



# TAMIL NADU ELECTRICITY OMBUDSMAN

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## BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present: Thiru. A. Dharmaraj. Electricity Ombudsman

### Appeal Petition No. 74 of 2016

M/s. Hariram Chemicals (P) Ltd.  
672/2, Melaamathur,  
Anaikuttam – 626 130.

..... Appellant  
(Rep. by Thiru C. Srinivasan)

Vs

The Superintending Engineer,  
Virudhunagar Electricity Distribution Circle,  
TANGEDCO,  
65/1, Ramamurthy Road,  
Virudhunagar – 626 001.

..... Respondent  
(Thiru.N.V. Senthilnathan/DFC)

**Date of hearing: 8.12.2016**

**Date of order : .14.3.2017**

The Appeal petition dt. 24-9-2016 , filed by M/s. Hariram Chemicals (P) Ltd., Anaikuttam was registered as Appeal Petition No. 74 of 2016. The above appeal petition came up for hearing before the Electricity Ombudsman on 8.12.2016. Upon

perusing the Appeal Petition, counter affidavit and after hearing both sides, the Electricity Ombudsman passes the following order;

### **Order**

#### **1. Prayer of the Appellant:**

It is prayed that the Hon'ble Ombudsman may be pleased to allow the appeal and direct the Respondent to:

- (a) Cancel the excess energy charges levied by the Superintending Engineer in letter No.SE/VREDC/VDR/AEE/DEV/TA/F.CGRF/D.No.481/16 dated 30.7.2016 based on the quota fixed to the Appellant vide letter No. SE/VREDC/VDR/AO/R/RCS/AS/F.Powercut/D---/10 dt. 27.5.2010.
- (b) Stay the recovery proceedings still the disposal of the case vide letter No. SE/VREDC/VDR/AO/RCS/AAO/HT/AS5/F.CGRF/D/812/16 dt. 8.8.2016.

#### **2. Brief History of the case:**

- 2.1 M/s. Hariram Chemicals (P) Ltd. the Appellant herein is having a factory for manufacturing potassium Chlorate by electrolysis. The industry is a continuous process industry and the HT SC NO. is 101.
- 2.2 The SE/Virudhunagar EDC has levied a shortfall amount of Rs.2,52,541/- towards excess consumption charges for exceeding the energy quota based on slot wise consumption for the period from June 2010 to December 2010 based on audit remarks vide SE/VDR/AO/R/RCS/AS/A5/HT Audit/D.No. /11 dt. 30.11.2011.
- 2.3 The Appellant submitted various representation to the Respondent but no reply was received.

- 2.4 The Appellant filed a petition before the CGRF of Virudhunagar EDC on 3.10.2015 and the CGRF has dismissed the petition vide its Order dt. 30.7.2016.
- 2.5 Aggrieved by the Order of the CGRF, the Appellant filed the appeal petition. As the Appellant has not enclosed the receipt for having paid 25% of the amount ordered by the CGRF, the Appellant was requested to furnish the copy of the receipt vide letter dt. 9.9.2016.
- 2.6 The Appellant in his letter dt. 24.9.2016 has enclosed the copy of receipt No.0279755 dt. 23.9.2016 in proof of having paid a sum of Rs.63,135/- towards 25% of the shortfall amount. Accordingly, the Appeal petition was registered as AP No. 74 of 2016.

3. **Order of CGRF:**

The CGRF of Virudhunagar EDC has issued its order on 30.7.2016. The relevant para of the Order is extracted below:

*“M/s. Hariram Chemicals is a continuous process industry as a HT consumer the electrical supervisor or in charge of the firm aware of the billing system of HT.SC.*

*They also aware that for billing purpose one day (24 hrs) is divided as peak hours (6 hours) Normal hour (11 hours) and off peak hours (7 hours) and also tariff rate for peak hours, off peak hour and normal hour vary. Hence they have to calculate the quota on hourly basis proportionately for peak hours, (6) off peak hours (7) and normal hours (11) and also for all the HT consumer of continuous process industry the quota for entire month was fixed and intimated. According to R&C measures, quota period is adopted on day basis and cannot be done on hour basis to the convenience of each and every consumer as their whims & fancy.*

