



FOURTEENTH KERALA LEGISLATIVE ASSEMBLY

COMMITTEE
ON
PUBLIC UNDERTAKINGS
(2016-2019)

ELEVENTH REPORT

(Presented on 08.11.2016)

SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM

2016

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COMMITTEE

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On

Kerala Electrical and Allied Engineering Company Limited
(Based on the Report of the Comptroller and Auditor General of India for the
year ended 31 March, 2013 (Commercial))

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COMMITTEE ON PUBLIC UNDERTAKINGS (2016-2019)

COMPOSITION OF THE COMMITTEE

Chairman:

Shri. C.Divakaran

Members:

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Shri.V.K.Babu Prakash, Secretary

Smt. P. K. Girija, Additional Secretary

Smt. Manju Varghese, Deputy Secretary

Shri. Deepa.V, Under Secretary

INTRODUCTION

I, the Chairman, Committee on Public Undertakings (2016-2019) having been authorised by the Committee to present the Report on their behalf, present this Eleventh Report on Kerala Electrical and Allied Engineering Company Limited based on the Report (commercial) of the Comptroller and Auditor General of India for the year ended 31 March, 2013 relating to the Public Sector Undertakings of the State of Kerala.

The Report of the Comptroller and Auditor General of India for the year ended on 31st March 2013, was laid on the Table of the House on 16.6.2014. The consideration of the audit paragraphs included in this Report and the examination of the departmental witness in connection thereto was made by the Committee on Public Undertakings constituted for the years 2014-16.

This Report was considered and approved by the Committee(2016-19) at its meeting held on 04.11.2016.

The Committee place on record their appreciation for the assistance rendered to them by the Accountant General (Audit), Kerala in the examination of the Audit Paragraphs included in this Report.

The Committee wish to express their thanks to the officials of the Industries Department of the Secretariat and the Kerala Electrical and Allied Engineering Company Limited for placing before them the materials and information they wanted in connection with the examination of the subject. They also wish to thank in particular the Secretaries to Government, Industries and Finance Departments and the officials of the Kerala Electrical and Allied Engineering Company Limited who appeared for evidence and assisted the Committee by placing their views before the Committee.

Thiruvananthapuram,
.....*CA*.....11. 2016.

C.Divakaran
Chairman,
Committee on Public Undertakings.

REPORT ON
KERALA ELECTRICAL AND ALLIED ENGINEERING
COMPANY LIMITED

AUDIT PARAGRAPH

Non-refund of Excise Duty

Failure to claim refund of Excise Duty within the time limit prescribed resulted in loss of ₹ 44.58 lakh.

Kerala Electrical And Allied Engineering Company Limited (Company), is a registered manufacturer and supplier of transformers of different ratings to various electricity utilities including Kerala State Electricity Board (KSEB). During 2008-2012, the company sold 16581 transformers of various capacities (25 KVA to 5 MVA) for ₹ 174.92 crore to bulk consumers. As per the terms of the purchase orders, the prices of transformers were variable based on the raw material price index published by Indian Electronic and Electrical Manufacturers Association (IEEMA). The Company was remitting excise duty at the purchase order price on removal of transformers. At the time of removal the above 16581 transformers from the factory premises, the Company remitted ₹ 14.91 crore toward excise duty on the purchase order value.

In respect of these transformers, however, the actual sale price was to be re-fixed at a later date as the IEEMA rates for a particular month would be known only later. Thus, the actual excise duty was assessed at a later date when the final sale price was fixed. The difference in duty had to be remitted or refund claimed, as the case may be. In case of refund, the claim had to be preferred within the time limit of one year from date of payment of excise duty as stipulated in Section 11B of the Central Excise Act, 1944.

