The respondents have also referred to the order dated 14-12-2006 of the Vidyut Ombudsman in Appeal No.16 of

2006 wherein it was held that the electricity consumption by the subject Unit falls under HT Category-II.

As regards Cold Storages, the counter affidavit averred that though there is no manufacturing activity involved in Cold Storage Units, the same are classified under HT Category-I since activity undertaken therein involves 'preservation of goods'. Adverting to Rice Mills, the respondents averred that 'process' is taking place i.e., the input to the machinery is rice grain and the output being rice. The counter affidavit further averred that as the activity of the subject Unit is only transportation of petroleum products through Pipe Line over long distances for marketing purpose, the same cannot be compared to Cold Storage Units and Rice Mills. The respondents sought to justify the classification of Effluent or Sewerage Treatment Plants maintained by Government or local bodies into HT Category-I on the ground that the electricity supply is for pumping of sewerage; that the pumping activities directly meant for civic amenities are charged with lesser tariff as there is no activity relating to business or sale involved therein; and that therefore the activities of the subject Unit stand on a different plane vis-à-vis the activities undertaken by effluent and sewerage treatment plants. It was further averred that though there is some process taking place in Photo studios, Printing Press Units etc., the same are not categorized under HT-I category since the main activity undertaken by such Units

is marketing, which deals with encouraging people to buy a product or a service.

It was further averred that the under Clauses 219 and 220 of the Retail Supply Tariffs 2007-08, the APERC has given clarification very clearly on classification of Oil Depots and Bottling Plants by observing that the activities of the said consumers have to be treated as commercial activities and classified as such. That as per the classification made, M/s. Gas Authority of India Limited, G. Konduru village, Krishna District, whose activity is to transport of gas through Pipe Line similar to the petitioner's Unit, is also paying C.C. charges under H.T. Category-II.

It was averred that in W.P.No.2468 of 2008, this Court has set aside the order passed by the Vidyut Ombudsman only on the ground that no notice was issued to the petitioner; that respondent No.3 has considered the issues independently and as per the provisions of the Regulation in vogue; and that respondent No.3 has given due consideration to the principles of audi alteram partem and passed orders in accordance with the Rules.

With regard to the claim of the petitioner that it is due in an amount Rs.80 lakhs from respondent No.3, the respondents denied the same on the ground that as per the available records, there is no proof of such demand from the petitioner and that therefore the said claim is not

supported by proper basis. The counter-affidavit reiterated that the electricity consumer classification and categorization for the purpose of levy of electricity charges are made on the basis of the purpose of the use of electricity and that the same are not related to the classification made by various Governments; that though subject Unit may be classified as 'industry' by some Government Departments from hazardous and safety point of view, usage of supply is the only criteria for categorization; that there is neither manufacturing activity nor the activity of processing of material etc., undertaken in the subject Unit traceable to the Tariff conditions; that the activity at the subject Unit is not preservation for sale, but only storage for sale; and that the staff strength and investment for establishment of the subject Unit will not alter the purpose of usage of electricity supply and the consequential classification/categorization. The counter affidavit further averred that without assailing the guidelines fixed by the APERC, the petitioner cannot question the consequential action of the respondents in fixing the rates/charges under HT Category-II.

CONSIDERATION:

The issue that requires to be considered is whether the activity being carried on by the petitioner in the subject Unit falls within the phraseology contained in the Tariff notification issued by the APERC for the years 2001-02 to

2004-05 for HT Category-I. For deciding this issue, it is useful to reproduce the extant tariff condition pertaining to HT Category-I, which reads as under :

> "This tariff is applicable for supply to all H.T. Industrial Consumers. Industrial purpose shall mean manufacturing, processing and/or preserving goods for sale, but shall not include shops, business houses, public buildings, hospitals, hotels, hostels, choultries, restaurants, clubs, theatres, cinemas, railway stations and other similar premises notwithstanding any manufacturing, processing or preserving goods for sale. The Water Works of Municipalities and Corporations and any other Government organizations come under this category. Information Technology units identified and approved by the Consultative Committee on IT industry (CCITI) constituted by Govt. of A.P. also falls under this category".