*Hence the petitioners argument of hourly quota not fixed and intimated could not be considered. Hence the petitioner has to pay audit amount of Rs.2,52,541/- is hence the petition filed by the petitioner is disposed in forum.”*

4. **Arguments of the Appellant furnished in the Appeal petition:**

- 4.1 The appeal is filed against the order of the Consumer Grievance Redressal Forum, Virudhunagar vide Lr. No. SE/VREDC/VDR/AEE/DEV/ TA/F.CGRF/ D.No.481/16 dt. 30.07.2016. In the impugned order, the Respondent had dismissed the appeal petition of the appellant praying for cancellation of alleged excess energy charge of Rs.252241/- (Rupees Two Lakhs Fifty Two Thousand Two Hundred and Forty one only) levied by the Superintending Engineer in letter No. SE/VDR/AO/R/RCS/AS/A.5/F.HT Audit/D.No. /11 dt. 30.11.2011.
- 4.2 The Appellant submits that initially quota was fixed for the working period on 27.05.2010 by the respondent vide letter No. SE/VREDC/VDR/AO/R/ RCS/ AS/F.Power cut/D.No. /10 dt. 27.05.2010 for a continuous process optimum demand consumer. Also on behalf of the respondent, quota was fixed by Assistant Executive Engineer, (O&M) for holiday periods. As per the said orders, the respondent instructed not to exceed the quota at any period but without specifying the quota to be consumed on slot wise.
- 4.3 The Appellant duly followed the instructions of department authorities accordance with the order dt. 27.05.2010, for the working period and non working period. The respondent issued an order on 30.11.2011 (for the billing **period June 2010 to December 2010**) imposing the penalty for excess consumption of energy based on slot wise to the tune of Rs.252541/- based on the working of **non-intimated circular memo No.CFC/R/FC/R/AO/HT/D.No.51/2009 & CFC/R/ FC/R/AO/HT/D.No.51-1/2009 dt. 4.4.2009.**

- 4.4 The respondent changed the quota fixed for non working period arbitrarily for the computation of slot wise quota and also changed the alleged excess charges for peak hour and off peak hour arbitrarily for the working of slot wise excess energy charges.
- 4.5 The respondent, by referring the above said circular, on their accord imposed excess energy charges retrospectively on the appellant, violating the order of respondent dt. 27.5.2010. The appellant submitted various representations with the respondent for 4 years to drop the Audit arrear amount of Rs,252541/- being the penal levy for alleged excess consumption of quota units on slot wise consumption during the period June 2010 to December 2010. **The appellant had not received any reply for the representation letters and hence the appellant were forced to represent the matter with the Hon'ble Chairman of Consumer Grievance Redressal Forum, Virudhunagar.**
- 4.6 The Appellant submit that the respondent has dismissed the application filed with CGRF belatedly after 10 months vide Lr. No. SE/VREDC/ VDR/ AEE/ DEV/ TA/F.CGRF/D.No.481/16 dt. 30.07.2016.
- 4.7 The impugned order of the Hon'ble **Consumer Grievance Redressal Forum, Virudhunagar dt. 30.07.2016** rejecting the application on the ground that the Appellant unit is a continuous process HT industry and without considering the respondent quota order dt. 27-05-2010. In the order, in as much as it does not discuss the issue raised by the Appellant and proceeded in a routine manner disposed the objections raised without proper appreciation of facts in the issue. The learned respondent ought to passed orders within two months but failed to

pass orders within the stipulated time. Hence the impugned order is not a speaking order and is not sustainable.

4.8 The Hon'ble Forum has failed to see that Appellant industry is a continuous process optimum demand consumer and never exceeded the quota fixed by the TNEB authorities at any period of time from June 2010 to December 2010. This was obviously proved by the bills raised for the appellant for the said period and the meter readings entered by the Assistant Executive Engineer (O&M), TANGEDCO, G.N Patti Sub-station G.N. Patti on behalf of respondent. In support the following, order of the Hon'ble Commission and Ombudsman are given below:

(i) DRP No.13 of 2010 L.S. Mills Ltd., Theni Vs CFC/Revenue& SE/Theni EDC.

