Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Urban Zone, Nagpur

Case No. CGRF(NUZ)/057/2007

Applicant : M/s. Shivmangal Ispat Pvt. Ltd.,
Bunglow-19, H.B. Town,
Old Pardi Naka,
Nagpur-440009.

Non–applicant : MSEDCL represented by
the Nodal Officer-
Executive Engineer,
Division No. I, NUZ,
Nagpur.

Quorum Present : 1) Shri S.D. Jahagirdar,
Chairman,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

2) Smt. Gouri Chandrayan,
Member,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

3) Shri S.J. Bhargawa
Executive Engineer &
Member Secretary,
Consumer Grievance Redressal
Forum, Nagpur Urban Zone,
Nagpur.

ORDER (Passed on 28.01.2008)

The present grievance application has been filed on 18.12.2007 under Regulation 6.4 of the Maharashtra Electricity

Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 here-in-after referred-to-as the said Regulations.

The grievance of the applicant is in respect of excessive additional supply charge amounting to Rs.21,24,099/- erroneously charged and collected from the applicant. He has requested to refund this amount along with interest as per Section 62 (6) of the Electricity Act, 2003.

Before approaching this Forum, the applicant had raised this grievance before the Superintending Engineer, NRC MSEDCL, Nagpur by his letter on 3rd Sept. 2007 informing him that his plant was under closure from 28.10.2005 to 01.09.2006 and as such, the average reference consumption calculated by the non-applicant for the calendar year 2005 and established at 731465 units for computation of additional supply charge (in short ASC) was not properly calculated. He, therefore, requested the Superintending Engineer to arrive at correct quantum of reference consumption for charging of ASC.

No remedy was, however, provided to the applicant's grievance in response to his letter dated 03.09.2007 and hence, the present grievance application.

The intimation given to the Superintending Engineer, NRC on 03.09.2007 in respect of the applicant's grievance is deemed to be the intimation given to the Internal Grievance Redressal Cell in terms of Regulation 6.2 of the said Regulations and as such, the applicant was not required to approach the Cell again before coming to this Forum.

The matter was heard on 15.01.2008 and 23.01.2008.

The applicant's case was presented before this Forum by his nominated representative one Shri R.B. Goenka while the Superintending Engineer NRC presented the case on behalf of the non-applicant Company.

The applicant's representative submitted that the applicant is a consumer of MSEDCL with a sanctioned contract demand 3050 KVA and sanctioned connected load of 3800 KW. The date of connection of the applicant's industry is 26.05.2005 and the first reading was taken on 20.06.2005. The applicant's Unit was closed from 28.10.2005 to 01.09.2006. The applicant's representative produced on record documentary evidence in respect of closure of his industry. In that, he has submitted copies of documents furnished to the Central Excise Department.

He added that the applicant was billed excess ASC based on incorrect quantum of average bench mark consumption for the calendar year 2005. According to him, the average bench mark consumption for computation of ASC should have been considered as 1040594 units while the MSEDCL has arrived at this average consumption as 731465 units without considering the factual position that the applicant's Unit was closed from 28.10.2005 to 01.09.2006 with the result that an excess amount of Rs.21,24,099 came to be erroneously recovered from the applicant towards ASC. He has submitted calculation sheets in this regard giving summary of excess payments made towards ASC as also relevant details of electricity bill amounts paid from November 2006 to March 2007.

The applicant has relied upon the MERC's (in short, the Commission's) tariff order issued in case no. 54 of 2005 on 20.10.2006

in which at page no. 1 there of it is said by the Commission that "In addition, in case of closure of any industrial unit for a period greater than one month during the period January 2005 to December 2005 for maintenance or other purposes, and documentary evidence of the same is provided to MSEDCL, then MSEDCL will exclude this period of closure, while computing the monthly average for the purposes of levy of Additional Supply Charges". Relying on this, the applicant's representative strongly urged that the excess amount of Rs.21,24,099/- charged and recovered from the applicant towards ASC may be refunded to the applicant along with interest as provided in Section 62 (6) of the Electricity Act, 2003.

The Superintending Engineer NRC MSEDCL has submitted his parawise report dated 14.01.2008 which is on record. A copy of this report was also given to the applicant. The Superintending Engineer has submitted in this report as well as in his oral submissions that the average reference consumption calculated for the purpose of levying ASC in this case was correct and proper and that there is no need to change this average reference consumption. It is his contention that the applicant never intimated to MSEDCL about closure of his unit and that the consumer has also not explained any reason as to why his factory was closed during the period from 28.10.2005 to 01.09.2006. It is also not known whether the applicant's factory was under lockout or whether it was a sick unit. The applicant has also not submitted certificate of any Competent Authority to substantiate his say. He has only submitted daily production data statements which he furnished to the Excise Department. Photocopies of these statements cannot be considered as reliable documentary evidence to come to the conclusion

that his factory was closed during this period. Neither Excise Department nor the Factory Inspector has certified that the applicant's unit was closed. He added that closure of factory as per the applicant's convenience cannot be considered as a sound reasoning for exclusion of the aforesaid period for the purpose of calculating the average bench mark consumption for levy of ASC.

The Superintending Engineer has also quoted the Commission's Clarificatory order dated 11.09.2007 and another order dated 24.08.2007 in which the Commission has stated that it is only in case of sick units, lock out units and permanently disconnection matters that the consumers' average bench mark consumption of the calendar year 2005 can be changed or reduced for charging of ASC. He, therefore, strongly submitted that there is nothing wrong in charging ASC to the applicant based on the average bench mark consumption for the full calendar year 2005. His energy bills were issued correctly and they need no revision.

