

A Govt. of Maharashtra Undertaking)

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Consumer Grievance Redressal Forum

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Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/

Date

Case No. 102/2016

Hearing Dt. 23.12.2016

In the matter of application of proper tariff and revision of bill as per industrial tariff rate

M/s. Evershine Coates Pvt. Ltd.,

(Consumer no 0000439027840)

- Applicant

Vs.

M.S.E.D.C.L. Vashi circle

- Respondent

Present during the hearing

A - On behalf of CGRF, Bhandup

1) Shri. Anil P. Bhavthankar, Chairperson, CGRF, Bhandup.

2) Shri.Ravindra S. Avhad, Member Secretary, CGRF, Bhandup.

B - On behalf of Appellant

Shri. Ankit Shah –

Consumer Representative

C - On behalf of Respondent

1) Mr. D.B.Pawar, Executive Engineer, Vashi Circle.

Consumer No. 000439027840

1. Above named consumer filed this dispute against the respondent utility stating that on 08.04.2004 respondent utility has connected power supply to the consumer bearing consumer 0000439027840 having contract demand 125KVA and connected load was 150KW and the said consumer was charge the tariff under 56-HT -IN industrial non express and accordingly the bill raised by

MSEDCL were regularly paid by the said consumer. The consumer further stated that he enter into leave and licenses agreement on dated 05.02.2013 executed between the said consumer and occupier and he enter into the premises was doing industrial business under the licenses as per provision of law since then. The premise is occupied and is in possession of this consumer accordingly the consumer is paying the regular bill as per the tariff applied by respondent utility. Consumer stated that the occupier consumer is engaged in the business of leasing out industrial work-ware for the usage by the industrial workers of the industrial units and after using them for a period, these work-ware are sent back to the occupier for clearing and washing and thereafter they are again send back to them for usage and the cycle goes on .Therefore, the occupier is in the business cleaning / washing of their own work -were

2. The said occupier on the way of application dated 23.03.2015 applied to MSEDCL for enhancing the contract demand from existing 125KVA to 170KVA which was allowed and received by MSEDCL on 06.04.2015. But respondent utility failed in its duty to supply on demand within the period of one month as envisaged under section 43of the Electricity Act, 2003. The copy of the said application of additional HTR dated 23.03.2015 is filed by consumer mark as Annexure 'A' to this letter. Consumer stated that he applied on 15.04.2015 to respondent utility for enhancing contract demand existing 125KVA to 170KVA by application No.7159. The copy of the said application is filed in Annexure 'B' consumer stated that on dated 19.12.2015 the respondent utility through its Executive Engineer, Administration Vashi Circle conducted inspection of the said premises and prepared spot inspection report and during the said inspection the occupier was given impression by utility that they are exercising the processes enhancing contract demand and the occupier had no reason to disbelieve the contention of utility ,the copy of the inspection report is filed dated 19.12.2015 mark Annexure 'C'. Consumer further stated that he received letter from Superintending Engineer