(ii) DRP No. 14 of 2010 M/s Durgesh Nandhini Spinning Mills Vs CFC/ Revenue & SE/Theni EDC.

(iii) AP 6 of 2010, Tmt. Sarojini, Mangalam VsEE/O&M, Somanur and AE, Samalapuram.

4.9 The respondent clearly quoted in the order that "The /AO/Rev/CO/VDR told that as it is a continuous process industry as per R & C measure, demand and energy quota was fixed for their working day period and holiday period and also slot wise quota was not fixed and intimated for any continuous process industry even though instructions were issued by higher authorities on 16.03.2009. Based on the instructions given to the Respondent vide memo no: CFC/R/FC/R/AO/HT/D.No:51/2009 dt 16.03.2009 & CFC/R/ FC/ R/AO/ HT/D. No.51-1/2009 dt 04.04.2009.

- 4.10 The Respondent never raised monthly bill to the Appellant Industry even though the respondent aware of the process of billing system from 16.03.2009 itself for the consumer of continuous process industry with optimum demand)
- 4.11 The Hon'ble forum failed to consider the alleged levy of excess consumption charges retrospectively by the respondent changing quota fixed and rate fixed were arbitrary, illegal and against the principle of natural justice.
- 4.12 The Hon'ble forum has failed to see that the electricity board has neither the power nor authority to collect the impugned demand of excess energy charges retrospectively without following the procedure in the event of excess consumption of quota. In the common law, penal proceedings cannot be made applicable retrospectively.
- 4.13 Without prejudice to the grounds of appeal as per the judgment of APTEL any excess energy charges should be arrived as per the CMRI download data and not by slot wise consumption. This was not followed by the audit without prejudice, the appellant submits that the audit had failed to follow the instructions of TANGEDCO for the working of excess energy charges on CMRI data.
- 4.14 It is pertinent to submit that the Deputy Chief Internal Audit Officer / Tirunelveli Region vide Letter L.R.No:602/ Pt.245/F.33/F.339-I/F.HT Audit 10/10-3/11-2015 dt 6.15 was pleased to refer the CE/ Comm/order dt 6.9.11 which relates to case of a HT consumer only. Hence the impugned order dt 30.07.2016 is discriminatory and is against equity and equality. Hence the impugned order dt 30.07.2016 is liable to be set aside.

5. **Arguments of the Respondent furnished in the counter:**

- 5.1 The Appellant filed a petition in CGRF to cancel the excess energy charges of Rs.2,52,241/- levied by the audit which was communicated to the appellant vide Lr.No:SE/VDR/AO/R/RCS/AS/A.5/F.HT.Audit/D.No./11 dt 30.11.2011.
- 5.2 The above petition has been discussed in the Forum on 20.02.16 and 25.06.16 and dismissed the petition and directed the appellant to pay the amount Rs.2,52,241/-.
- 5.3 .As per instruction of CE/Comml/Chennai VideMemo.No.CE/ Comml/ EE/ DSM/ AEE/P.M.M/F.PowercutID224/2010 dated 27.05.2010. R&C was implemented to all HT consumer since the appellant is a continuous process industry, as per the request of the appellant optimum demand has been fixed as Demand 450 KVA Energy-194606 units-25 days Vide Lr.No :SE/VREDC/VDR/ AO/R/RCS/AS/ F.POWERCUT/D./10 dt27.05.2010 and the same has been intimated to the appellant by the territorial Assistant Executive Engineer.
- 5.4 BOAB Audit Party raised a slip to the HT SC No:101 M/S Hariram Chemicals Ltd (Appellant) for an amount of RS.2,52,241, towards excess consumption of energy based on slot wise for the billing Period June 2010 - December 2010. BOAB levied the above amount based on the CFC's Instruction vide Memo.No: CFC/R.FC/RIAO/HTID.No:51/2009 dt: 16.3.2009. Hence the appellant is liable to pay the penalty for exceeding the energy quota .