On scrutiny of the records, Audit noticed that:

- On re-fixing the price of these transformers, based on IEEMA price index, the final price of 8322 number of transformers was lower than the purchase order price by ₹ 538.29 lakh. The excise duty paid on this difference was ₹ 44.58 lakh. Thus, the Company was eligible to get the duty refund from the Central Excise Department, if claimed within one year.
- The Company, however, applied (November 2010 to June 2012) for refund of the excess paid excise duty of ₹ 44.58 lakh belatedly after a lapse of more than one year from the date(s) of payment of duty. All the refund claims were rejected by Central Excise Department citing delay in preferring the claims. The delay in raising claim for refund beyond the time limit fixed in the Statute cannot be condoned on any account. Therefore, the chances of allowing the refund claims even in appeals are remote. As such, failure of the Company to prefer the refund claims within the stipulated time of one year resulted in loss of ₹ 44.58 lakh.

The Company replied (September 2013) that there was significant delay in getting information of the refixed price from KSEB on the basis of IEEMA formula. As a result of this, time limit of one year for preferring claim for refund with Excise Department could not be complied with.

The reply was not acceptable. As the IEEMA index was publicly available the Company should have itself refixed the price without depending on KSEB and preferred the claim for refund.

The matter was reported to the Government in September 2013; their reply was awaited (January 2014).

[Audit paragraph 4.7 contained in the report of the Comptroller and Auditor General of India for the year ended on 31st March 2013]

Notes furnished by the Govt. on the audit paragraph is given in Appendix II

1. The Committee enquired the reason for not claiming the refund of excise duty within the stipulated time of one year which had resulted in a loss of ₹ 44.58 lakh. The Managing Director, KEL replied that there was an inordinate delay in getting the information of the refixed price from KSEB on the basis of IEEMA formula. When the

Committee pointed out the audit observation that the Company was able to get the information of price fixation from sources other than KSEB, it was explained that KSEB could not pass the bill if the rates based on the prices known from outside sources were claimed and therefore, the Company was able to claim the refund only on the prices based on the purchase orders issued by KSEB.

2. The Committee was not fully convinced with the arguments of the witness. Therefore the Committee wanted to be produced with the details of said purchase order issued by KSEB and also to make clear the provisions included in the purchase order regarding the loss incurred by the Company due to the delay in getting intimation of the refixed price from KSEB. The witness informed that this was the first time they had encountered such a situation and the company had already filed an appeal before the Commissioner of Central Excise and Service tax (Appeal) for getting a favorable decision without much delay.

3. The Principal Secretary, Industries Department opined that the excess amount would be refunded immediately when KSEB announced the revised price.

4. Disagreeing with the Department's stand, the Deputy Accountant General opined that the Company was not eligible for getting the refund of excise duty since they had failed to claim it within the stipulated time of one year. She also added that since the IEEMA index was available to the public, the company itself should have refixed the price without depending on KSEB.

CONCLUSIONS/RECOMMENDATIONS

5. The Committee finds that the Company has miserably failed to comply with excise norms in preferring claim for the refund of excise duty intime. Meanwhile the Committee learns that owing to the late intimation of IEEMA index from KSEB, the Company is not in a position to claim the refund of excise duty within the stipulated period of one year and this corrigendum needs to be corrected permanently. Therefore, it is recommended that, in future, the Company should try hard to get the price of its products reassessed based on the raw material price index of Indian Electronic and Electrical Manufacturers Association (IEEMA) and explore the possibility of getting revised rates quarterly, so that the Company can submit timely claims for quarterly refunds.

Thiruvananthapuram,
.....2016.

C. DIVAKARAN,
Chairman,
Committee on Public Undertakings.

APPENDIX 1
SUMMARY OF MAIN CONCLUSIONS/RECOMMENDATIONS

(1)	(2)	(3)	(4)
Sl. No.	Para No.	Department Concerned	CONCLUSIONS/ RECOMMENDATIONS
1	5	Industries department	The Committee finds that the Company has miserably failed to comply with excise norms in preferring claim for the refund of excise duty in time. Meanwhile the Committee learns that owing to the late intimation of IEEMA index from KSEB, the Company is not in a position to claim the refund of excise duty within the stipulated period of one year and this corrigendum needs to be corrected permanently. Therefore, it is recommended that, in future, the Company should try hard to get the price of its products reassessed based on the raw material price index of Indian Electronic and Electrical Manufacturers Association (IEEMA) and explore the possibility of getting revised rates quarterly, so that the Company can submit timely claims for quarterly refunds.

