

**CONSUMER GRIEVANCE REDRESSAL FORUM**  
(Established under the section 42 (5) of the Electricity Act, 2003)  
**MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.**  
**NASHIK ZONE**

**Phone: 6526484**  
**Fax: 0253-2591031**  
E.Mail: cgrfnsk@rediffmail.com

**Office of the**  
**Consumer Grievance Redressal Forum**  
**Kharbanda Park, 1<sup>st</sup> Floor,**  
**Room N. 115-118**  
**Dwarka, NASHIK 422011**

No. / CGRF /Nashik/Nagar Circle /Nagar (UCR).Dn./535/11-2016-17/

Date: 08/07/2016

**(BY R.P.A.D.)**

**In The Matter Of**

**Recovery of Arrears for Change of Tariff Category**

**Date of Submission : 10/05/2016**

**Date of Decision : 08/07/2016**

To.

- 1 M/s. Sudharshan Tyres Pvt. Ltd.  
Plot No. A-26, M.I.D.C.  
Ahmednagar  
(Con.No. 162010442231)

Complainant

- 2 Nodal Officer ,  
Maharashtra State Electricity Distribution Com. Ltd.,  
Circle office, Ahmednagar,
- 3 Executive Engineer (UCR)  
Maharashtra State Electricity Distribution Com. Ltd.  
Ahmednagar.

Distribution Company

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**DECISION**

M/s. Sudharshan Tyres Pvt. Ltd. (hereafter referred as the Complainant ). MIDC , Ahmednagar is the industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company ). The Complainant has submitted grievance against MSEDCL for demand of additional amount on account of tariff difference to the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. But not satisfied with the decision of the Respondent , the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is received on 11 /05/2016.

The Forum in its meeting on 13/05/2016, decided to admit this case for hearing on 10/06/2016 at 1.00 Pm in the office of the forum . A notice dated 13/05/2016 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Circle Office Ahmednagar for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. J.S.Chavan , Nodal Officer , Shri. Sudhakar S. Jadhav , Executive Engineer represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

**Consumers Representation in brief :**

1. MSEDCL has released the connection for tyre remolding unit situated at industrial area .Since then industrial tariff is made applicable by the license.
2. Pursuant to the inspection conducted by MSEDCL on 06/01/2014, MSEDCL has issued a demand notice for reclassifying the consumers unit under LT II (A) Commercial tariff, from April 2012 to Dec.2013 for Rs.1,75,082/- stating that tyre remolding units comes under commercial tariff and requested to pay the bill within 15 days otherwise supply will be disconnected.
3. MSEDCL has changed the tariff code from Industrial to Commercial for the billing month of Jan.2014 and thereafter, again converted to Industrial from the billing month of Feb.2014.
4. Again, MSEDCL has changed the tariff from Industrial to Commercial from the month of June, 2015.
5. In the month of August 2015, pointed out by higher authority, again MSEDCL has raised supplementary bill dated 10/08/2015 for tariff recovery for the period of Feb.2014 to May 2015 for Rs.1,66,210/-.
6. The supplementary bill is not related with escaped billing due to error in meter or in billing. We have paid all the bills raised from time to time based on the classification as per prevailing tariff schedule, and merely protested to a supplementary bill due to reclassification as per report of Flying squad, MSEDCL.
7. MERC has clarified in the tariff order for in case no. 19 of 2012 that workshop and any other type of repair center LT II Commercial tariff shall be applicable whereas industrial related workshop shall be billed as per industrial tariff. After this tariff, with Reference to regulation 13 of supply code classification/reclassification is the primary duty of licensee. For mistakes/faults of licensee the consumer cannot be burdened. If wrong tariff category has been made applicable the licensee is not empowered to recover arrears on account of difference of tariff.
8. With reference section 50, the electricity supply code, of Electricity Act, 2003 that there is no provision for recovery in tariff difference.
9. In any case classification/reclassification of the tariff is responsibility of the licensee. Instead of taking action against the erring officer, the licensee is raising bill upon consumer in contravention to the statutory provision. As per MSEDCL Circular no. recovery should be from concern person/staff, who is responsible for such recovery.