- 5.5 BOAB levied Penalty as per the CFC Instruction vide Memo.No: CFC/R.FC/RIAO/HTID.No:51/2009 dt: 16.3.2009., for the billing period of June 2010-December 2010 hence levy was not implemented retrospectively.
- 5.6 The petition of Appellant was put in forum first time on 20.02.2016 and hearing was postponed for next hearing on 25.06.16. Before second hearing election code of conduct was imposed. The petition was finalized on 25.06.2016 and order was passed.
- 5.7 The petition given by the appellant to the CGRF has been completely analyzed by the chairman and member of the forum and concluded to collect the amount based on the following grounds .

- ❖ The appellant industry is a continuous process Industry.

Optimum demand quota was fixed as below

Demand 450 KVA	}	Working period
Energy 194606 units		25 days

- ❖ As for as the continuous Process Industries are concerned there is no peak hour restriction as in the case of other industries from 6 PM - 9 PM. Hence the total energy Quota fixed for the month has been segregated in to 3 slot which are billed at following rates.

Peak hour - 6 hrs (6/24) at Rs. 3.50+20% i.e Rs. 4.20

Normal Hour - 11 hrs (11/24) at Rs.3.50

Off peak hour - 7 hrs (7/24) at 3.50 - 5% i.e Rs.3.325

5.8 The appellant Industry is a continuous process Industry. As a HT consumer they must be aware of billing system and also they should use the energy as per the above 3 slot.

5.9 For all the HT consumer of continuous process Industry the quota for entire month was fixed and intimated. According to R&C measures quota period is adopted in day basis and cannot be done on hour basis to the convenience of each and every consumer at their whims and fancy.

6. **Hearing held by the Electricity Ombudsman:**

6.1 To enable the Appellant and the Respondent to putforth their arguments in person a hearing was conducted on 8.12.2016.

6.2 Thiru C. Srinivasan, has represented the Appellant and putforth his side arguments.

6.3 Thiru N.V.Senthilnathan, Deputy Financial Controller has attended the hearing on behalf of the Respondent and put forth his arguments.

7.0 **Arguments put forth by the Appellant's Representative on the hearing date:**

7.1 Thiru C. Srinivasan, who represented the Appellant reiterated the contents of the appeal petition.

7.2 The Appellant's representative argued that the slot wise quota was not intimated to them. The circular dt. 16.3.2009, cited by the licensee is also not issued to them. Therefore, he argued that penalty could not be levied based on slot wise consumption.

- 7.3 He argued that the quota fixed is for 25 days only as per the letter dt. 27.5.2010 of the SE/Virudhunagar EDC. But in the audit slip, the quota was splitted up for working days and holidays for each month. Hence, he argued that the quota of 1,94,606 units fixed for the month has to be splitted into peak hour, normal and non-peak hour in slot wise. Had it been adopted, there may not be any penal levy.
- 7.4 He also cited the orders of Commission in DRP No. 13 & 14 of 2010 and the Electricity Ombudsman order in AP No. 6 of 2010 in support of his argument of that without intimating the slot wise quota, excess consumption charges could not be levied for exceeding the quota.
- 7.5 The Appellant's representative also argued that they have not exceeded the monthly energy quota fixed for the HT service.
- 7.6 On the hearing dates he also furnished the following arguments against the counter filed.
- (i) It is submitted that para 4 of the Counter filed by the Opposite Party Respondent is retrograde in nature since, the letter Memo No. CFC/R/FC/R/AO/HT/ID.No.51/2009 dated 16-03-2009 was neither communicated to the appellant. nor has been followed by the Respondent Authorities. It is respectfully submitted that BOAB's audit slip is not in order.
  - (ii) It is submitted that the 'Quota fixed by respondent vide Lr No: SE/VREDC/VDR/AO/R/RCS/AS/ F.Powercut/D./10 dt 27.05.2010 were not violated or exceeded as per the statement furnished in page no: 23.