For deriving the benefit of the charges leviable under HT Category-I, it is not necessary that a consumer must involve itself in all of the three activities conjunctively, viz., manufacturing, processing or preserving goods for sale. It will suffice if a consumer proves that it undertakes any of the three of the aforementioned activities.

It needs to be noted that respondent No.3 has discussed in detail as to whether the activity undertaken by the subject Unit constitutes 'preservation of goods'. However, he has not dealt with in detail as to whether the petitioner undertakes the activity of 'processing of goods for sale'. On the contrary, respondent No.3 made the following observations in para-8 of the order:

> "Though there is some process, all the

processing units are not categorized under HT-I by the APERC, like Photo studios, Printing Press units etc., since their main activity is marketing".

As the petitioner's claim for inclusion under HT-I Category is based on the activities of 'processing' and 'preservation of goods for sale', let me discuss these two aspects.

As regards 'processing', as noted above, the petitioner has explained in detail the activities being undertaken by it in the subject Unit. Hence, it is unnecessary to repeat the same. From the pleadings of the petitioner, it is evident that it is undertaking the following activities as explained in Annexure-III of the writ affidavit.

(i) Advance planning for the availability of the product at the Master Control Station based on the anticipated product requirements at receiving locations.

(ii) Planning the product cycles and sequence to ensure uninterrupted supply to the receiving locations.

(iii) Operating the pumps.

(iv) Round the clock monitoring of the critical flow & pressure parameters at the Master Control Installation and intermediate installations.

(v) Facilitating product receipt at receiving terminals in designated tanks.

(vi) Detection and management of interfaces and also pipeline shutdowns for carrying out maintenance etc.

(vii) SCADA system is provided to ensure effective and reliable control, management and supervision of the pipeline. Leak detection system is provided for alarm in case of a pipeline leak.

The petitioner has also given a flow chart indicating the Multi Product Petroleum Pipeline System. It has also given out the details of infrastructure facilities and summary of operations.

From a reading of these details, I feel that batch sequencing and sizing of product dispatches deserve a little elaboration. Under this process, the petitioner undertakes operation of Multi Product Pipe Line based on a technical principle called “Tight Line principle”. As per the said principle, the Pipeline is always kept under high pressure by implementation of sophisticated techniques to avoid mixing of any two different adjacent POL products viz., Petrol, Diesel and Kerosene Oil, moving in the pipeline simultaneously. The Pipeline receives products from the Visakha Refinery at the initial station at Visakhapatnam and transfers the same to the terminals at Rajahmundry, Vijayawada, Suryapet and Ghatkesar. The products are pumped in sequential batches depending on the following criteria:

(i) Product compatibility and ability to blend with successive products.

(ii) The minimum batch volume necessary to absorb the interface quantity of the adjacent products without compromising on the product specifications.

(iii) Tankage/Ullage availability at the point of receipt and point of delivery.

Typical batch sequencing is given as follows:

HSD – SKO – MS – SKO – LAN – SKO – HSD

The receipt of delivery of products is made under strict quality control following BIS, ISO-9001-2000 and API/ASTM and OISD specifications.

It is explained that the above mentioned arrangement is to ensure that any product is preceded or succeeded by Superior Kerosene Oil (SKO) which has to be delivered as a pure product to the Units. Various other technical details forming part of the process taking place during conveyance of POL through the Pipeline are referred to by the petitioner, detailed reference to which is unnecessary.

In its explanation submitted to the show cause notice dated 23-8-2008, the petitioner has graphically described the activities undertaken by the subject Unit requiring consumption of electricity, before respondent No.3 as under :

