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

Case No. CGRF(NUZ)/35/2013

Applicant : M/s. D.S. Electrical Works,
D-71, M.I.D.C. Industrial Estate,
Hingna Road,
NAGPUR.

Non–applicant : Nodal Officer,
The Executive Engineer,
M.I.D.C. (O&M) DN., NUC,
MSEDCL,
NAGPUR.

Quorum Present : 1) Shri. Shivajirao S. Patil
Chairman,

2) Adv. Subhash Jichkar,
Member,

3) Smt. Kavita K. Gharat
Member Secretary.

ORDER PASSED ON 29.4.2013.

1. The applicant filed present grievance application before this Forum on 5.3.2013 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

2. The applicant's case in brief is that unit of the applicant is registered as S.S.I. unit and applicant is

manufacturer of insulated wire, Commutator, Coil Assembly, Electromagnetic separators, repairing & services. On 6.3.2012, there was inspection of unit of the applicant by Flying Squad and found that electrical supply was used for servicing of electrical motors, generators, transformers and not for manufacturing activities and hence changed the tariff from industrial tariff to non domestic i.e. from L.T. V to L.T. II. The applicant is doing manufacturing and production work but M.S.E.D.C.L. held that commercial tariff is applicable. Bill amount to Rs. 274310/- is issued to the applicant. It is illegal. Therefore applicant filed present grievance application and claimed relief to withdraw the bill of Rs. 274310/- and to issue correct energy bill for the month of February 2013 & M.S.E.C.L. may be directed to continue industrial tariff i.e. L.T. V instead of L.T. II.

3. Non applicant denied applicant's case by filing reply Dt. 19.3.2013. It is submitted that Dy. Executive Engineer, Flying Squad has inspected the said premises on 7.3.2012 and found that electrical supply was used for servicing of electrical motors, generators and transformers and not for any manufacturing activities and hence changed tariff from industrial tariff to non domestic as per MERC order No. 116 of 2008, where the tariff applicability for industries was for industries where there are manufacturing activities. In the unit of the applicant activities performed were not manufacturing. Hence tariff applicability was changed. Mere registration as

SSI unit would not ipsofacto into categorization of unit in question to industrial tariff. It is to be demonstrated that the unit in question was engaged in the manufacture or production of some goods is not even the case of Appellant. Therefore action as proposed by Flying Squad there by changing tariff from LT V to LT II and recovery of past period assessment is correct action on the basis of MERC orders. As such there are no manufacturing activities in the premises, therefore LT V (Industrial) tariff can not be applied as per Hon'ble MERC tariff order in Case No. 116 of 2008 decided on 17.8.2009.

4. Therefore bill issued by M.S.E.D.C.L. amounting to Rs. 274310/- for the period August 2009 to February 2012 amounting to Rs. 274310.18 is correct. Grievance application may be dismissed.

5. Forum heard the arguments of both the sides and perused the record.

6. We have carefully perused inspection report of Flying Squad. In para 16 of this report Dt. 6.3.2012, it is specifically mentioned that -

I) S/C is in industrial tariff and supply is authorized for industrial manufacturing purpose only.

II) Supply is used by D.S. Electricals for servicing of electrical Motors, generators, transformers and not for any manufacturing.

III) As per MERC order in case No. 116 of 2008 Dt. 17.8.2009, industrial tariff is applicable to industries which entail manufacturing only, hence tariff shall be changed. In para 18 of inspection report of flying squad, remedial action proposed is –

a) Change the tariff L.T. V to LT II.

b) Recover assessment for past period.

7. It is note worthy that this report of Flying Squad is duly signed by representative of the applicant Shri Surjansingh Shekhawat (Store keeper) that too in English. It is noteworthy that in Column No. 20 of inspection report of flying squad it is specifically mentioned that **"The above mentioned details and irregularities pointed out have been checked in my presence & I agree with the same".** Below this important undertaking there is signature of representative of the applicant (Store keeper – Surjansingh Shekhawat) in presence of raiding party and two attesting witnesses. Therefore inspection report is not exparte or arbitrary. It is clear that inspection was conducted in presence of representative of the applicant and after writing the entire inspection report representative of the applicant admitted all contents as mentioned in para 20 of the report and signed the inspection report about correctness and admitted that there is no production or industrial work going on but only repairing works. It is note worthy that it is no where

mentioned in this report that there is production or manufacturing work going on in the unit of the applicant. Relying on inspection report of flying squad we hold that only repairing work is going on in the unit of the applicant and no manufacturing or production work is going on.