- (iii) It is submitted that the respondent is reluctant to follow the clarifications issued by the Chief Engineer ( Commercial), T ANGEDCO for the levy of penalty for exceeding quota vide letter no: CE/Commercial/ EE/ DSM/AEE/F.Clarification/ D.346/11 dt 06.09.11 to The Chief Engineer/ Distribution, Tirunelveli Region even though penalty levied vide audit slip no: 10 dt 31.10.2011.
- (iv) Even though "The Consumer Grievance Redressal Forum has completely analyzed the issue, the Honorable forum did not speak about the change of quota fixed by Respondent authorities concerned about quota for working period (25 days) for continuous process industry and quota for holiday period (5 days).
- (v) Appellant never violated the R&C measures but the respondent adopted the quota arbitrarily without any communication. If the respondent had communicated in time or raised penalty in the month of June 2010, the appellant could have avoided penalty.

8. **Arguments put forth by the Respondent's representative:**

- 8.1 Thiru N.V. Senthilnathan, DFC who represented the Respondent reiterated the contents of the counter.
- 8.2 The DFC argued that the Appellant is aware of the Billing procedure to levy excess charges for exceeding the slot wise quota.

8.3 The DFC argued that as the slot wise quota system was followed as per circular dt. 16.3.2009, the excess energy charges for exceeding the slot wise quota levied is in order.

8.4 The DFC also argued that the levy is based on a circular dt. 16.3.2009 for the period from June 2010 to December 2010. Hence, the levy is not retrospective.

9. **Written argument of the Respondent:**

9.1 In the written argument dt. 28.12.2016, the Respondent has furnished the following arguments.

(i) It is submitted that the Licensee will have the right to demand an additional amount in the event of any clerical errors or mistakes in the amount already levied Hon'ble TN ERC has also said the above fact in its section 12(1).

Further, as the appellant is a HT consumer, he will be deemed to have full knowledge of the provisions of applicable Acts, Rules and all regulations and notifications made there under. It is also noticed in section 42 of the Tamilnadu Electricity Distribution Code. As such the CFC/Revenue circular memoNo.1.CFC/R/FC/R/AO/HT/DNo.51/2009 Dt.16.03.2009, 2. CFC/R/FC/R/Ao /HT/ DNo.51-1/ 2009 dt 04.04.2009 were already intimated to consumer through respective territorial AEE.

(ii) It is submitted that the excess charges was arrived based on the billing methodology vide CFC/R/FC/R/ AO/HT /DNO.51/2009 Dt 16.03.2009 for continuous process Industries. As far as the continuous process industries are concerned there is no peak hour restriction as in the case of other industries ie

from 6.00 pm to 9.00 pm. Therefore the total energy quota fixed for the month shall be segregated in to slot wise in the following ratio.

Peak Hour : (6 hours) 6/24

Normal Hour:(11 hours) 11/24

Off peak Hour: (7 hours) 7/24

The energy charge has to be levied as per slot wise consumption at the applicable rates. Therefore the quota energy may be segregated as per the above ratio and the excess over the energy quota fixed shall be levied as per the slot wise consumption.

(iii) It is submitted that the appellant has hide the fact of their excess consumption in slot wise and trying to adopt the CE/Commercial's clarification letter date 06.09.11 which was adopted for the consumer those who are involved in peak hour restriction. **But this appellant is under continuous process industries category.** Hence the excess charges was levied as per working instructions of CFC/REV/TANGEDCO date 16.03.2009.

(iv) The petitions pointed out in the grounds by the appellant in their appeal petition are entirely different not related to their grievance of their present petition.

(v) It is submitted that it is well known fact that the consumer those who are under continuous process industry category are having separate quotas for working days and holidays. The optimum demand was permitted only for working days for the consumer as like this appellant.

(vi) It is submitted that it is noticed that the appellant has exceeded quota energy while on reviewing their consumption in slot wise segregation since this appellant was under continuous process industries category. Hence, this appellant is liable to pay the penalty for exceeded energy.

10. **Findings of the Electricity Ombudsman:**

On a careful consideration of the rival submission, I find the following as the issues for consideration.

- (i) Whether the quota for slot wise consumption has been communicated to the Appellant?
- (ii) Whether the prayer of the appellant to cancel excess energy charges levied for exceeding the slotwise quota is acceptable?

11. **Findings on the first issue:**

11. The Appellant argued that initially quota was fixed for the working period by the respondent and communicated the same to the Appellant vide Lr. No. SE/VREDC/VDR/AO/R/RCS/AS/F.Power cut/D-10 dt. 27.5.2010. On behalf of the Respondent, the AEE/O&M, has fixed the quota for holiday period slot wise quota was not fixed and intimated to them.