> "It is submitted that the electricity is consumed for the process of (i) Pumping or Boosting the pumping of petroleum products; (ii) Tapping or Drawing them from the said pipe line; (iii) Adding or blending; (iv) Doping; (v) Storing and (vi) Packing them in special containers or vessels and then sold in whole sale and therefore the said activity of the said unit of the HPCL falls within the expressions of "process for sale" or "Preserving for sale" or "Processing and Preserving for sale" used in the said definition/clause provided in the said Category-I (Industry) in the Tariff Order.
>
> It is submitted that the activities involved in each of the said terminals are for drawing the products

for further distribution in bulk or whole sale storage, at the same time the products at these units are tapped in bulk and packed in special containers making it convenient for distributing in bulk to the retail dealers and also for the usage of the ultimate consumers. Further, blending of certain other products with this POL is undertaken in these units to produce new products. The process of mixing of the doping agent is also undertaken in these Units to differentiate the kerosene meant for domestic use and commercial use. At the cost of repetition, because of highly combustible and volatile nature of the product these units are equipped with highly sophisticated and technically complicated equipment and process either for drawing from the pipe, handling, blending, doping, storing, further loading and packing the said products…."

It has further pleaded as under :

"It is submitted that apart from the process of preserving and storing very large quantities of highly volatile Petroleum Products (Essential Commodities) like Motor Spirit, High Speed Diesel and Kerosene, there is also manufacturing activity involved in the Unit in question. Petroleum products, namely, (i) "Gasohol" (which is a blend between Motor Spirit and Ethanol), (ii) "Power" (which is Motor Spirit variant) and (iii) "Turbojet" (which is a variant of High Speed Diesel) are produced in the said Unit of the HPCL. Marker doped in Kerosene to detect adulteration of petroleum products i.e., Petrol and Diesel."

The above pleadings have been reproduced by the petitioner in para-51 of the affidavit filed in the present Writ Petition. In para-63 of the affidavit, the petitioner further pleaded :

"I submit that the electricity is consumed for the

process of (i) Pumping or Boosting the pumping of petroleum products, (ii) Tapping or Drawing them from the said pipe line, (iii) Adding or blending (iv) Doping, (v) Storing and (vi) Packing them in special containers or vessels and then sold in whole sale and therefore the said activity of the said unit of the petitioner falls within the expressions of “Process for sale” or “Preserving for sale” or “Processing and Preserving for sale” used I the said definition/clause provided in the said Category-I (Industry) in theTariff Order.”

In **Chowgule and Co. Pvt. Ltd. and another Vs. Union of India and others**[1]**,** a three Judge Bench of the Supreme Court has discussed the word ‘processing’ under Rule 13 of the Central Sales Tax Rules 1957. That was a case where the assessee company was carrying on business of mining iron ore and selling it in the export market after dressing, washing, screening and blending. The process involved therein was conveyance of mined ore from the mine site to the river side, carrying it by barges to the Marmagoa harbour, and then blending and loading it into the ship through mechanical ore handling plant. The Supreme Court held that blending of diverse qualities of ore possessing different chemical and physical composition so as to produce the ore of the contractual specifications amounted to processing. It has referred to the Webster’s Dictionary for the meaning of the word ‘process’ as “*to subject to some special process or treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market*

etc., to convert into marketable form as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing, fruits and vegetables by sorting and repacking". The Supreme Court further held:

> "… Where therefore any commodity is subjected to a process or treatment with a view to its development or preparation for the market, as for example, by sorting and repacking fruits and vegetables, it would amount to processing of the commodity within the meaning of Section 8(3)(b) and Rule 13; the nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. It may be that camphor powder may just be compressed into camphor cubes by application of mechanical force or pressure without addition or admixture of any other material and yet the operation would amount to processing of camphor powder as held by the Calcutta High Court in Om Prakash Gupta Vs. Commissioner of Commercial Taxes (1965) 16 STC 935. What is necessary in order to characterize an operation as "processing" is that the commodity must, as a result of the operation, experience some change…."

As noted hereinbefore, the petitioner has specifically pleaded before respondent No.3 that apart from the process of preserving and storing very large quantities of highly volatile petroleum products like Motor Spirit, High Speed Diesel and Kerosene Oil, it is also manufacturing petroleum products, namely, "Gasohol", which is a blend

of Motor Spirit and Ethanol; “Power” which is a Motor spirit variant, and “Turbojet”, which is a variant of High Speed Diesel.

