

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 27 -01-2011

Appeal No. 58 of 2010

Between

M/s.Vamsee Seed (INDIA) Pvt. Ltd.,
H.No.11-67, Road No.2
KSR Thota, Gavaravaram,
Eluru, WG Dist.

... Appellant

And

1. Senior Accounts Officer/Operation/Eluru
2. Divisional Engineer/Operation/ Eluru

....Respondents

The appeal / representation dt. 20.12.2010 (received on 22.12.2010) of the appellant has come up for final hearing before the Vidyut Ombudsman on 13.01.2011 at Visakhapatnam in the presence of Sri R.Rama Rao, appellant present and Sri K.Uma Maheswar Rao, JAO/HT/Eluru and Sri A.Kiran Kumar, ADE/O/Pedavegi for respondents present and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

The appellant filed a complaint before the Forum stating that he was a seasonal load consumer with option from February 09 to May 09. He applied for change in the seasonal period (September to December)to other than the already approved period for the next financial year 2009-10 after commencement of the season for which the licensee has not approved the change and prayed for approval of the same and received the abnormal bill issued for 04/10.

2. The respondent No.1 filed his written submissions as hereunder:

I. Dispute – I – Seasonal load period to be changed from February to May.

1. An estimate for an amount of Rs.128250/- (net) for extension of HT supply to M/s. Vamsee Seeds (India) Pvt. Limited, Alliveedu (V), Pedavegi (M) under seasonal head during the period February, March, April, May and September, October, November, December (2 seasons in a year) was sanctioned vide reference 1st cited.

2. HT service ELR 589 in the name of M/s. Vamsee Seeds (India) Pvt. Limited, Alliveedu is released on 08.03.2009 with CMD 750 kVA under Cat-I under seasonal head.

3. M/s. Vamsee Seeds (India) Pvt. Limited has utilized 2 seasons in 2009. Accordingly HT bills are raised and paid by the consumer.

4. The above consumer has addressed a letter to SE/O/Eluru vide his letter dt.14.05.2010 stating that ELR 589 of M/s. Vamsee Seeds (India) Pvt. Limited, had completed its seasonal utilization of power for this year 2010 and as per the agreement with APEPDCL as a seasonal industrial service, they can use the power till 31 of May 2011. The copy of consumer letter dt.14.05.2010 is not marked to SAO/Eluru as stated by him.

5. HT bill for 09/2010 is raised under seasonal tariff as there is no information regarding acceptance of withdrawal of 2nd season from September to December in the year 2010.

6. vide Lr.No.SE/O/ELR/DET/ADE.C/AE.Comml/ d.No.575/10, dt .27.10.2010, the SE/O/Eluru had addressed a letter to M/s. Vamsee Seeds (India) Pvt. Limited, Alliveedu that "as per schedule of retail tariff rates and terms & conditions for financial year 2009-10" the seasonal period once declared cannot be changed during the tariff year in which it is declared.

Further it was also stated that the seasonal period cannot be changed during this tariff year and will be changed in next year only, if the consumer represent, early ie., before commencement of 1st season ie., February 2011.

7. According to the above letter addressed to the above HT consumer, HT bill 10/2010 is also raised under seasonal load.

8. In the meanwhile, M/s. Vamsee Seeds (India) Pvt. Limited has addressed a letter dt.02.11.2010 under reference 4th cited to the SE/O/Eluru with a copy to SAO/Operation circle/Eluru stating that

- The seasonal period once declared cannot be changed during the tariff year in which it is declared. But they have not changed their seasonal period during the same tariff year ie., in 2009-10 in which it is declared.
- They have changed the seasonal period limiting to one season i.e., from February 2010 to May 2010 in the next tariff year 2010-11 which is permissible under the above clause.
- Finally the consumer has requested to change and revise the HT bill under off seasonal period from September 2010 to December 2010 (2nd spell of season).

The above HT consumer has made a representation to the SE/O/Eluru on 14.05.2010 i.e, after commencement of 1st season and just before completion stating that power utilization starts from 1st February 2011 to 31st May 2011.