,Vashi Circle bearing SE/VC/HTB/002774 dtd.02.06.2016 sent supplementary bill for amounting 1,4,99,670/- (One Crore Four Lac Ninety Nine Thousand Six Hundred only) towards plain recovery of difference due to change of tariff from "56-HT-1-N-Industrial to Non-express" to "79HT II Non- commercial Express" tariff calculating Feb. 2013 to April 2016 and requested consumer to pay the said amount within 15 days from the date of receipt of the copy of letter and supplementary bill dated 02.06.2016 ,copy of the said letter and supplementary bill is Annexure 'D'. Consumer stated that the occupier shocked and surprised to raised baseless unfounded supplementary bill and letter and required to raise the dispute against supplementary bill on the ground the activities were in the definition of industrial activity and requested respondent utility to consider by reversing supplementary bill and the request letter send to utility filed Annexure 'E'. Thereafter respondent utility send supplementary bill dated 04.06.2016 for amounting Rs. 7,31,534.44/- (Rupees Seven Lakh Thirty One Thousand Five Hundred Thirty Four and Thirty Four paisa) in the month of May 2016 after calculation of revised rate in response of the letter sent by consumer dated 15.06.2016 and 17.06.2016. Consumer requested utility to give clarification of bill revised issue in the month of May 2016. but no clarification is given by utility. In response the consumer paid amount of Rs.4,97,937/- as per calculation bill revision raise and issue the letter dated 15.06.2016 and 17.06.2016. The copy of the said letter is mark Annexure F,G,N,H Consumer stating that on 20.06.2016 respondent utility sent notice under Section 56(1)of IEA Act.2003 mentioning threat of disconnection of power supply for nonpayment of electricity charges and instructed occupier to pay the bill within 15 days ,copy of the said notice attach Annexure 'I'. Acting upon the said notice in complied under 56(1) of IEA Act. 2003 occupier had calculated average of last six months i.e November 2015 till April 2016 in accordance with the provision (b) to section 56 (1) arrived and deposited the bill Rs.4,67,626/- copy of the said receipt of the bill is filed Annexure 'J' .Consumer further stated that he already deposited amount Rs. 4,97,937/-

against impugned bill May 2016 against which notice was send by utility under section 56(1) of IEA Act 2003 and requested utility not to disconnect the supply.

3. Consumer stated that the occupier does not falls under the activity under which commercial consumption listed in MERC order which is copy of order reproduce by consumer. It is the contention of consumer that the premises located in MIDC possessing valid licenses under factories Act. 1948 and having Certificate of Maharashtra Pollution Control Board, occupier also certificate issued by various local authority as per Law. The said premises are within the limit of industrial and not fall under commercials unit. It is stated by occupier CETP within the area for discharging and generated regular operation is never part of commercials activities the activity falls in respect of business of work-ware management applied to big industrial corporate by using industrial washing machine and it comes under B- business category of operation occupied and operate in industrial washing machine and maintaining the workers of industrial consumer and therefore the activities of present occupier fall within the per view of industries and the electrical consumption used by occupant fall under the industrial connection and not under commercial consumption . It is stated by consumer the despite of oral and in writing contention represented to MSEDCL was completely ignored and occupier was misdirected by saying of utility the units fall under commercial activities. It is grave error on the part of utility due to non application of proper mind and understanding hence consumer said the dispute to charge him appropriate tariff and requested to quash and set aside the supplementary bill and respected to change the category commercial to industrial .Consumer also pray to quash and set aside the supplementary bill dated 02.05.2016 and pray for any other reasonable and proper relief to be grant in his favor.

4. The consumer initially filed his complaint before IGRC on receiving the said complaint IGRC registered case No. 90/2016 ,opportunity of hearing given on

22.07.2016 and on dated 12.08.2016 IGRC after hearing the consumer and utility gave the judgment saying classification of this consumer is rightly classified into commercial category by respondent utility as commission approved tariff activities cleaning and washing activities and laundries come under commercial and the activities falls under the category of cleaning and repairing of industrial work-ware as service. IGRC also gave six monthly installments for paying the dues to the consumer without charging interest and DPC.

5. Being aggravated by the order of IGRC this consumer approach to the Forum on 07.10.2016 and filed his complaint which is registered as complaint No. 102/2016. After registration of complaint notice was issued to the respondent utility. Respondent utility appeared and filed reply to the said complaint on 09.11.2016. It is contention of respondent utility original connection was issued in the name of M/s. Lindstrom Services India Pvt. Ltd., and the premises was given connection situated in A-83,TTC,MIDC Koperkhairne, Navi Mumbai present occupier M/s. Evershine Coates Pvt. Ltd occupied the said premises under the agreement which was not inform to the utility at appropriate time.
6. Respondent utility submitted that they received letter no 4186 date 06.04.2015 application of extension of load from M/s. Lindstrom Services India Pvt. Ltd., in which request to enhance contract demand on the above said premises from 125KVA to 170 KVA on scrutiny of the said application filed by M/s. Lindstrom Services India Pvt. Ltd., the discrepancy was found at the proposal was made by M/s. Evershine Coates Pvt.Ltd., therefore letter was send on 17.04.2015 and compliance was asked to made by applicant and occupier but no correspondence was made by both of them.
7. Utility submitted that **M/s. Lindstrom Services India Pvt. Ltd.**, filed following document on 07.04.2015 along with application serial No.1 to 7 on 15.06.2015