Thus, through the processes undertaken such as mixing, blending and doping, the petroleum oils are undergoing ‘some change’, thereby satisfying the test applied by the Supreme Court in **Chowgule and Co. Pvt. Ltd. (1-supra)** and the Calcutta High Court in **Om Prakash Gupta Vs. Commissioner of Commercial Taxes**[2]**.**

Thus, I have no doubt in my mind that the entire process of conveyance of POL from Visakhapatnam to Hyderabad involves deployment and usage of sophisticated technology, for which purpose the petitioner has been using electricity in order to maintain proper pressure in the Pipe Line. Hence, I am of the opinion that one of the activities undertaken by the petitioner in conveying petroleum products from its storage points at Visakhapatnam and Vijayawada involves ‘processing’.

On a careful consideration of the nature of operations, I have no doubt in my mind that the subject Unit of the petitioner is undertaking processing of petroleum products during their conveyance from storage points to the end destinations before they are sold to its bulk customers.

The next question that needs to be considered is whether the petitioner is involved in the activity of

‘preserving the goods for sale’.

Respondent No.3 has elaborately dealt with this aspect and observed that the activity undertaken by the subject Unit does not amount to ‘preservation’ and it only amounts to storage of goods and that therefore it will not fall under HT-I category. In arriving at this conclusion, respondent No.3 has heavily relied upon the order of the Vidyut Ombudsman in Appeal No.16 of 2006. The learned Counsel for the petitioner submitted that by setting aside proceedings dated 1-2-2005 of respondent No.3, which was confirmed in the above mentioned appeal by the Vidyut Ombudsman, this Court has impliedly set aside the Vidyut Ombudman’s order also and that therefore placing reliance on the said order by respondent No.3 is not correct. It is unnecessary to render any finding on this aspect for the reason that this Court is independently examining this issue and the opinion of the Vidyut Ombudsman expressed in the previous round of litigation has no relevance in the present case.

Respondent No.3 opined that like any petrol pump, the petitioner’s subject Unit is involved in bulk storage and that such bulk storage does not constitute ‘preservation of goods’. He has further held that the word ‘preservation’ is commonly understood as the activity of protecting any material from perishing/decay/damage and that the pumping activity undertaken for movement of POL over long distances across the State for marketing purpose

does not find place in HT Category-I. While referring to the clarification issued by the erstwhile APSEB in 1998 in Memo No.CE/Comml)/ADE-2/Misc.Tariffs/D.No.511/98, dated 22-6-1998, on which heavy reliance was placed by the petitioner, respondent No.3 has observed that supply is not being utilized for 'preservation of goods' but for bulk storage of POL and filling of tankers just like petrol pumps and only through pipeline operation without there being any process involved and that therefore the said Memo is not applicable to the subject Unit of the petitioner.

The phrase "preserve" is not defined in the extant Tariff Order. Undoubtedly, between the acts of 'storing' and 'preservation', the latter requires an extra effort than the one required for mere storage. For example, goods which are not perishable in nature are those which do not require any extra effort in storing them. In contrast, goods which are subject to natural decay and those which are inflammable, volatile etc., require observance of extra precautions in storing them. The activity of applying these precautions may be called 'preservation of goods'. In the context of Section 2(c) of the Industrial Finance Corporation Act, 1948 and Section 16(2)(a) of Salarjung Museum Act 1961, in Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition, the following meaning is ascribed to the word "preservation":

> "The act of keeping safe from injury, harm or destruction".

Another meaning explained by the same author to the word “preserve” is :

> “The word “preserve” means to keep; to secure; to uphold; and when used in a statute intended to preserve the public peace it means to secure that quiet order and freedom from agitation or disturbance which is guaranteed by the laws.
>
> To maintain; to manage or retain for the rightful owner, to keep safe from harm or injury”.

The measures undertaken by the petitioner for bulk storage of POL in its Units in various locations involve sophisticated technology because of the highly combustible and volatile nature of the products. The said Units are equipped with technically complicated equipment.

