



CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE

Case No. 51/2017

Date of Grievance : 13.07.2017

Date of Order : 12 .09.2017

In the matter of recovery of electricity duty (ED) difference between Commercial & Industrial rate for the period Nov.2010 to Dec.2016.

M/s. Sharada Construction &
Investment Co.,
685/2C, Satara road,
Near Bajaj Auto Showroom,
Ashwamedh, Pune - 411037.

Complainant

(Herein after referred to as Consumer)

Versus

The Superintending Engineer,
M.S.E.D.C.L.,
Rastapeth Urban Circle,
Pune - 411011.

Respondent

(Herein after referred to as Licensee)

Quorum

Chairperson

Mr. S.N.Shelke

Member Secretary

Mrs. B.S.Savant

Member

Mr. S.S.Pathak

Appearance

For Consumer

Mr.S.V. Thombare (Representative)

Mr.A.R.Bodas, -----“-----

For Respondent

Mr.S.R.Patil, EE, Admin, RPUC,Pune

Miss.Anju Phuke, Law Officer

Mr.S.A.Kade, Asstt. Acctt.

- 1) The Consumer has filed present Grievance application under regulation No. 6.4 of the MERC (CGRF & E.O.) Regulations, 2006.
- 2) Being aggrieved & dissatisfied by the impugned order dated 22.05.2017 passed by IGRC Rastapeth Urban Circle, the consumer

above named prefers the present grievance application on the following amongst other grounds.

- 3) The papers containing the above grievance were sent by the Forum to the Superintending Engineer, M.S.E.D.C.L., Rastapeth Urban Circle, Pune vide letter no. EE/CGRF/PZ/Notice/51 of 2017/234 dtd. 18.07.2017. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 5.8.2017.
- 4) We heard both sides at length and gone through the contentions of the consumer and reply of the respondent and the documents placed on record by the parties.
- 5) Facts giving rise to the grievance may be stated as under :

The above named consumer having consumer No.170019003691 with connected load 969 KW, CD 1223 KVA was connected on 19.02.1979 in the category HT-II. The Flying Squad of the Licensee visited the premises of the consumer on 17.1.2017 & found that the E.D. applied is 9.3% though the consumer is a commercial consumer. The E.D. to be reviewed. Accordingly spot panchanama was carried. In view of the said spot inspection, the Licensee raised supplementary bill dated 17.2.2017 towards electricity duty (E.D.) difference for the period from Nov.2010 to Dec.2016 for Rs.87,57,194/-. The Licensee communicated the supplementary bill to the consumer vide letter no.SE/RPUC/HT/669/1/1271 dated 18.2.2017. The consumer challenged the said supplementary bill on the ground that the tariff applicable to the consumer is Industrial because since the beginning till the date of spot inspection usage of electricity is for IT/ITES purpose. Therefore the Licensee cannot charge E.D. as per Commercial tariff. The consumer submitted complaint before IGRC, RPUC on 27.2.2017. The IGRC rejected the grievance of the consumer vide impugned order dated 22.5.2017 holding that the tariff applicable to the consumer is HT-II (Commercial). The E.D. has been charged as per Industrial tariff at the rate 9.3% but it should have been charged as

per Commercial tariff at the rate 21%. Therefore the supplementary bill of E.D. difference from Nov.2010 to Dec.2016 amounting to Rs. 87,57,194/- is to be proper & correct.

The consumer seeks relief to set aside the impugned supplementary bill of Rs.87, 57,194/- and directing the Licensee not to disconnect the supply for impugned bill amount till the issue is finally resolved.

- 6) The consumer representative Mr. Ashish Bodas submitted that the Licensee carried spot inspection of the consumer's premises on 17.1.2017 observing that the E.D. applied 9.3% i.e. as per the Industrial tariff but it is to be charged as per Commercial Tariff & accordingly supplementary bill of Rs.87,57,194/- was raised for the period Nov.2010 to Dec.2016. The said bill is illegal because since the beginning usage of the consumer is for IT/ITES purpose. The companies are STPI registered. Therefore the consumer is eligible for the electricity duty (E.D.) at Industrial rate only.
- 7) He further submitted that the issue of applicability of tariff has already been decided by the appellate authority vide order dated 11.4.2013 in appeal No.176 of 2009 & the appellate authority has directed the Licensee to refund the excess amount. The said order was challenged by the Licensee in W.P. No. 9166 of 2013 before the Hon'ble High court. The High Court reminded the matter for rehearing. After rehearing, the appellate authority vide order dated 13.4.2017 set aside the final assessment order dated 31.7.2009 & it was held that use of supply is authorised for IT/ ITES Companies. Thus issue of applicability of tariff has already decided. Therefore Industrial tariff is applicable to the consumer & as such ED applicable to the consumer is at Industrial rate only.
- 8) Mr. Bodas further submitted that the Licensee can not recover ED difference between Commercial & Industrial retrospectively i.e. for the period Nov.2010 to Dec.2016 amounting to Rs.87,57,193/- in the month

of Feb.2017 by raising supplementary bill. It is the duty & responsibility of the Licensee to issue correct bills to the consumer.