**Action Taken Report on the Para 4.7 of the C&AG Report on Public
Sector Undertakings for the Year ended 31st March 2013 on Kerala
Electrical & Allied Engineering Company Ltd.**

Para (4.7)	Reply
<u>Loss</u> <u>Failure to claim refund of excise duty within the time limit prescribed resulting in loss of Rs.44.58 lakh.</u> Kerala Electrical & Allied Engineering Company Ltd, Kochi is a registered manufacturer of transformers and structural supplying transformers of different rating to various electricity utilities. During 2008-12, the Company sold 16581 transformers of various capacities (25 KVA to 5 MVA) for Rs, 174.92 crore to bulk consumers. As per terms of these purchase orders, the prices of transformers were variable based on the raw material price index published by Indian Electronic and Electrical Manufacturers Association (IEEMA). Transformer is an excisable commodity the rate of duty and tariff value applicable should be rate and value in force on the date when such goods were removed from the factory. Therefore the company was remitting excise duty at the purchase order price on removal of transformers from the Company. At the time of removal of the above 16581 transformers, the Company remitted Rs. 14.91 crore towards excise duty on the purchase order value. In respect of these transformers, however the actual sale price was to be re-fixed at a later date as the IEEMA rates for a particular month would be known only later. Thus, the actual	Kerala Electrical & Allied Engineering Company Ltd is the registered manufacturer of transformer and supplying distribution transformers to various Electricity Boards, KSEB is the main customer during this period. Chief Engineer (SCM), KSEB. Vydyuthi Bhavanam, Thiruvananthapuram releases the purchase orders to the company with prices variable as per the Indian Electronics and Electrical Manufacturers Association (IEEMA) formula and with other terms and conditions. KEL has to supply transformers to various Stores of KSEB at Tirumala, Pallom, Angamaly & Shornur. Their bills against the supplies of transformers will be verified by concerned KSEB Stores and it is forwarded to concerned circles at Kattakada, Pallom, Perumbavoor & Shornur. Deputy Chief Engineers of the above circles will pass bills as per Purchase Order Conditions and will again forward to Chief Engineer (SCM), KSEB, Vydyuthi Bhavanam, Trivandrum for effecting payment. There was significant delay in getting intimation to the re-fixed price and the PV recovery Statement from KSEB on the basis of IEEMA Formula. After completion of execution of the purchase order only, KSEB will take action for re-fixing the basic price according to IEEMA formula and it takes long periods for releasing the price variation order from Chief Engineer (SCM) Office at

excise duty was assessed at a later date when the final sale price was fixed. The difference in duty had to be remitted or refund claimed, as the case may be. In case of refund, the claim had to be preferred within the time limit of one year from date of payment of excise duty as stipulated in Section 11B of the Central Excise Act, 1944.

On scrutiny of the records, Audit noticed that:

On re-fixing the price of these transformers, based on IEEMA price index, the final price of 8322 number of transformers was lower than the purchase order price by Rs.538.29 lakhs. The excess duty paid on this difference was Rs.44.58 lakh. The Company was eligible to get the duty refund from the Central Excise Department, if claimed within one year.

The company, however, applied (November 2010 to June 2012) for refund of the excess paid excise duty of Rs. 44.58 lakh after a lapse of more than one year from the date of payment of duty. All the refund claims were rejected by Central Excise Department citing delay in preferring the claims. The delay in raising claim for refund beyond the time limit fixed in the Statute cannot be condoned on any account. Therefore, the chances allowing the claim even in appeals are remote. As such, failure of the Company to prefer the refund claims within the stipulated time of one year resulted in loss of Rs.44.58 lakh.

Thiruvananthapuram. After releasing the price variation orders/letters, the concerned Deputy Chief Engineers of 4 circles will deduct the negative price variation amount from the bills of other purchase orders and will issue a statement showing the price variation and resultant excess payment of Excise duty, for getting refund from Central Excise Authorities.

