

**CONSUMER GRIEVANCE REDRESSAL FORUM,
AMRAVATI ZONE, AKOLA.**

*“Vidyut Bhavan”,
Ratanlal Plots,
Akola: 444 001
Tel.No.2434476*

Dt- 13/12/2013

Complaint No.87/2013 & 88/2013

**In the matter of grievance of illegal recovery of Electricity Duty , refund
there of wioth interest and costs**

Quorum :

Shri T.M.Mantri,	Chairman
Shri P.B.Pawar,	Secretary
Shri A.S.Gade	Member

M/s Goenka Fibers (Con.No.297079048900) ... Complainant No. 87/2013
M/s Goenka Cotton Trade Industry (Con.No.297079048520) ... Complainant No. 88/2013

...VS...

The Executive Engineer , MSEDCL, Dn. Khamgaon. ... Respondent

Appearances:

Complainant Representative: Shri Ashish Chandarana

Respondent Representative: Shri G.T. Ekde, Dy.Executive Engineer.

1. The grievance in these complaints being same and identical so also the reply of the N.A. , the matters have been heard together as per the submission made on behalf of the parties and are being decided by this common order.

2. The grievance is in respect of illegal recovery of electricity duty and inspite approach made to IGRC Buldhana, it has passed an order without granting an opportunity of hearing and being aggrieved thereby the present complaints have been filed.

3. The complainants have referred to the Government notification issued by the Government of Maharashtra dated 7th July,2004 and 26yth May, 2009 where under the industrial establishments in Vidarbha Region have been exempted from payment of electricity duty, initially upto 31/3/2009 and then extended the date upto 31st March, 2014 by later notification. Reference has been also made to departmental circular No. 393 and 101 issued by MSEDCL. As far as the complaint NO. 87 of 2013 (M/s Goenka Fibers) is concerned, it is consumer of N.A. since 8th October, 2009 whereas complainant in complaint No. 88 of 2013 (M/s Goenka Cotton Trade Industries) is consumer of N.A. since 26th November, 2007. It has been alleged that the N.A. has failed to incorporate the proper Duty Code 97 thereby the illegal recovery has been resulted. Not only this much even the Electrical Inspection Department has expressed displeasure in the communication to the concerned authority in that respect and asked not to repeat the same in future. Only because of negligence in official duties of the concerned officers/staff of the N .A. the complainants/consumers are required to suffer.

4. It is further alleged that in case of H.T. consumer of Akola Circle Office the exemption of Electricity Duty has been given rightly and those consumers are not required to face any illegal recovery. Reference has been made to one such consumer M/s Ganesh Cot Spin from whom the electricity duty is not recovered from the very first billing. However, the complainants have been charged the electricity duty. The information given on the Right of Information establishes this contention of the complainants.

5. It is alleged that the complaints approached the I.G.R.C. on 29/7/2013 which issued the notice of hearing dated 6/8/2013 which was received by the complainants on 17/8/2013 at 2.00 PM i.e. on the date of scheduled hearing, inspite of mentioning this fact to the concerned on telephone but it did not bothered fixing the next date of hearing and disposed off the grievance by passing ex parte order. Averments have been made about the observations made by the I.G.R.C. and further alleged that as per the Government Notification, the benefit is extended to all industrial establishments. The order of I.G.R.C. is incorrect and is an attempt to save the skin of guilty officers.

6. According to the complainants, the observation of the I.G.R.C. in respect of P.S.I. 2007 is an addition and it will come in force only after 31/3/2014, as far as complainants are concerned in view of the G.R. referred to above. It is further alleged that in the similar type of matters the Electricity Ombudsman has awarded costs of Rs. 3000/- so also interest @ 9.5% per annum in the matter of M/s Ambika Agro, Digra, similar type of industry. The complainants have also referred to the judgment of the Hon. Supreme Court in the matter of Lucknow Development Authority Vs. M.S.Gupta (1994 SEC (1) 247 page) and on that basis the Electricity Ombudsman has directed in this respect about recovery from the guilty officers. Lastly, prayed for relief sought for. Alongwith the complaint copies of bunch of documents came to be filed.