8. In case no. 116/2008 Hon. MERC has clarified in its tariff order applicable from August 2009 that broadly the categorization of the industry is applicable to such activity **which entails manufacture**.

In this order in case no. 116/2008 it is held as under.:

"*A similar impression is conveyed as regards the 'Industry' categorization, with the Commission receiving several representations during and after the Public Hearings, from the hotel industry, leisure and travel industry, etc., stating that they have also been classified as 'industry' for the purpose of taxation and / or other benefits being extended by the Central Government or State Government, and hence, they should also be classified as 'industry' for the purpose of tariff determination. In this regard, it is clarified that classification under Industry for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003, and the import of the categorization under Industry under other specific laws cannot be applied to seek relief under other statues.*

Broadly, the categorization of 'Industry' is applicable to such activities, which entail 'manufacture'.

9. In order dated 30.12.2009 in case no. 11/2009, The Commission has clarified the commercial category actual refers to all category which have not been classified into any specific category. In this order Hon. Commission held that …..

"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, bust-stands multiplexes, shopping malls small and big stores, automobiles showrooms, etc, are covered under this categorization. Clearly, they cannot be turned 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".

10. Similar view is taken by Hon. Electricity Ombudsman Mumbai in case of representation no. 140/2009. In the matter of M/s. Atul Impex Pvt. Limited V/s. MSEDCL decided on 02.02.2010 it is held that……

"Here the word 'industrial' is not specifically defined in the tariff order. Therefore, it has to be understood in its natural, ordinary and popular sense, meaning thereby the industry should have some manufacturing activities. As is seen, from the above that the Appellant is a research and development establishment which can be clearly distinguished from the industrial/ manufacturing purpose. Therefore, the Appellant's prayer that it should be categorized under the HT I – Industrial tariff (which is meant for industrial purpose / consumers) does not sound to reason, especially when read with the provisions of the tariff orders, effective from 1st June, 2008 onwards".

11. In appeal no. 116/2006 decided on 04.10.2007 Hon. Appellate Tribunal for Electricity (Appellate Jurisdiction) held as under…..

"It will not be correct to borrow the definition of "Industry" from 'other statutes' for the purpose of holding that the appellant ought to be billed as per Industrial Tariff. In Union of India Vs. Shri R.C. Jain (AIR 1981 SC 951), the Hon. Supreme Court refused to borrow the meaning of the words 'local fund' as defined in the General Clauses Act on the ground that it is not a sound rule of interpretation to seek the meaning of the words used in an Act, in the definition clause of 'other statutes'. In this regard it was held that definition of an expression in one Statute must not be imported into another."

12. In representation no. 5/2011 before Hon. Electricity Ombudsman Mumbai in the matter of the Automotive Research Association of India Vs. MSEDCL decided on 15.03.2011 it is held that as under. ….

"Now in order to appreciate the Appellant's argument, it will be necessary to understand as to which category of consumers can be considered as industrial. Documents and submissions made by the Appellant undisputedly show that it is a Research and Development Association. The Appellant has also not claiming that it is doing mass production of items and sells them. Instead, the Appellant carries out R & D, testing, certification, service and management support and makes prototypes which in turn, is used by Automotive manufactures for mass production and sale. The Appellant, therefore, cannot logically claim that it

manufactures the products. The word "manufacture" as is defined in the Oxford dictionary means "make something on a large scale using machinery, making of goods on a large scale using machinery". The Appellant has not produced anything to show that it has a licence to manufacture and sell the products. Therefore, it is difficult to accept the contention that it should be classified as an activity to get the HT Industrial tariff. The Commission has also clarified that the 'Commercial' category actually refers all categories using electricity for non industrial purpose or which have not been classified under any other specific category."