- 9) He further submitted that the ATE in Appeal No.131 of 2013 held that the Licensee cannot recover tariff difference retrospectively. The Ombudsman Mumbai in Representation No.91/2015 also ruled that tariff difference cannot be recovered retrospectively. The consumer should not suffer due to mistake of Licensee. The supplementary bill for the period Nov.2016 to Dec.2016 for Rs.87,57,194/- is time barred & be set aside.
- 10) On the other hand Mr. S.R.Patil, E.E., RPUC, Pune submitted that the Licensee i.e. Addl. Ex. Engineer, Flying Squad, Pune Urban visited the premises of the consumer & carried spot panchanama on 17.1.2017 & observed that the ED applied is as per Industrial rate at 9.3% but the usage is commercial & therefore ED to be reviewed. In view of the observations of the Flying Squad, the Licensee raised supplementary bill dated 17.2.2017 towards electricity duty (ED) for the period Nov.2010 to Dec.2016 amounting to Rs.87,57,194/-. He further submitted that previously the premises of the consumer was inspected on 25.3.2009 and it was observed that the consumer was using power for Commercial activities & was also extending the supply for various use & violated provisions of Section 126 of E.A. 2003. Therefore final assessment order for the period April-2008 to March-2009 for Rs.84,72,410/- was passed by the Assessing Officer on 31.7.2009. Therefore the consumer was billed as per commercial tariff from April-2008 & therefore ED on the Commercial tariff requires to be calculated as per Commercial rate. It is mandatory upon the Licensee to recover the ED in view of the mandates enshrined in the Maharashtra Electricity Duty Act & the Bombay Electricity duty Rules, 1862.
- 11) He further submitted that the consumer has raised the issue that the Licensee cannot billed for the period Nov.2010 to Dec.2016 in view of

the order passed by the Appellate authority. However the order passed by the appellate authority has been stayed by the Hon'ble High Court directing both the parties to maintain status-quo which means the tariff levied to the consumer at the commercial rate is proper & legal. In view of this, the act of issuance of supplementary bill towards ED difference with appropriate rate is just and legal. He lastly submitted that the consumer be directed to pay the amount of supplementary bill dated 17.2.2017 and the grievance application be dismissed.

- 12) On perusal of record it is seen that the Licensee had previously inspected the premises on the consumer on 25.3.2009 & it was observed that the consumer was using the power for Commercial activity and also extended unauthorised power supply to various users through sub meters and violated provisions of Section 126 of E.A.2003. Accordingly the assessing officer passed final assessment order dated 31.7.2009 directing the consumer to pay the amount of Rs.84,72,410/-. The consumer challenged the order dated 31.7.2009 passed by assessing officer before the appellate authority under Section 127 of the Act. The appellate authority vide order dated 11.3.2013 set aside the final assessment dated 31.7.2009 in Appeal No.176 of 2009. Thereafter the Licensee challenged the impugned order dated 11.3.2013 passed by appellate authority before the Hon'ble High Court in W.P.No.9166 of 2013. The Hon'ble High court vide order dated 4.3.2015 set aside the order dated 11.3.2013 & directed the appellate authority to rehear & decide the same, in accordance with law & on their own merits. Thereafter the appellate authority reheard appeal No.176 of 2009 & partly allowed the appeal vide order dated 27.4.2017. The final assessment dated 31.7.2009 for amount of Rs.84,72,410/- is set aside. The use of electricity by Appellant for m/s.HOV Services Ltd., M/s.HOVAR Management Services Pvt. Ltd., M/s. Kale Consultants Ltd. is declared as authorized. In case of M/s. Selectia India Pvt. Ltd.

unauthorized use may be considered from the date of expiry of STPI certificate. For M/s.Reliance Communications Ltd., M/s. Airtel Communications, Respondent acquires jurisdiction to decide the unauthorized use as per the prevailing rules ----- . Thereafter the Licensee challenged the order dated 27.4.2017 passed by appellate authority before the Hon'ble High Court in W.P. No. 8665/8666 of 2017. The Hon'ble High Court vide order dated 1.8.2017 directed the parties to maintain status-quo. Stand over to 22.8.2017.

13) The Electricity duty(ED) is to be charged as per consumption of energy as per the consumer category such as Industrial, Commercial, Residential etc. According to the Licensee the consumer is using power for commercial purpose & has violated provisions of Section 126 of the Act. Whereas according to the consumer since the beginning power has been utilized by them for IT/ITES purpose & therefore the consumer is eligible for Industrial tariff & Licensee cannot charged ED difference between Commercial & Industrial. Thus the basic issue whether consumer is to be billed as per Commercial/ Industrial tariff & whether the consumer is indulged in authorised used of electricity as contemplated under Section 126 (6) of the Act is under consideration before the Hon'ble High Court in W.P. No.8665/8686 of 2017 & the Hon'ble High Court has directed the parties to maintain status-quo.

14) Regulations 6.7 of MERC (CGRF & E.O.) 2006 reads as under :

(d) Where a representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.

15) Regulations 6.8 of MERC (CGRF & E.O.) 2006 reads as under :

If the Forum is prima facie of the view that any Grievance referred to it falls within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum :

(a) *Unauthorized use of electricity as provided under Section 126 of the Act;*

(b) - - - -

(c) - - - -

(d) - - - -

16) Therefore we are of the opinion that the present grievance is not tenable before the Forum. The grievance is liable to be rejected.

Lastly we proceed to pass following order.

ORDER

1. Grievance of the consumer stands dismissed with cost.

Delivered on: - 12 .09.2017

S.S.Pathak
Member
CGRF:PZ: PUNE

B.S.Savant
Member/Secretary
CGRF:PZ: PUNE

S.N.Shelke
Chairperson
CGRF:PZ:PUNE

Note: - The consumer if not satisfied may filed representation against this

order before the Hon'ble Ombudsman within 60 days from the date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Bldg.,
Bandra Kurla Complex, Bandra (E), Mumbai-51.