7. As per the regulation, notice was issued to the concerned office of the N.A. licensee for its reply to the complaints and the same came to be filed, belatedly, alongwith letter dated 16/11/2013, supporting the order of I.G.R.C. It is stated that the complainants have been given the benefit of exemption of

electricity duty from the billing month i.e. September, 2013, onwards. Further stating that it is as per the clarification of Electrical Inspector, Amravati dated 25/9/2013 with regard to benefit under P.S.I. 2007.

8. As far as other averments made in the complaint they are not specifically replied and vague averments have been made. However some of the contentions as mentioned in the complaint have been admitted. Reference has been made to eligibility certificate under P.S.I. 2007 and representation made to the concerned office for stopping the recovery of electricity duty and refund of the electricity duty already paid. Reference to the order of I.G.R.C. dated 17/8/2013 is made with averments, that as per the prevailing procedures, the matter was referred to the Electrical Inspector dated 30/8/2013 and as per letter dated 25/9/2013, charging of electricity duty to the complainants is immediately stopped from the billing of September, 2013.

9. It is stated that as far as the electricity duty already recovered, it is deposited with the Electrical Inspector, Amravati and a proposal in the prescribed format will be submitted today and after receipt of approval necessary credit would be given to the complainant's. Lastly, pressed for rejection of the complaints. Alongwith reply copies of certain documents came to be filed. The matter was then posted for arguments.

10. Heard Shri Ashish Chandarana the learned representative of complainants and Shri G.T.Ekde, Dy.Executive Engineer the learned representative of the N.A. licensee. Written notes of arguments also came to be filed on behalf of both the parties. Notes of arguments on behalf of N.A. have been received on 6/12/2013. On going through the available material on

records and after giving considerable thought to the rival contentions, the matters are being decided by this common order.

11. As already observed above the grievance is in respect of levying of electricity duty. As already observed above, the respective dates of connections of the complainants are not disputed. It is also clear from the reply as well as the submission made during the course of arguments from the side of the N.A. licensee that the electricity duty has not been levied in these bills of Sept. 2013 onwards.

12. Admittedly, the Government of Maharashtra has issued notifications dated 7th July, 2004 and 26th May, 2009 granting an exemption of payment of electricity duty to the industrial establishments in the Vidarbha Region and accordingly the period has been extended till 31st March, 2014. The complainants have also referred to the departmental circulars issued by the MSEDCL in that respect. If one minutely goes through the reply of the N.A. it is clear that the N.A. has deliberately not made reference thereof. However, during the course of arguments it has been admitted by the learned representative that the Government Notifications as well as the circulars of MSEDCL are binding.

13. If one considers the reply of the N.A. filed on record, it is clear that various averments made by the complainants have not been specifically dealt with therein and reliance has been placed on PSI 2007. During the course of arguments it has been admitted that apart from the Government notification referred to above, the industries will be entitled to take the benefit of PSI 2007, if it is applicable. No doubt, on behalf of the N.A. the learned

representative has tried to argue that the notifications referred to above are not applicable to the complainant. However, nothing was stated in reply in that behalf. In any case, the submission made by the N.A.'s representative is not correct. The complainant has referred to certain example like Ganesh Cot Spin etc. dealing in similar activities which have been exempted from the very first date of commencement by applying Electricity Duty Code "97", that has not been disputed from the side of N.A. When similar type of industries by the Circle office of the N.A. has been granted exemption, how there could be discrimination with similar type of consumer. In any case, the documents filed on record clearly shows that the competent authority-District Industries Centre (DIC) has issued a certificate wherein not only the dates of respective registrations but also the products manufactured are given, so also the details of "raw material" required for the industries apart from the date of start of "commercial production". It is clear that the complainants are amply covered under the notification issued by the State Government. So the argument advanced on behalf of the N.A in that respect can not be accepted. During the course of arguments the learned representative of N.A. licensee has admitted that the DIC is the competent authority to decide whether the relevant activities are being carried on or not and whether the unit is "industry" or not. When the competent authority has specified that particular products are being "manufactured" so also specified the respective dates of "commercial production" it cannot lie in the mouth of N.A. to raise controversy in that respect.