11.2 The Respondent argued that there is no peak hour restrictions for the continuous process industries. Therefore, the total energy quota fixed for the months shall be segregated into slot wise in the following ratio:

Peak Hour	: 6 hrs	: 6/24
Normal Hour	: 11 hrs	: 11/24
Off-peak hour	: 7 hrs	: 7/24

11.3 The Respondent argued that the energy charges are levied as per the slot wise consumption at the applicable rates. Therefore, the energy quota may be segregated as per the above ratios and the excess over the energy quota fixed shall be levied as per the slot wise consumption.

11.4 The Respondent also argued that as per regulation 42 of the Distribution Code, the Appellant is deemed to have full knowledge of the provisions of Applicable Acts, Rules and all regulations and notifications made thereunder. Further, the CFC/Revenue circular Memo No.CFC/R/FC/AO/HT/D.No.51/2009 dt. 16.3.2009 and CDC/R/FC/R/AO/HT/D.No.51-1/2009 dt. 4.4.2009 was already intimated to the consumer through respective territorial AEE.

11.5 As the Appellant has argued that in letter dt. 27.5.2010, the quota was intimated.

The extract of the above letter is extracted below:-

*“In view of the present power shortage in the State, the Government of Tamil Nadu has issued direction for certain restrictions, on consumption of power.*

*1. Accordingly, 20% demand and energy cut will be imposed on the base demand and base consumption with effect 27.5.2010. The base demand will be worked out based on the highest maximum demand registered in any month during the period from October 2007 to October 2008 of sanctioned demand whichever is less. The base consumption will be the highest average of any three consecutive months between October 2007 to October 2008 respectively.*

*2. The following are monthly demand and energy quota fixed for your HT SC No.101 continuous process*

<i>Base demand</i>	<i>: 500 KVA</i>
<i>Base energy</i>	<i>: units</i>
<i>Demand quota</i>	<i>: 450 KVA/25 days</i>
<i>Energy quota</i>	<i>: 194606 units</i>

*The unutilized quota in any quota period will not be carried over to the subsequent period.*

3. *In respect of monitoring energy quota, meter reading will be taken on weekly basis or at such intervals as the Board may deem fit. You should restrict the usage of energy within the quota fixed.*

4. *In case of HT industrial and commercial services the excess demand i.e over and above the quota shall be charged at thrice the normal rate i.e. 1+2 i.e. (Rs.300 + Rs.600 – Rs.900/KVA per month). In case of HT industrial service the excess energy i.e consumption exceeding the quota shall be charged at thrice the normal rate i.e. 1+2 i.e. (Rs.3.50 + Rs.7.00 – Rs.10.50 per unit). Further applicable peak hour charges @ 20% shall also be levied.*

6. *Considering the prevailing grid conditions, which warrant restrictions on the usage of electricity, as per sec. 32 & 33 of Electricity Act 2003 and Regulation 38 of the Tamil Nadu Electricity Distribution Code to operate the grid in a stable and safe manner, the above restriction in consumption and usage of electricity have to be imposed.”*

11.6 On a careful reading of the above circular it is noted that the quota fixed for the Appellant is as below:

Demand quota : 450 kVA/25 days

Energy quota : 194606 units

11.7 The excess demand charges and excess energy charges leviable in case of exceeding the demand and energy quota fixed has also been intimated. The demand quota was fixed for 25 days. The energy quota is for the full month only. As per the above quota intimation letter dt. 27.5.2010 communicated to the Appellant, the slot wise energy quota has not been indicated. Though it was argued that the territorial AEE has

intimated the quota to the Appellant, the Respondent has not furnished any document in proof of the communication of the quota in slot wise to the Appellant. Hence, this point is decided in favour of the Appellant.

**12. Findings on second issue:**

12.1 The Respondent argued that as per circular memo No. CFC /R /FC /R /AO /HT/D.No. 51/2009 dt.16.3.2009, in respect of continuous process industries, the excess energy charges shall be levied as per slot wise consumption.