During this process, time limit of one year for preferring claim for refund will be over. In some cases, in the purchase order delivery period of the transformers itself is more than one year and as such, in the settling of price re-fixation and consequent question of refund of excise duty shall arise only after one year by which time the allowed time limit is expired which is beyond the control of KEL.

Making provisional payment of Excise duty was not availed by KEL due to non-availability of limit for Bank Guarantee. KEL could not remit even Security deposit for KSEB orders by Bank guarantee at that time. During this time, Security Deposit for Rs.1,65,26,200/- against P.O.No.TCM 53/2010-11/2837 dated 29/07/2010 has been deducted from their 90% running bills, this was due to the reason that they had already utilized the available limit for security for earlier orders of KSEB. The security deposit of KSEB has to be valid for 18 months after last delivery against any order. However Government and the Board have since agreed to accept Corporate Guarantee in lieu of Bank Guarantee and as such Bank Guarantee will not be an issue for future provisional

payments.

The tender conditions of KSEB are common to all participants and not amenable to modification to any particular bidder. More over, if the Company prefers a conditional bid, the same is liable to be rejected or at times KSEB insist through further communications that KEL accept all terms unconditionally without deviations from tender conditions. Under the circumstances, the Company does not foresee KSEB accepting a condition in the agreement stipulating settlement of price variation claims within one year as stated in the audit.

KEL has taken up the matter with KSEB authorities and the following appeals have already been filed before the Commissioner of Central Excise & Service Tax (Appeals), Cochin for getting the refund of Excise Duty.

1. A.No.18/CE (CHN/2011(R)
dated 15.06.11
2. A.No.29/CEX (CHN/2012(R)
dated 21.06.12
3. A.No.28/CEX (CHN/2012(R)
dated 21.06.12
4. A.No.188/ST (CHN/2012(R)
dated 13 .09.12
5. A.No.48/CE (CHN/2012(R)
dated 20.10.12
6. A.No.57/CE (CHN/2012(R)
dated 13.12.12

Apart from the concerned

officials of the Unit, the Managing Director himself has appraised the Deputy Commissioner of Excise on this matter and it is expected that the excess amount will be refunded immediately on disposal of the pending appeal. According to the opinion of the Central Excise Consultant, Company is quite confident that the decision will be in favour of KEL.

KEL has taken approval from Central excise Authorities for payment of Excise Duty provisionally during last year onwards for the following purchase orders in order to avoid period of limitation for getting refund of Excise duty if any.

1. KSEB P.O No.SCM 47/12-13/2710 dtd. 19.10.2012.

2. KSEB P.O No.SCM 51/12-13/2713 dtd. 19.10.2012.

3. KSEB P.O No.SCM 57/12-13/3031 dtd. 16.11.2012.

4. TANGEDCO P.O No.SE/MM-II/EEDT/A5/M39/11-12,
P.O No.8 dtd. 21.05.2012.

As can be seen from the above:

(a) KEL could not have avoided the delay due to the existing practice of re-fixation settlement by KSEB and their inability to make their provisional payment due to BG limitation.

(b) KEL has resolved the BG limitation by converting BG being earlier furnished to KSEB to Corporate guarantee and as such, provisional payment can be made in future and the Company has already started this.

(c) For cases that have already happened, KEL has appealed to the Appellate authority and are hopeful of getting favorable decision.

(d) KEL has taken up with KSEB for price re-fixation progressively on a monthly quarterly basis so that the time limit for refund, if any, is not expired. Regarding the case of TNEB also there was significant delay in getting intimation of the re-fixed price and Price Variation recovery statement from M/s. TNEB on the basis of IEEMA formula. The Company has filed separate appeals for both KSEB and TNEB issues before the Central Excise & Service tax (Appeals), Cochin for getting refund of Excise Duty and are hopeful of getting favorable decision without much delay.

As corrective measures and appeals for recovery as mentioned above have already been taken by KEL, the relevant para with C&AG report may be dropped.