M/s. Evershine Coates Pvt. Ltd., occupier submitted application for extension of load. But M/s. Lindstrom Services India Pvt. Ltd., not made further correspondence therefore Executive Engineer. Administration Vashi conducted inspection on 19.12.2015 representative of M/s. Lindstrom Services India Pvt. Ltd., Shri. Dilip Patil was present representative observations made in the inspection report reproduce by utility as per Commercial Circular No. 175 dated 05.09.2012 and commercial circular No 243 revision effected from June 01.06.2015 and revised tariff schedule in 2016-2017 dated 01.11.2016 utility submitted that HT II commercial tariff as ***Applicable for use of electricity/power supply at high Tension in all non –residential, on industrial premises and /or commercial premises for commercial consumption meant for various appliances used for purpose such as lighting, heating, cooling ,cooking, washing/ cleaning, entertainment/leisure, pumping in following (but not limited To) place Tailoring shops ,computer Training institutes, Typing Institutes, Photo Laboratories Laundries;***

8. Accordingly utility submitted that District Industries center EM part II certificate produce by applicant activities as Engineering under the head cleaning and repairing of industrial work-ware under small service enterprises. It contradict applicant claim big industrial corporate utility relied on judgment given by CGRF Nagpur Zone in Case No ***75/2011*** opined that ***,washing of the cloths do not amount to manufacturing works & commercial Traiff applied by MSEDCL is correct.*** Utility also relied Appeal Petition ***No.60/2015*** Talmilnadu Electricity Ombudsman order 88/20.07.2015 reproduce as under ***“Appellants’s mechanized laundry is service oriented enterprise & cannot be classified as manufacturing industry”*** and pray for dismiss of grievance application filed by applicant. Utility pray for as Act an existence clarification made by competent authority allowed by MSEDCL to categories this application HT commercial in accordance with circular and further allowed to recovered the difference form Feb. 2013 to April 2016. Utility pray for other suitable order from this Forum utility relied on document mark as Annexure A to G.

9. On Various date I gave opportunity to the consumer and his representative and also nodal officer Vashi Sub division was present. The Forum heard details by grievance consumer and representative they also perused document relied and filed by consumer and also considered the document filed respondent utility and the copy of judgment and order.
10. After perusing of rival contention of consumer and the respondent utility following point arose for our consideration to which I have recorded by findings to the point for the reason given below.
- Whether respondent utility entitled to apply the tariff of Ht II commercial to his occupier consumer t
 - Whether consumer is entitled for revision of bill as per industrial tariff.
 - What order?

Reasoning

11.

have given opportunity to the consumer and his representative and heard the dispute and objection raised point wise. It appears from the record that original consumer as per record of respondent utility MSEDCL the connection earlier in the name of M/s Lindstrom Services India (P) Ltd. The description of occupation the premises is not disputed, it is contention of respondent utility earlier application of extension of load was submitted by original consumer. The occupier M/s. Evershine Coates Pvt. Ltd. thereafter made application for extension of load on the same address premises. The date of the said application as mention by utility 10.04.2015 The Respondent utility made scrutiny of the said application and found there are discrepancy non communication made by occupier and earlier consumer on their part causes delay in granting relief of enhancement of sanction load at their own cost and therefore no grievance for violation of SOP or delay of