**10. Model Supply Code of Forum of Regulators constituted under section 166 (2) of Electricity Act, 2003  
Clause 4.82 Reclassification of Consumer Category provides as under:**

4.82 If it is found that a consumer has been wrongly classified in a particular category, or the purpose of supply as mentioned in Agreement has changed, or the consumption of power has exceeded the limit of that category as per the Commission's order, the licensee may consider reclassifying the consumer under appropriate category. The consumer shall be informed of the proposed reclassification through a notice and duly given a 30-day notice period to file objections, if any. The licensee after due consideration of the consumer's reply, if any, may alter the classification. In case of any dispute, the matter shall be referred to the Consumer Grievance Redressal Forum.

4.83 If a consumer wishes to change his consumer category, he shall submit an application form to the licensee in the format given in Annexure 11.6 to this Code. The licensee shall process the

application form in accordance with clauses 4.68 - 4.71 of this Code. For site inspection and issuance & payment of demand note for the estimated cost of works, both the licensee and applicant shall follow the procedure and timelines as laid down in clauses 4.29 - 4.40 of this Code. The licensee shall also note down the meter reading at the time of inspection. If on inspection the consumer's request for reclassification is found valid, change of category shall be effective from the date of inspection and a written acknowledgment shall be sent to the consumer.

4.84 If the licensee does not find the request for reclassification valid, it shall inform the applicant in writing, giving reason(s) for the same, within 10 days from date of inspection. 4.85 For the period in which the consumer's application for reclassification is pending, the consumer shall not be liable for any action on grounds of unauthorized use of electricity.

**11. MERC (Electricity Supply code and other conditions of supply) Regulations, 2005 regulation 13 provides as under:**

The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer:  
Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission.

12. **MERC supply code 2005 and Electricity Act 2003**, there is no provision to issue the supplementary bill (under charged) for previous period where original bills were issued and paid within due dates.
13. **With Reference to MERC order in Case No.24/2001 on 11th Feb.2003**, the Hon'ble Commission has laid down that no retrospective recovery of arrears can be allowed on the basis of any abrupt re-classification in spite pointing out the same by the Auditor. The Hon'ble Commission has laid down that no retrospective recovery of arrears can be allowed on the basis of any Classification and re-classification as per tariff order, is the duty and responsibility of the licensee. It cannot abruptly make the change and cannot make claim of arrears, retrospectively.
14. **MSEDCL has issued the General Circular (Commercial) No.377 dated 02/07/2003** in the subject matter of change in category of a consumer vis-à-vis revision in applicability of tariff with retrospective effect.
15. **The same matter has decided by Appellate Tribunal for Electricity (Appellate Jurisdiction) in ELR No. 1543 Appeal No. 131 of 2013 dated 07/08/2014 in the matter of M/s. Vianney Enterprises versus Kerala state Electricity Regulatory Commission** "that the arrears for difference in tariff could be recovered from the date of detection of the error". In the said case, the APTEL has held that the arrears for difference in tariff could be recovered only from the date of detection of error.
16. **Again, MERC in its order dated 13/05/2016 in Case No.42 of 2015 and M.A.No.3 of 2015, M.A.No.4 of 2015** in the matter of Seafood Exporters Association of India regarding wrongful tariff categorization by MSEDCL, it confirms that the order dated 11/02/2003 in case on.24 of 2001, in the matter of retrospective application of a different tariff category, the order was passed prior to the coming into force of the EA, 2003, the same principle continues to apply.
17. As per the order of MERC and APTEL judgment, there is no retrospective recovery of arrears due to reclassification of tariff category.

**Demands of the Consumer:**

Refund be ordered for total of Rs.3,41,292/- paid against supplementary bill for tariff difference recovery with interest @9% from the date of deposit to date of refund.

