



sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission. Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014'.

2] Case in brief is that, the consumer APM Terminals India Pvt. Ltd., formerly known as Express Repair Services Pvt. Ltd., having consumer No. 029509020238 is in the business of repairing of marine containers and handling thereof. The power connection was given to the consumer as HT Industrial by Licensee MSEDCL, since February 1999. Accordingly consumer started its operations. Abruptly consumer received a letter dated 27/11/2015 referring audit enquiry No.9 dated 26<sup>th</sup> October 2015 on the basis of which MSEDCL has determined that the consumer had been incorrectly categorized as an industrial unit and should have been classified as HT-II – HT commercial (New Express) for the purpose of calculation of Tariff. In view thereof MSEDCL imposed arrears of INR Rs.68,31,614.10 towards differential loss between April 2010 to September

2015. There is also a reference made to an alleged inspection report of 2013-14 which consumer has not been provided copy of it.

3] Consumer contends that reclassification of his connection as HT II commercial is incorrect so also the arrears claimed. Consumer has been paying the same under protest and prays for quashing and setting aside the arrears and supplementary bill claimed by MSEDCL for the period from April 2010 to September 2015 and return the amount paid towards the same and also direct the MSEDCL to correct the further bills already paid after reclassification and correct bill by applying HT Industrial tariff. There are also other reliefs claimed by consumer.

4] In reply MSEDCL denies the contentions of the consumer. As per Regulation No.13, of MERC Supply Code Regulation 2005, Distribution Licensee may classify or reclassify consumer in to various commissions approved tariff categories based on the purpose and usage of supply by such consumer: Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission. Present consumer has been admittedly and since beginning indulging in the activity of repairing of marine container and storing and handling the same. There is no production activity. MERC Tariff Order 2010 created a new tariff category HT II commercial to cater to consumers who are invoked in non manufacturing activity. The Govt. Audit team pointed out the case of the consumer wherein, commercial tariff should have been levied instead of industrial. The consumer himself in his A-I application Form for electricity connection and also in agreement of supply has stated the purpose of cases of electricity as repairing of container and storage.

5] It is the contention further that above being the state of things the Govt. Audit partly has calculated tariff difference amount of

Rs.68,31,614/- for the period from April 2010 to September 2015 vide audit enquiry No.9 did. 26/5/15 and accordingly MSEDCL has levied commercial tariff to the consumer with effect from April 2010 and communicated the same to consumer vide letter No. SE/P/HTB/4433/ did 27/11/2015 and also requested to pay tariff difference amounting to Rs. 68,31,614/-. There are several other contentions raised with respect to the case Laws.

6] We have heard both sides. There appears absolutely no doubt that the power supply has been obtained by the consumer for the purpose of the business of repairs of the marine container and for storage and handling. There is no production of any kind to call it an industrial activity. Tariff orders are produced to show that except for repairs of transformers all other repairs have been categorized as commercial for the purpose of Tariff. That being so the audit party of the Licensee detected that the consumer was being wrongly charged under Industrial tariff instead of commercial one. Further the Licensee was within it's right to correct the error and reclassify consumer under commercial category.

7] The only point that requires consideration for consumer is whether Licensee can make retrospective recovery. Here the audit report came in 2015 while Licensee has sought to change the consumer under commercial category from April 2010 the date of alleged tariff order. In this context , it is to be noted that Licensee itself had categorized this consumer under Industry since beginning up to Nov-2015 when it was changed on the detection of the error by the Audit Party. That being so there is no fault of the consumer to be saddled with past recovery. Mr. Mane on behalf of the Licensee submitted that similar matters are pending before Hon'ble High Court. That does not however have any bearing on this proceeding. There is

no stay granted. On the other hand, in these cases consumer has succeeded on the point before CGRF and Appellate Forum. Even consumer has been allowed to withdraw the refund amount deposited in Court, on bank guarantee though. That being so the point raised is not available to Licensee.

8] There are also two judgments of the Hon'ble High Court produced for reliance which we have gone through. In Rotex Polyester's case ( W.P. No.7015 of 2008) the question was about wrong calculation of the change by applying incorrect multiplication factor. That was just an oversight which does not invoke application of mind unlike in categorization of a consumer. Hence the facts of the case cited are different from the case before us.

The other case is of Swastik Industries ( citation not provided). The Judgment speaks that right to recover dues and right to disconnect supply are distinct and the bar of limitation to recover dues does not fetter the right of the Licensee to disconnect supply. We have carefully gone through the said Judgment. Firstly, it is based on the provision of Indian Electricity Act 1910 which has already been repealed. Secondly the fact of the case are different from cases with those before us. In the present case, there is reclassification of the consumer for tariff category. There has been sea change in the Law after coming in to force of the current Act of 2003. There is regulatory authority MERC formed under the New Act which has made things clear in the order dated 11/2/2003 in case No. 24 of 2001. The Commission has directed as under: -

“No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must

follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively.”

9] The Appellate Tribunal also in the order dated 7<sup>th</sup> August 2014 in Appeal No. 131 of 2013 in the matter of Vinay Enterprises V/s. Kerala State Electricity Regulatory Commission and Anr. held that arrears of difference in tariff could be recovered only from the date of detection of error. Mr. Mane appearing for the Licensee contended that there was no reclassification by MERC. MERC has already reclassified but MSEDCL has failed to follow the tariff as per the tariff order. The argument are not available to the Licensee for the simple reason that qua consumer it amounts to reclassification, at whatever point of time it is effected, and he is not at fault.

10] There are other judgments on the said issue passed by Electrical Ombudsman Mumbai on 23/12/14 in Rep., No. 124,125,126 of 2014. It is true that the orders are challenged in the Hon’ble High Court but there is no stay. On the other hand consumers therein have withdrawn the refund amount deposited in Court though on Bank guarantee.

11] In the above view of the entire matter supplementary bill issued by the Licensee in the sum of Rs. 68,31,614/- for the period from April 2010 to September 2015 is to be set aside and amount paid of any has to be refunded to the consumer along with interest as per Section 62(2) of the Indian Electricity Act.

This matter could not be decided within a stipulated time because both parties have to produce some documents.

Hence the order.

**ORDER**

- 1] Grievance application of consumer is hereby partly allowed.
- 2] The supplementary bill of tariff difference dated for Rs. 68,31,614/ for the period from April 2010 to September 2015 is hereby quashed and set aside.
- 3] The Licensee is directed to refund above said amount to the consumer deposited by it, if any, towards the above said bill along with interest at RBI rate from the date of deposit till realization by consumer.
- 4] The classification of consumer as commercial is upheld.
- 5] Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order.

Date: 14/7/2017.

(Mrs.S.A.Jamdar)  
Member  
CGRF, Kalyan

A.P.Deshmukh  
Member Secretary  
CGRF, Kalyan.

(A.M.Garde)  
Chairperson  
CGRF, Kalyan.

**NOTE**

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

*“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, 606/608, Keshav Bldg, Bandra Kurla Complex, Mumbai 51”.*

- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or

- c) delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”

- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

Grievance No. K/E/1192/1414 of 2017-18