12.2 Further, as per regulation 42 of the Distribution code, the Appellant is deemed to have the full knowledge of provision of applicable Rules and Regulations and notifications made thereunder. Therefore, the Respondent argued that the Appellant is aware of the slot wise quota fixed for the continuous process industries.

12.3 The Appellant argued that they have not been informed about the slot wise quota.

12.4 The Appellant also argued that the Respondent also not followed slot wise quota and not levied penal charges in the respective months even though, the Respondent is aware of the instruction issued on 16.3.2009.

12.5 The Appellant also argued that they have not exceeded the quota intimated in letter 27.5.2010 from June 2010 to December 2010. Therefore, the levy of penalty is not justifiable.

12.6 The Appellant also argued that the Respondent is reluctant to follow the clarification issued by the CE/Commercial in letter no.CE/ Commercial/ CE/DSM/ AEE/F.clarification/D.346/11 dt. 6.9.11 to CE /Dist. / Tirunelveli Region.

12.7 The Appellant argued that had the Respondent intimated the quota in time or levied penalty for June 2010, the Appellant would have avoided penalty for subsequent months.

12.8 As the Respondent have cited the circular dt. 15.3.2009, the relevant paras of the circular is extracted below:

*“6. As far as the continuous process industries are concerned there is no peak hour restriction as in the case of other industries i.e. from 6 p,m to 9 pm. Therefore, the total energy quota fixed for the month shall be segregated into slot wise in the following ratio.*

<i>Peak hour</i>	<i>:</i>	<i>(6 hours)</i>	<i>6/24</i>
<i>Normal hour</i>	<i>:</i>	<i>(11 hours)</i>	<i>11/24</i>
<i>Off peak hour:</i>		<i>(7 hours)</i>	<i>7/24</i>

*7. The energy quota is fixed for the entire month. The energy charges has to be levied as per slot wise consumption at the applicable rates. (i.e. peak hours 3.5 + 20% normal hours 3.50, off-peak hours 3.50-5%, i.e. 4.20, 3.50, 3.325 per unit respectively).*

*8. The continuous process industries are permitted to avail the lighting load for security and essential activities during the holidays. As the continuous process industries will consume power from TNEB for their lighting purpose i.e. during night hours for security purpose and during the day time for their office use, etc. Hence 15% of the energy quota may be fixed for their lighting load for holiday period as below:*

*Energy quota fixed x 15% x No. of days / 30 days*  
*If the energy quota fixed is 5,00,000 units*  
*No. of days running the industries: 20 days*  
*No. of holidays : 10 days*  
*No. of days in a month : 30 days*

*The Energy quota to be fixed  $5,00,000 \times 15 / 100 \times 10 / 30 = 25,000$  units.*

*xxx xxx xxxx  
xxx xxx xxxx*

*Illustration XI:*

*xxx xxx xxx  
xxx xx xxxxx*

*(a) xxx xxx xxx*

*(b) xxx xx xxxxx*

*(c) Excess over the Energy quota fixed shall be levied as per the slot wise consumption. Therefore the quota energy may be segregated, as per the following ratio. Peak hour-6/24, Normal hour-11/24, Night hour-7/24.”*

12.9 On a careful reading of the Circular and illustration, it is noted that the licensee has issued instructions to fix the quota in slot wise and levy excess energy charges as per the slot wise consumption.

12.10 As the Appellant has cited CE/Commercial's letter dt. 6.9.2011 the same is extracted below:

*“Referring to the above, it is clarified that the energy quota fixed is for the total consumption for the month. The peak hour quota limit allowed is to restrict the consumption up to that level during the peak hours.*

*The consumer is liable to pay the penal charges if they exceed the quota as follows during the month.*

*i) If they exceed the demand and energy consumption quota limit allotted for peak hours.*

*ii) If they exceed the demand and energy consumption allotted for the month including peak hour energy consumption.*

*The consumer may use up to the allotted demand and energy limit or below during the peak hour as per his option. Hence use of unutilized peak hour energy during non peak hour does not attract any penal levy. So the presumption of BOAB audit is not correct.”*

12.11 As per the clarification issued by the CE/Comml. the penal levy is levied if the consumer exceeds the quota as follows:

- (i) If they exceeded the demand and energy quota fixed for peak hour,
- (ii) If they exceed the demand and energy consumption allotted for the month including peak hour energy.