14. Here it is pertinent to note that the complainants' averments in respect of date of hearing before the I.G.R.C., the same has not been disputed from

the side of N.A. It is, thus, apparently clear that the notice of hearing before the I.G.R.C. were received by the complainant on 17/8/2013, in the afternoon, i.e. the date of hearing and the request made on behalf of the complainants have not been duly considered by the I.G.R.C. In fact, there is a substance that it was ex parte order. In any case the observations made by the I.G.R.C. in the impugned order are on surmises. In any case, it ought to have verified whether the G.R.s is applicable. At this stage, It is also pertinent to note that though the N.A. is opposing the claim of refund of electricity duty, however, since the billing of September-2013 it has been stopped levying such electricity duty. In para No.7 of the reply it has been stated that, as far as the electricity duty already recovered is concerned, the proposal in the prescribed format will be submitted to the Electrical Inspector and after receipt of approval, necessary credit would be given to the complainants. So, it is clear that in clear words the N.A is admitting its liability of refund of electricity duty recovered from the complainants till September-2013.

15. When the Government of Maharashtra has exempted levying of electricity duty and when the Akola Circle office of the N.A. Licensee was not levying the electricity duty, levying and recovery of electricity duty by the concerned office of the N.A. from the complainants, is illegal and it could not have been levied. Hence the recovery itself is illegal, consequently it is required to be refunded. The submission made on behalf of the N.A. that the amount is with the Government, hence no interest be awarded, cannot be accepted, in view of the above observations. In any case, in the similar type of grievance the Hon'ble Electricity Ombudsman, has awarded interest in the representation No. 50 of 2013 in the matter of M/s Ambika Agro.

Consequently this forum is of considered view that the complainant is entitled for appropriate relief in respect of levying of interest.

16. In the like manner, the complainants claim for awarding of costs needs to be dealt with properly in view of the fact that the complainants are required to approach the authorities of the N.A. so also IGRC and ultimately to this forum, naturally they have been required to incur expenses. Had the concerned officers/staff of the concerned office of the N.A. licensee acted diligently, this litigation could have been avoided and there could not have been any requirement of arising of such grievance. The complainants have relied upon the judgment of Hon. Apex Court in the matter of Lucknow Development Authority Vs. M.S.Gupta (1994 SEC (1) 247 page) which has been referred to by the Hon. Electricity Ombudsman in its order in representation No. 50 of 2013, whereby the liability has been fixed against the erring officers. This forum is of considered view to adopt the same observations and findings against the erring officers. The MSEDCL to take appropriate action against the erring officers/staff in the light of these observations. Needless to say, that the amount of electricity duty to be refunded to the complainants, in pursuance to the order, has to be adjusted in the forthcoming electricity bills alongwith interest. With such observations, this forum proceeds to pass the following unanimous order:

ORDER

- 1) That complaints NO. 87/2013 and 88/2013 filed are hereby partly allowed.
- 2) The N.A. is directed to refund the electricity duty illegally recovered from the complainant from 8/10/2009 (as far as the complainant NO. 87 of 2013 M/s Goenka Fibers) and from 1/12/2008 (as far as the complaint NO. 88 of 2013 M/s Goenka Cotton Trade and Industries) alongwith interest @ 9% per annum from the date of recovery, till the adjustment/payment of the amount.
- 3) The N.A. is also liable to pay costs of Rs. 1000/- to each of the complainants.
- 4) The N.A. licensee to take appropriate action against the erring officers/staff as per the judgment of the Hon. Apex Court in the matter of Lucknow Development Authority Vs. M.S.Gupta (1994 SCC (1) 247 page) as well as the order of Hon. Electricity Ombudsmen.
- 5) The Compliance report to be submitted within a period of one month.

Sd/-
(A.S.Gade)
Member

sd/-
(P.B.Pawar)
Secretary

sd/-
(T.M.Mantri)
Chairman