Admittedly, cold storage Units are included in HT Category-I by the respondents even though neither manufacturing nor processing activity is undertaken by those Units. When the petitioner made a reference to cold storage Units, respondent No.3 has drawn a distinction in the following manner:

> “The appellant has quoted the classification of Cold storages, Rice mills and Effluent treatment plants under HT Category-I. Though there is no manufacturing activity involved in cold storage units they are classified under HT Cat-I since their activity is “preservation of goods…..”

In my opinion, respondent No.3 has over-simplified the activity undertaken by the petitioner in preserving the POL products. Indeed, compared to the efforts required

by the petitioner to preserve the highly inflammable and combustible POL products, the efforts involved in preserving goods in cold storages are negligible. In the latter case, all that is required is maintenance of low temperatures to prevent goods such as vegetables, fruits etc., from perishing and being subjected to natural decay. On examining the true nature of the petitioner's activity, the erstwhile APSEB issued the above mentioned Memo dated 22-6-1998, which reads as under :

> "Sub:- HT Supply to M/s. I.O.C. Limited and M/s. HPCL, Kondapally and Sanathnagar – Classification under Category-I – Regarding.
>
> Assistant Divisional Engineer/DPE/Vijayawada and Divisional Engineer/DPE/Hyderabad have inspected the HT services of M/s. I. Operation Circle (sic: IOC) Limited and M/s. HPCL Kondapally and Sanathnagar, respectively and have requested the concerned Superintending Engineer Operation (Vijayawada and Hyderabad North Circle) to classify the above service under H.T. Category-II on the plea that no production activity is involved in their premises and advised to issue back bills from 11/90 onwards. The Superintending Engineer, Operation, Vijayawada and North Circle/Hyderabad have sought clarification from Board on this matter.
>
> The subject has been examined in detail. The above companies are engaged in the activity of preservation of petroleum products for sale and distributing to various places in bulk loads. This activity falls under HT Category-I as per the tariff notifications issued from time to time and even as per the latest notification issued in B.P.Ms.No.32, dt.29-7-96.
>
> The Superintending Engineer, Operation, Vijayawada and North/Hyderabad Circle and Superintending Engineer, DPE, Vijayawada,

Hyderabad are advised not to re-classify M/s. I.O.C. Limited and HPCL under HT Category-II, but continued to classify under HT Category-I only."

The above reproduced contents of the Memo clearly show that the APSEB has recognized the storage of POL by the petitioner as constituting 'preservation of goods'. While accepting existence of the said clarification, respondent No.3 was however not prepared to follow the decision of the predecessor organization by making an artificial distinction between "preservation" and "bulk storage of POL. The petitioner has also referred to and relied upon order dated 23-8-2005 of the TNERC, Chennai pertaining to storage of LPG of M/s. Indian Oil Corporation wherein it has held that the activity of the said Unit is nothing but an industrial activity falling under HT Industrial tariff.

CONCLUSION:

The question whether an activity which does not involve 'manufacture' of goods can still be considered as an industrial activity or not, depends upon the interpretation of the extant statutory provisions/notifications. Going by the language of the Tariff Order, it is clear that even if no manufacturing activity is undertaken, it is enough if a consumer carries on the activity of processing and/or preserving of goods for sale. From the undisputed facts pleaded by the petitioner and in the light of the discussion undertaken above, this Court has no hesitation to hold that the

petitioner has been utilizing power from the respondents for the activity of both processing and preservation of goods for sale and therefore it is entitled to be classified as a consumer falling under HT Category-I. The order of respondent No.3 cannot therefore be sustained and the same is accordingly set-aside.

RESULT:

The Writ Petition is allowed. The respondents are directed to reclassify the petitioner's Unit at Kattubadipalem, Vijayawada, under HT Category-I and revise the bills w.e.f. 1-2-2005 when the respondents have changed its category from HT Category-I to HT Category-II, and adjust the excess tariff collected from the petitioner in future bills.

As a sequel to the disposal of the Writ Petition, WPMP No.29422 of 2012 and WVMP No.3266 of 2012 are disposed of.

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Justice C.V. Nagarjuna Reddy

Date : 08-10-2015
AM

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[1] **AIR 1981 S.C. 1014**

[2] (1965) 16 STC 935 (Cal.)