13. On close scrutiny of the entire record it appears that applicant is doing only work of repairing and applicant is not doing any manufacturing work. Therefore relying on these cited authorities we hold that commercial tariff i.e. L.T. II is applicable to unit of the applicant and not industrial tariff L.T.V. Therefore commercial tariff applied by M.S.E.D.C.L. is perfectly correct, legal and valid and needs absolutely no interference.

14. It is an admitted fact that assessment was raised by flying squad amounting to Rs. 274310.18 for the period August 2009 to February 2012. Date of inspection of flying squad is 6.3.2012. According to Limitation act, there is limitation of 3 years to recover arrears of difference in tariff and therefore

assessment of Rs. 274,310.18 is perfectly correct, legal, valid and within limitation, therefore needs no interference.

15. Hon'ble Electricity Ombudsman Nagpur in Representation No. 110/12 Maharashtra Industries Association Vs. Executive Engineer decided on 14.2.2013 held in para 11 of the order as under:-

"A perusal of the impugned order of the Forum reveals that the Forum took great pains in relying on the Tariff order dated 17.8.2009 passed by MERC in Case No. 116/08 applicable w.e.f. 1.8.2009. The Forum has also considered the order of Electricity Ombudsman, Mumbai in Representation No. 5/2011 (Automotive Research Association of India Vs. M.S.E.D.C.L.) decided on 15.3.2011. After considering the relevant factors, the Forum came to the conclusion that the Flying Squad rightly suggested that the tariff category of the appellant should be changed from LT-V (Industrial) to LT-II (Commercial). In view of the detailed discussion by the Forum in this behalf, I do not think it necessary to dwell upon this point any more. I am satisfied that the Forum was fully justified in holding that the appellant was correctly categorized as LT-II (Commercial)".

16. Hon'ble Electricity Ombudsman Nagpur in representation No. 43/12 Midland Diesel Services Pvt. Ltd. Vs.

Executive Engineer, decided on 16.8.2012 held in Para 10 of the order as under :-

"I have carefully gone through the impugned order of the Forum. It shows that the Forum has properly considered the Tariff Orders passed by the MERC while coming to the conclusion that the respondent was justified in changing the tariff category of the appellant from LT-V to LT-II. I also found that the Forum has rightly placed reliance on the orders passed by the Electricity Ombudsman in Representation Nos. 140/2009 and 5/2011. I see no reason to interfere with the conclusions drawn by the Forum about change in the categorization of the appellant from LT-V to LT-II"..

17. Relying on the authorities cited supra, we hold that commercial tariff is applicable to the unit of applicant.

18. The applicant relied on the order of Hon'ble Electricity Ombudsman Nagpur in representation No. 22,23,24,25 and 49 of 2012 decided on 3.8.2012. We have carefully perused said order of Hon'ble Electricity Ombudsman Nagpur. However, facts of the present case are totally different and distinguishable from the case cited by the applicant and therefore this authority is not applicable to the present case. The applicant also relied on certain other judgments. However facts of the present case are different distinguishable and

therefore the judgement and authorities relied by the applicant are not applicable to the case in hand.

19. For these reasons this Forum is of considered opinion that the applicant is not doing any industrial or manufacturing activities. On the contrary the applicant is doing only repairing and servicing work and hence relying on the authorities cited supra we hold that commercial i.e. L.T. II tariff is applicable to the unit of the applicant and not industrial tariff. Furthermore, bill issued by the M.S.E.D.C.L. for difference of tariff amounting to Rs. 2,74,310.18 for the period August 2009 to February 2012 is well within limitation according to Limitation act and therefore M.S.E.D.C.L. is definitely entitled to recover this amount. The bill is perfectly legal and valid and needs no interference.

20. In case in hand, though there is no manufacturing or production activities and though there is only repairing and servicing work going on, even then the applicant is illegally claiming industrial tariff which is contrary to order of Hon'ble M.E.R.C. No. 116/2008 cited supra and therefore it is not proper and legal.

21. For these reasons in our opinion there is no force and no substance in present grievance application and application deserves to be dismissed. Resultantly Forum proceeds to pass following order :-

ORDER

1) Grievance application is dismissed.

Sd/-	Sd/-	Sd/-
(Smt.K.K.Gharat)	**(Adv.Subhash Jichkar)**	**(ShriShivajirao S.Patil)**
MEMBER SECRETARY	MEMBER	CHAIRMAN