sanction enhancement of load consider against the respondent utility. The dispute raised by occupier, it appears from the record the respondent utility while made scrutiny of document and because of the discrepancy decided to visit the site made inspection 19.12.2013 .As per the report Annexure B filed on record the observation is made in inspection report. The nature of activities and work defined and stated in inspection report industrial washing machine having facilities of washing the cloth and draying the cloth of various company. The employees and staff are visited for washing purpose and cloths was dry and wash with the use of machine. Accordingly to observation the premises power supply is used for industrial laundry purpose. There is also small officer situated in first floor on M/s. Lindstrom Services India Pvt. Ltd., representative production coordinator Dilip Patil was present and the inspection report is sine and verifying by S.S.Patil Executive Engineer, Vashi Circle and Assistant Engineer D.N. Ratnapogse. The details of use of power supply sanction load and connecting load is given 69.53 KVA. After the said inspection report the activity which was observed inspection report was verified by Superintending Engineer and accordingly on 2.06.2016 the letter was issued by respondent utility officer to occupier M/s. Evershine Coats Ltd., In view of the said letter as mention date of inspection report 19.12.2015 the activity considered falls under commercial category and therefore instead of industrial tariff the commercial tariff was applied and difference of tariff claim amounting Rs. 1,04,99,670/- from the period of occupation Feb. 2013 to April 2016. The supplementary bill is generated and issued to the occupier by application of commercial tariff. After receiving the said bill the dispute raised for the purpose of classification of category to this occupant various aspect required to be consider by Forum. I have considered application Form 'A load extension application and details leave and licenses agreement, copy of certificate issued by various authorities. The main certificate required to be considered and seen part II memorandum of acknowledgment 4366 issued by district industrial sector Thane .On perusing of the said certificate in Colum serial No.02 category define engineer

cleaning and repairing of industrial work were and commitment date 01.08.2009 the category further define as mention in column No. 6 activity (Manufacturing and Services) under category I & II on dated 10.03.2011. The license and certificate was issued for category it comes under services, other licenses is produce by consumer occupier not concern for making classification either industrial or commercial. The power enhancement request obviously made from 170 KVA and 190KVA on the dated of inspection the sanction and demand between 165KVA and 150KVA. Therefore the power factor is to be considered on the date of inspection. It appears to be record the supplementary bill issued claiming difference of tariff form industrial of commercial effect form Feb. 2013. The respondent utilities considered the entry of occupant in the premises and charge the difference of tariff since the date of occupation by the occupier. It is established in various orders of MERC and ombudsman which is referred as under* that no retrospective recovery of difference of tariff can be claim by utility against the consumer and it should be from date of inspection of premises. Admittedly in this present case the date of inspection is 19.12.2013 and therefore the difference of tariff should be calculated from 19.12.2013 and not from earlier period. Coming to the dispute whether the activity found at the premises falls under industrial tariff or as per the circular and definition as mention by circular and order of MERC falls under commercial tariff. I have access the contention of respondent utility minutely, it appears form the recital of the judgment relied by utility order case **No. 075/2011 M/s WHITE HOUSE POWER LOUNDRY VS MSEDCL** as observation made in the said order reeling on provision the tariff always applied for concern activity found in the premises. The application of industrial tariff as defined by Hon'ble MERC and tariff order since case **No.116/2008** decided on 17.08.2009 as there is no manufacturing activity only laundry and pressing and ironing purpose the bill is required to be issued as per required to be LT II commercial. Since the application of tariff the distinction is made in MERC order and Tariff which made clear distinction between manufacturing and other service

purpose. **Appeal No. 1065 of 2000** Hon'ble Supreme Court opined that no specific definition is given under the act therefore expression are to be given in common parlance and it was be understood in their nature of ordinary purpose or popular sense. Relaying the judgment of appellate tribunal appeal No.116/2006 decided on 04.10.2006 the definition given under factories Act and further tariff philosophy clearly made classification there is no manufacturing activity and the supply is given for laundry dressing and ironing purpose should be classified under commercial category Hon'ble MERC in order No 11/2009 held as under “

12.