In the addendum to reply dated 22.01.2008 to the applicant's written submission, the Superintending Engineer has reiterated that reliable documentary evidence has not been produced on record by the applicant in respect of closure of his unit and also that only stoppage of production should not be considered as closure of unit. Mere submission of production data may not be considered as a substantiate documentary evidence to establish that the applicant's Unit was closed. Hence, according to him, the average bench mark consumption of the calendar year 2005 already considered for calculation of ASC needs no change. He, therefore, requested that the grievance application may be dismissed.

The applicant's representative has produced on record additional documentary evidence in the shape of monthly returns prescribed by the Excise Department for the months of October, 2005 to December 2005. Based on this, his submission is that substantial and reliable proof is produced on record to demonstrate that the applicant's Unit was closed during the period from 28.10.2005 to 31.12.2005.

In this case, it is to be seen whether MSEDCL has properly calculated the quantum of average bench mark consumption for the calendar year 2005 for the purpose of levy of ASC on the applicant.

The applicant's contention is that this bench mark consumption should have been considered as 10,40,594 units while, according to MSEDCL, it is 7,31,991 units. The basic point that is to be decided is whether the period during which there was no production in the applicant's unit can be considered as closure of the applicant's industry. In this regard, the Commission in its tariff order dated 20.10.2005 passed in case no. 54/2005 has stated that, in addition, in the case of closure of any industrial unit for a period greater than one month during the period January 2005 to December 2005 for maintenance or other purposes, and documentary evidence of the same is provided to MSEDCL, then MSEDCL will exclude this period of closure, while computing the monthly average for the purposes of levy of Additional Supply Charges.

In this case the applicant's representative has proved beyond doubt based on reliable documentary evidence that there was no production in his unit during the period from 28.10.2005 to 31.12.2005. In fact, the applicant's contention is that the applicant's unit was closed from 28.10.2005 to 01.09.2006 and that in normal

circumstances the relevant period to be considered for arriving at proper bench mark consumption is the period from 01.01.2005 to 31.12.2005. We feel that the period during which there was no production in the applicant's Unit during the calendar year 2005 will have to be excluded from the period of one year i.e. calendar year 2005 for the purpose of levy of additional supply charges. The applicant's representative has submitted on record copies of monthly returns for the months of October 2005 to December 2005 which he furnished to the Central Excise Department. These monthly returns along with the daily statistical data maintained go to show beyond doubt that no manufacturing has taken place in the applicant's unit from 28.10.2005 to 31.12.2005. As such this period needs to be excluded from the one years' period for arriving at correct bench mark consumption.

The contention of the non-applicant that stoppage of production should not be considered as closure of Unit cannot be accepted for the simple reason that no such interpretation of the Commission's order dated 20.10.2006 can be drawn. The words used "In addition, in case of closure of any industrial unit for a period greater than one month during the period January 2005 to December 2005 for maintenance or other purposes, and documentary evidence of the same is provided to MSEDCL" are very important. In particular, words "other purpose" convey intention of the Commission's that the period during which no production was turned out in any industrial unit irrespective of any reason will have to be excluded considering the industrial unit to be closed.

The non-applicant has relied upon Commission's order dated 11.09.2007 passed in case no 26 of 2007 and case no. 165/2006

and another dated 24.08.2007 in the same case in respect of tariff applicable w.e.f. 01.05.2007. The Commission has directed MSEDCL to ensure that the clarifications given in the clarificatory order dated 24.08.2007 are incorporated with retrospective from 01.05.2007 and consumers bills revised accordingly. This means that the Commission's clarificatory orders do not take retrospective effect prior to 01.05.2007. A view has already been held by the Electricity Ombudsman in a matter before him that the Commission's order dated 24.08.2007 takes effect only from 01.05.2007 and cases prior to 01.05.2007 will be governed by the tariff order in force at appropriate time. Reliance placed on these clarificatory orders by the non-applicant is, therefore, misconceived.

The contentions of the applicant's representative are quite cogent and convincing and they are based on sound reasoning coupled with reliable documentary evidence. Even the Superintending Engineer, NRC has not offered any note of dissent on the additional documentary evidence produced on record by the applicant's representative in the shape of monthly returns submitted by the applicant in the prescribed formats to the Central Excise Department. These returns have been submitted in the natural course of business.

It, therefore, boils down to this that the average bench mark consumption of 731991 units calculated by the MSEDCL as average consumption for calendar year 2005 was not correct and proper. The correct bench mark consumption should be arrived at considering the closure period It is, therefore, true that excess ASC charges were billed and recovered from the applicant.

According to the applicant's representative, this excess amount comes to Rs.21,24,099/-. The MSEDCL is now directed to re-calculate correct quantum of ASC payable by the applicant considering the above observations.

In view of above position, we also direct the non-applicant to revise the applicant's energy bills and refund appropriate excess amount to the applicant alongwith interest as provided in Section 62 (6) of the Electricity Act, 2003.

The applicant's grievance application is thus allowed and it stands disposed of in terms of this order.

The non-applicant shall carry out this order and intimate compliance to this Forum on or before 29.02.2008

Sd/-	**Sd/-**	**Sd/-**
(S.J. Bhargawa)	**(Smt. Gauri Chandrayan)**	**(S.D. Jahagirdar)**
Member-Secretary	MEMBER	CHAIRMAN

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