#### **Arguments from the Distribution Company.**

The Distribution Company submitted a letter dated 08/06/2016 from the Executive Engineer (UCR) Ahmednagar Division. MSEDCL and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

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- 2- vkkLV 2012 rs tkukjh 2014 ; k dkyko/khr 0; kol k; hd njkus vkdkj.kh dsh Eg.ku Qjdkps #- 1]75]082@ ekgs tkukjh 2014 fcyke/; s lekfoB dj.; kr vkys o rs xtgdkus ekU; vl Y; kus Hkjys vkgs
- 3- rlp Qcpkj 2014 ikl u okf.kT; njkua oht fcy pkyq dj.ks utjpphus jkpu xsys Eg.ku R; ki fhy Qcpkj 2014 rs es 2015 ; k dkyko/khe/; s vks] kfxd , oth okf.kT; njkus vkdkj.kh dsh vl rk rh jDde #- 1]66]210@ jdeps chy xtgdkl fn- 11@08@2015 jksth ns; kr vkys rs l qnk xtgdkl ekU; vl Y; kus Hkjys vkgs
- 4- rlp fn- 30@07@2015 jksth l gk; d vfHk; rk , e-vk; -Mh-l h- d{k ; kP; k LFG rikl .kh vgoxy fn- 30@07@2015 uq kj xtgdkpk okij gk Vk; j fjek/Mhæ vl Y; kps funkukl vkys
- 5- R; kurj xtgdkus vk; -th-vkj-, Q- vvxr xtgdk xk&gk.ks fuokj.k d{k½ idj.k d- 05@03@03@2016 vlo; s rdj lknj dshy gkrh- R; k d p fudky l qnk fnsyk vl u R; ke/; s Li V mYy[k vkgs dh] xtgdkl vkdkj.; kr vkysy nj o xtgdkph oxbkjh fg dia uhp; k ifji=dkiæk.ks ; kX; vl Y; kefs xtgdkus Hkjysy jDde ijr djrk ; r ukgh-
- 6- rjh xtgdkus ekshryy jDde 0; ktkl g ijr dj.; kpk izu mnHkor ukgh-

#### **Action by IGRC:**

1. Internal Grievance Redressal Cell Ahmednagar Urban Circle conducted hearing on 20/04/2016 for the complaint submitted on 02/03/2016 .
2. After hearing both the parties IGRC gave decision as per letter dated 22/04/16 as under:

*xtgdkl vkdkj.; kr vkysy nj o xtgdkph oxbkjh fg dia uhp; k ifji=dkiæk.ks ; kX; vl Y; kefs xtgdkus Hkjysy jDde ijr djrk ; s kX; ukgh-*

#### **Observations by the Forum:**

1. Shri H,V Dhaware, Executive Engineer, Nashik Zone Office is given addition charge of the post of the Member-Secretary of the Forum as the officer holding the regular charge has retired on 31/05/2016. However he could not remain present for the hearing because of some important work at Zonal Office. As 2 other members of the Forum were present , the hearing was conducted as the regulation 5.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 permits quorum of 2 members.
2. The complainant is carrying out the activity of "tyre remolding" and the Distribution Company had applied industrial tariff for the electric connection since beginning .

3. Later as per MERC tariff order dated 16/08/2012 [in case no. 19/2012] which is applicable with effect from 01/08/2012 , the activity of "tyre remolding/retreading" is brought under LT II :Non residential/Commercial .
4. However, the Distribution Company continued to apply industrial tariff till the visit of flying squad on 7<sup>th</sup> January 2014 . There is no dispute that the tariff category LT II :Non residential/Commercial should be applied after detecting that the consumer is conducting business of "tyre remolding".
5. The only question is about justification for asking retrospective recovery with effect from 01/08/2012. The consumer is not at fault for paying the bills under industrial tariff category from August 2012 to December 2013 as the consumer was raised bills by the Distribution Company under the same category.
- 5 MERC under the order dated 11/02/2003 in Case No. 24 of 2001 regarding retrospective recovery on the basis of reclassification of the tariff category has directed as under:

*".....no retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer.....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..... In all those cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective...."*

Though the above order of the Hon'ble Commission is prior to the enactment of Electricity Act, 2003 , the same principle is applicable even today. This has been reiterated by the Hon'ble Commission in its recent order dated 13<sup>th</sup> May 2016 in the case of Seafood Exporters Association of India Petitioner and Maharashtra Veej Grahak Sanghatana Intervenor V/s Maharashtra Electricity Distribution Co. Ltd. (CASE No. 42 of 2015 ). The para 16 of the order is reproduced below:

*"16.While that Order was passed prior to the coming into force of the EA, 2003, the same principle continues to apply: the ATE's more recent Judgment dated 7 August, 2014 in Appeal No. 131 of 2013, for instance, has also been cited in these proceedings. ...."*

- 6 The Appellate Tribunal for Electricity (APTEL) in the order dated 7<sup>th</sup> August, 2014 in Appeal No. 131 of 2013 [in the matter of Vianney Enterprises versus Kerala State Electricity Regulatory Commission ] has held that " the arrears for difference in tariff could be recovered from the date of detection of the error"
7. The Hon'ble Electricity Ombudsman, Mumbai in his order dated 23/12/2014 [In representation no. 126 of 2014] in the similar matter of recovery of arrears after change of tariff category in a case of Mr. Subhash Kailash Gupta (J. S. Auto Garage) Vs MSEDCL has mandated as under:  
*".....The Representation is thus allowed. The Respondent is directed to recover arrears from the Appellant from billing month of March, 2014 without applying DPC and interest on the said arrears. The arrears already paid by the Appellant should be adjusted and balance amount be recovered from the Appellant"*

8. This Forum had earlier rejected a similar case of M/s Shivam Industries ,Nashik on the grounds that "in identical matter of Shri Kambalat Subramaniam Babu of Ahmednagar, the MSEDCL has challenged the order dated 26<sup>th</sup> June, 2015 of the Forum and W.P. No. 10659 of 2015 is pending at pre-admission stage in High Court Bench at Aurangabad and therefore as per Regulation 6.7 (4) of the CGRF Regulations, the Forum cannot entertain such grievance" However Hon'ble Ombudsman, Mumbai in an appeal against the Forum's order [case no. 41/2016 ] has reversed the order of the Forum and allowed refund of the retrospective recovery without interest .The order reads as :

*"The Respondent MSEDCL has not recovered the tariff in this case exceeding the tariff determined by the Commission. The commercial tariff was applicable to the Appellant consumer from August 2012. Therefore, even if, the retrospective recovery is held to be not correct, it is not necessary to grant any interest on the refund amount of Rs. 2,39,702/-."*

9. The complainant has demanded refund of the amount paid for arrears of February 2014 to May 2015 on account of tariff difference . The error of tariff category was detected in January 2014 and the

complainant was informed and served a supplementary bill also. The Distribution Company should have issued the bills from February 2014 onwards at LT II category. But as stated by the Distribution Company, the bills were issued by oversight at industrial rate till the month of May 2015 . The error was corrected in June 2015 and a supplementary demand for arrears of February 2014 to May 2015 was issued in August 2015 which has been paid by the complainant. This amount of these arrears can not be waved as demanded by the complainant since it is after the event that the complainant became aware of the correct tariff category of the tariff.

10. On the basis of the orders of MERC, APTEL and the Electricity Ombudsman ,Mumbai as mentioned above , the Distribution Company is entitled to charge the tariff category as "LT II :Non residential/Commercial" from January , 2014 onwards. The retrospective recovery for the period from August 2012 to December 2013 is set aside and the complainant is entitled to the refund of the amount recovered .

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

#### **ORDER**

1. The retrospective recovery for the period from August 2012 to December 2013 is set aside and the Distribution Company should refund the amount recovered by adjusting in the ensuing bills.
2. The refund of the supplementary demand recovered for arrears of February 2014 to May 2015 in view of tariff difference can not be considered.
3. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.
4. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
5. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

**(Rajan S. Kulkarni )**  
Member

Absent  
**( Hari V. Dhavare )**  
Member-Secretary

**(Suresh P.Wagh)**  
Chairman

**Consumer Grievance Redressal Forum Nashik Zone**

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. ,  
Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. ,  
Vidyut Bhavan, Nashik Road 422101 ( For P.R.O )
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. ,  
Circle office, Ahmednagar .