It is further clarified that the 'commercial' category actually refers to all categories using electricity for 'non-residential, non-industrial' purpose, or which have not been classified under any other specific category. For instance, all office establishments (whether Government or private), hospitals, educational institutions, airports, bus-stands, multiplexes, shopping malls, small and big stores, automobile showrooms, etc., are covered under this categorization. Clearly, they cannot be termed as residential or industrial. As regards the documents submitted by the Petitioners to justify their contention that they are 'Charitable Institutions', the same are not germane to the issue here, since the Electricity Act, 2003 does not permit any differentiation on the basis of the ownership. As regards the parallel drawn by the Petitioners' between the nature and purpose for which supply is required by Government Hospitals, ESIS Hospitals, etc., and Public Charitable Trust hospitals, the Commission clarifies that it has been attempting to correct historical anomalies in the tariff categorization in a gradual manner. In the impugned Order, the Commission had ruled that Government Hospitals, ESIS Hospitals, etc., would be charged under LT I category, even though they may be supplied at HT voltages. This anomaly has been corrected in the subsequent Tariff Order, and all hospitals, irrespective of ownership, have been classified under HT II Commercial category”.

13.

Further Hon'ble Ombudsman order relied by utility in case 140/2009 *M/s. Atul Impex Pvt Ltd. Vs MSDCL* decided on 02.02.2010 also considered in the said judgment. As it is observed in said order merely because of applicant obtained

SSI Certificate the applicant is not entitled for industrial tariff. There is no evidence on record either produce also in this case not any document filed to that effect that existing unit are doing manufacturing and product work. I found apparently the supply is only for laundry purpose and the work of laundry is cannot be believed as manufacturing work and therefore application of commercial tariff as appeared and defined today in review of order of 1st November 2016 by MERC. The category of commercial tariff is legally and perfectly correct and there cannot be opinion express by this Forum unless competent authority gives clarification of this order. It is further appears from the awarement made by respondent utility and relied in Tamilnadu Electricity ombudsman order and judgment in Appeal petition 16/2015 with respect to the said observation though it is an observation made outside the court of situated in Maharashtra the circumstances categorization of particular unit has right to respondent utility under the notification and circular. Here in this case certificate issued by DIC to the occupant unit is perused by me. I found the activity cleaning and repairing of industrial work ware and the licenses issued by competent authority under category 2 services. Here whether this services provided by this unit entitled to claim industrial tariff there is still no clarification which was produce by consumer to the satisfaction of this Forum to my view interpretation of clarificatory order issued by competent authority on the question of licenses issued under the category of 2 services by DIC and the unit is situated in industrial area whether it should be classified as industrial purpose is not given till then to my view classification made by respondent utility to this occupier consumer is legal proper and valid. I found the period and assessment is done by issuing supplementary bill the revise bill should be issued by respondent utility considering the effect of commercial tariff difference from the date of inspection in further period. The amount already deposited by consumer shall be given setoff. Consequently the interest and DPC cannot be allowed to be calculated in the bill and therefore the consumer complaint is necessary should be

allowed partly to the effect of period of calculation of commercial tariff revised bill only.

14. I have considered all the attempt and argument raised by consumer and given lawful consideration the licenses issued to the occupant consumer by DIC falls under unit under the category of II and apparently no manufacturing licenses possess by consumer and therefore consumer not entitled for charge of industrial tariff rate. Hence, with direction to respondent utility only to revise the bill from the date of inspection onwards of difference of tariff should be recovered. I proceed to pass following order.

ORDER

1. The consumer complaint No.102/2016 stands dismiss
2. The respondent utility directed to issue revised supplementary bill for recovery from the date 19.12.2013 onwards only difference of commercial tariff should be access without charging interest and penalty.
No order as to the cost.
Both the parties be informed accordingly.
Proceeding close.

Note:

1) If Consumer is not satisfied with the decision, it may proceed within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman
The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),

Mumbai - 400 051

2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I Agree/Disagree

I Agree/Disagree

**DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP**

**ANIL P. BHAVTHANKAR
CHAIRPERSON
CGRF, BHANDUP**

**RAVINDRA S. AVHAD
MEMBER SECRETARY
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