It is to submit that HT billing on ELR 589 of M/s. Vamsee Seeds (India) Pvt. Limited is done for 09/10, 10/10 under seasonal load as per the existing orders from the competent authority please.

II. Dispute –II. Abnormal bill is issued for 04/10 against SC No.ELR 589.

The CC bill for the month of March 2010 has been issued as per the readings Furnished by IAMR but the CC bill for the month of 04/10 has been issued with the readings as furnished by the ADE/O/Pedavegi as detailed below:

	March 2010	April 2010
Closing Kwh reading	32893 (22.03.10)	57328 (22.04.10)
Opening kwh reading	31688 (23.02.10)	32893 (22.03.10)
Difference	1205	24435
Multipling factor	8	8
Recorded consumption	9640units	195480units
Billed consumption	30000 (tariff minimum)	195480units
Total billed amount in Rs.	Rs.221575/-	Rs.734664/-

The consumer of the above service has paid the CC bill for the month of March 2010 but represented through his letter in the ref 2nd cited stating that their bill for April 2010 was on higher and requested this office for correction of the bill.

As per the request of the consumer a detailed report has been called for from the ADE/O/Pedavegi in the ref 3rd cited. The ADE/o/Pedavegi has submitted the report stating that the readings as on 22.03.10 received through IAMR were wrong and he has recommended for apportionment of total consumption for two months i.e., for March and April 2010.

Based on the report of the ADE/O/Pedavegi total consumption 205120 (9640 + 195480) units for the period from 23.02.2010 to 22.04.2010 have been shared equally for the two billing months of March and April 2010. Accordingly the CC bills for March and April 2010 have been recalculated and arrived for the following amounts:

	March 2010	April 2010	Total
Cc bills already issued	221575	734664	956239
Revised CC bills (on average basis)	472670	472601	945271
Differential amount to be withdrawn	-251095	262063	10968

Accordingly the consumer has been informed that an amount of Rs.10968/- has been withdrawn from the demand and necessary adjustment entry has also been passed in this office records during 8/2010.

3. After hearing both sides and after considering the material placed before the Forum, the Forum passed the following order:

“As per the schedule of retail tariff rates and terms and conditions for financial year 2009-10 the seasonal period once declared cannot be changed during the tariff year in which it is declared.

As per the letter was addressed by the respondent No.3 stating that the seasonal period cannot be changed during this tariff year and will be changed in next tariff year only. If the consumer represent, early, before commencement of 1st season i.e, February/11.

The complainant consumer is directed that if he wants the change in seasonal period, he has to represent to SE/O/Eluru before commencement of next tariff ;year i.e,2001-12.

As requested by the complainant consumer regarding revision of CC bill for 03/10 and 04/10, it has been done and excess demand has been withdrawn and adjusted in the month of 08/10.

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same, that the Forum has failed to consider his case and failed to understand that in the year 2009 though utilized 2 seasons as mentioned above accordingly HT bills were raised and paid. In view of the lesser demand for maize seed in the market, they decided to utilize the power for first season from February 10 to May 10 and represented the SE/O/Eluru that they would utilize the power till May 2010. But surprisingly, they received the CC charges for September, October, November with the tariff of seasonal instead of off-seasonal tariff making them financially overburden without any intimation regarding rejection or remarks on his letter dt.14.05.2010 till 27.10.10. It is in correct to say that seasonal period cannot be changed during this tariff year. The appellant changed seasonal period limiting to one period i.e, February to May in the next tariff; year ie., in 2010-11 which is permissible under the above said clauses. The appellant's industry is a medium scale industry and running with low finance by giving consistent quality maize seeds to the nation. Issued CC bills for the months 09/10, 10/10, 11/10 for huge amounts under seasonal tariff is against to rules and principles of natural justice. Hence, appeal preferred by him is to be allowed by setting aside the impugned order.

6. Now, the point for consideration is, “whether the impugned order dt.26.11.2010 is liable to be set aside? If so, on what grounds?”