Further, it has been also clarified that use of unutilized peak hour energy during non peak hour does not attract any penal levy.

12.12 The above clarification is applicable for industries for which peak hour quota and monthly quota has been fixed. But, the continuous process industry has no peak hour quota. Hence, it is not applicable to continuous process industries. As the case before me is in respect of the continuous process industry, the above is not applicable.

12.13 As per my findings on the first issue, it is held that the slot wise quota was not intimated to the Appellant.

12.14 As the slot wise quota fixed was not intimated to the Appellant and only the monthly energy quota was intimated to the Appellant, I am of the view that the excess energy charges could be levied only if the Appellant exceeded the quota intimated to him in writing. Excess energy charges levy is a penalty for exceeding the quota. Therefore, it is necessary that the quota for each slot has to be intimated to the consumer in advance so that the consumer can restrict the utilization within the quota limit or pay the penalty for exceeding the quota.

12.15 Though the circular was issued during 3/2009, the Respondent has not intimated the quota in slot wise while intimating the quota on 27.5.2010 which was issued about a

year after issue of the circular. They have also not raised excess energy charges in the respective months after the issue of the circular dt.15.3.2009. But without intimating the quota as per the circular the Respondent cannot enforce the quota as per the circular under pretext that all rules and regulations are deemed to be known to all. In fact, the circular is only a internal communication of the licensee and the Respondent has also not argued that the same is available in the website for reference. As excess energy charges is a penal provision, the quota in slotwise has to be intimated to the respective consumers before enforcement. Hence, I am unable to accept the above argument of the Respondent.

12.16 On a careful examination of the excess energy charges levied it is noted that the excess energy charges was calculated considering the slot wise quota. But, the total energy quota as intimated in letter dt. 27.5.2010 has not been exceeded in any of the disputed period. As monthly quota alone was intimated to the Appellant, the monthly quota fixed and the consumption recorded alone could be considered for arriving the excess energy charges.

12.17 As the Appellant has not exceeded the energy quota for 1,94,606 units fixed for a month in any of the period from June 2010, October 2010 & December 2010. I am of the view that the excess energy charges levied is not correct and excess amount collected has to be refunded.

### **13. Conclusion:**

13.1 As the Respondent has not intimated the slotwise quota for the disputed period, the excess energy charges levied based on slot wise quota is not correct. Hence, the excess energy charges levied in SE, letter dt. SE / VEDC / VDR / AEE / Dev / TA /

F.CGEF / D.No.481 /16 dt. 30.7.2016 is cancelled. The Respondent is directed to refund/adjust the sum of Rs.63,128/- deposited with the licensee towards 25% of the amount as ordered by the CGRF.

13.2 With the above findings, the AP No. 74 of 2016 is finally disposed of by the Electricity Ombudsman. No Cost.

**(A. Dharmaraj)**  
Electricity Ombudsman

To

1) M/s. Hariram Chemicals (P) Ltd.  
672/2, Melaamathur,  
Anaikuttam – 626 130.

2) The Superintending Engineer,  
Virudhunagar Electricity Distribution Circle,  
TANGEDCO,  
65/1, Ramamurthy Road,  
Virudhunagar – 626 001.

3) The Chairman,  
(Superintending Engineer),  
Virudhunagar Electricity Distribution Circle,  
TANGEDCO,  
65/1, Ramamurthy Road,  
Virudhunagar – 626 001.

4) The Chairman & Managing Director,  
TANGEDCO,  
NPKRR Maaligai,  
144, Anna Salai, Chennai -600 002.

5) The Secretary,  
Tamil Nadu Electricity Regulatory Commission,  
19-A, Rukmini Lakshmi pathy Salai,  
Egmore,  
Chennai – 600 008.

6) The Assistant Director (Computer) – **For Hosting in the TNEO Website.**  
Tamil Nadu Electricity Regulatory Commission,  
19-A, Rukmini Lakshmi pathy Salai,  
Egmore,  
Chennai – 600 008.