7. The appellant himself present at the time of hearing of the appeal and reiterated all the grounds mentioned in the appeal and finally requested this authority to allow the appeal preferred by him by setting aside the impugned order.

8. Whereas the respondents are represented by Sri K.Uma Maheswar Rao, JAO/HT/Eluru and Sri A.Kiran Kumar, ADE/O/Pedavegi for respondents present and submitted that the appellant has no right to change tariff after commencement of the seasonal period that too it can be made once in a tariff year and the same can be changed in the next tariff but not in the present tariff year and the appeal preferred by the appellant is liable to be dismissed.

9. It appears that two disputes were raised before the Forum. One is for the change of season and another is with regard to issue of abnormal bill for the month of April 10.

10. The 2nd dispute has been resolved by withdrawing excess demand and adjusted in the month of 08/10. In fact no appeal is filed against the above said aspect.

11. So the only point to be considered by this authority is whether change of season in the tariff year 2010-11 can be entertained or not.

12. The department has issued off seasonal benefit as per the schedule of retail tariff and terms and conditions for financial year 2009-10. It has also stated that “the seasonal period once declared cannot be changed during the tariff year in which it is declared”. Ultimately the estimation is made under HT billing on the ELR 589 for September to December under seasonal head as per existing orders.

13. It is very clear from the above said material that the appellant has requested for seasonal benefit under seasonal head one spell from February to May and other from September to December. The other months are declared as un-season. He has utilized the power under seasonal category for the tariff year 2009-10. He has addressed a letter dt.14.05.2010 due to the shortage of material and on other grounds to declare the 2nd period September to December as un-season. No order is passed on the above said letter, but issued bills under the seasonal head. But the claim of the respondents is that he ought to have applied for the same in the month of February i.e, before commencement of the season.

14. The analogy adopted by the respondents is not correct as there is no such provision akin to the said analogy in the tariff order. It clearly envisages that once seasonal period is declared cannot be changed during the tariff year in which it is declared as per Annexure-D (HT Tariff) clause 4 sub-clause 4 of the Tariff order 2010-11 (page 173). When he has to apply is silent in the above said Tariff Order. It does not speak that it has to be applied prior to the commencement of the season, but it says that it can be declared once in the tariff year. The declaration made by the appellant is for two spells for the tariff order 2009-10. The declaration is sought in the Tariff order 2010-11, for the first time by addressing a letter on 14.05.2010. No order is passed on the said letter and without passing any order on the request made by him, a notice was issued simply demanding HT bills under seasonal head for September to December. The observation made by the Forum as well the SE in interpreting the above said clause is in correct and the same is liable to set aside, since the declaration is sought for once in the tariff year 2010-11.

15. If he seeks for change of tariff after commencement of the respective season or running season, the same cannot be entertained due to the running of the period. Had he applied in the month of September 2010 to declare that particular period as un-season, the same need not be entertained, but he has declared long prior to the 2nd spell to declare it as un-season. When there is sufficient time and when he has

informed much in advance, there is no point in rejecting the request, in the absence of a particular clause that it should be declared on a particular date or month.

16. The appellant d declared the months of September to December as un-season in the tariff year 2010-11 by addressing a letter on 14.05.2010 i.e, 4 months prior to the commencement of that particular season. The respondents are claiming that he should have asked the same in the month of February prior to the commencement of the 1st spell season. But the Tariff order is silent on this aspect as it says that declaration must be once in the tariff year but it does not speak that it should be prior to the commencement of the Tariff year or prior to the commencement of the season (herein 1st spell) so the analogy drawn by the respondents is not fortified by the relevant provision. Hence, the finding of the Forum is liable to be set aside.

17. In the result, the appeal is allowed by setting aside the impugned order by declaring 2nd season ie., September to December as un-season and the bills have to be made accordingly by the respondents and if any excess amount is paid by the appellant either in volition or by compulsion, the same can be adjusted in future bills.

This order is corrected and signed on this day of 27th January 2011

VIDYUT OMBUDSMAN