

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

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

Dt-20/05/2013

Complaint No.28 & 29/2013

In the matter of R.P.Nimodiya,Vidarbha Ginning & Pressing for refund of electricity duty.

In the matter of Ratan Ginning & Pressing for refund of electricity duty

Quorum

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

R.P.Nimodiya,Vidarbha Ginning & Pressing Complainant (Case No. 28/13)

Ratan Ginning & Pressing Yavatmal Complainant (Case No.29/13)

...VS...

MSEDCL Circle Office ,Yavatmal

..... Respondent

1 By this common order these complaints are being decided, as the nature of grievance , relief sought for are same and identical, so also the reply and arguments. During course of submissions both the learned representatives of the parties have made such submissions and accordingly this common order is being passed.

2 In substance the grievance is pertaining to the illegal recovery of electricity duty, consequently refund thereof alongwith interest. The complainant has also claimed costs with other reliefs.

3 The complainant has referred to the notification dt.7th July,2004 and 26th May,2009 of the State Govt. of Maharashtra referring to the electricity duty act, alleging that all existing as well as up-coming industrial establishment in Vidarbha region are exempted from payment of electricity duty from 01/04/2004 upto 31/03/2014 and it

was necessary for N.A.licensee to comply with those Govt. resolutions. It is alleged that in pursuance therefor N.A.licensee issued Circular No.393 in 2004 and Commercial circular No.101 of 9th June,2009. Copies of which have been annexed with complaint alongwith above referred Govt. Resolutions. The complainants have filed documents alongwith the case.

4 It is alleged that inspite such Govt. resolutions and circulars of the department, the electricity duty has been recovered instead of providing facilities as per these govt. resolutions and circulars.

5 Reference has been made to giving of such benefit by the Circle office of the N.A.licensee to its consumers however the concerned office of the N.A.licensee has illegally recovered the duty and because of these mistakes of the concerned Yavatmal circle office, illegal recovery of Rs.4,70,944.84 in complaint 28 of 2013 and Rs. 6,72,467.63 in complaint No.29 of 2013 have been made from the complainants.

6 Reference has been made to correspondence made with the concerned authorities of the N.A.licensee on 12/11/2009 again in 2012 & 13. Reference has been made to the correspondence made by the Electricity Duty Inspector raising various technical grounds including that of seeking explanation of the concerned office of the N.A. licensee as to how recoveries made inspite exemption of electricity duty.

7 It is thus clear that illegally duty has been recovered from the complainants whereby substantial amount has been blocked on account of the fault on the part of N.A.licensee, hence it is liable to pay interest and sought the reliefs as prayed for. Copies of documents have been filed with the compliant.

8 After receipt of notice as per regulations the concerned office of the N.A.licensee has filed same and identical reply stating that the issue regarding electricity duty are to be dealt with under the provisions of Bombay Electricity duty Act 1958 with rules thereof hence out of preview of the forum. Similarly the complaint is devoid of any grievance as the issue does not find place in supply code as well as standard of performance therefore the complaint is not tenable.

9 It is further stated that the complainant has taken up these issues for first time before this forum and the concerned office of the N.A.licensee has referred the matter to Electrical Inspector Amravati on 03/01/2013 and the said office has raised certain queries by letter dt. 13/02/2013. The complainant instead of complying the formalities elected to file the present complaint which is illegal, hence not tenable.

10 It is stated that the complainant instead of waiting the outcome of the application and completing the formalities, has approached this forum, that too, after a period of two years from the date of cause of action hence the complaint is not tenable.

11 Further it is stated that Electricity duty Inspector is necessary party since the Electricity Duty recovered has been paid to the State Govt. and there cannot be any complaint against the N.A.licensee in that respect. As the concerned office of the N.A.licensee has taken steps the complaint against it alone is not tenable. It is further stated that certain facts are to be verified technically and the proposal for refund has been rightly sent to the office of the Electricity Duty Inspector Amravati, hence the N.A.licensee is not at all responsible for any interest as claimed by the complainant, specially when the amount has been deposited with the Govt. There is no negligence on the part of employees of the N.A.licensee as alleged. Electricity duty Inspector is authorized and empowered to effect the refund according to the procedure laid down by the State Govt. and mistake is to be rectified by the agency of the State Govt., hence the N.A.licensee is not liable for anything including cost as claimed by the complainant. The complaint is therefore liable to be dismissed with compensatory cost of Rs.2000/- for unnecessarily vexing this N.A.licensee in the complaint. The N.A. has also filed copies of letter dt. 30/04/2013.

12 Heard Shri Ashish Chandarana, the learned representative for the complainant and Shri R.V.Bommi, Jr.Law Officer, the learned representative for the N.A.licensee. On behalf of the complainant written note of arguments also came to be filed. Copy of which has been supplied to the N.A.licensee. The learned representative for the N.A.licensee has expressed that in view of oral submissions no written notes are required to be filed on its behalf.

13 As already observed above, the grievance is in respect of illegally recovery of Electricity Duty. Admittedly the Govt. of Maharashtra has exempted levying of electricity duty to entrepreneurs like complainant in Vidarbha region and as per Circulars of the State Govt. it is admitted position that such exemption is from 01/04/04 to 31/03/2014. As per submissions as well as during course of arguments it has been admitted by the learned representative of the N.A.licensee that there was mistake in levy/recovery of the electricity duty, so the fact remains that inspite exemption granted by State Govt. so also departmental circular issued by the concerned authority of the N.A.licensee, electricity duty has been incorrectly/illegally recovered from the complainant. During the course of submissions as well as the available material on record it is admitted position that no electricity duty was leviable in view of exemption granted by the State

Govt. but the fact remains that for sufficient long period for years together, the electricity duty has been illegally recovered. Though it has been submitted that due to mistake such recovery has been made, however an attempt has been made from the side of the N.A.licensee through he learned representative in making submissions that claim is time barred and is not tenable as electricity duty inspector is not made party.

14 It is clear from the record that in one breath it is being submitted on behalf of the N.A.licensee that there was mistake in levying and recovering the electricity duty whereas in other breath technical objections of the complaint being time barred and non joining of necessary party are tried to be raised.

15 During course of arguments when query was made with the learned representative of the N.A.licensee that when the State Govt. has exempted payment of electricity duty in Vidarbha region for such entrepreneurs, how in the electric bills the electricity duty could have been levied and recovered, he could not give satisfactory reply except saying that there was mistake. Now one has to understand as to whether such contradictory submissions made on behalf of the N.A.licensee can be said to be plausible. In view of exemption of electricity duty it could not have been included in the electricity bill, hence question of recovery thereof arises subsequently. For the mistake committed by the concerned person of the N.A.licensee, the complainant cannot be asked to suffer, specially when huge amount (approximate more than four lakhs and six lakhs) have been recovered illegally without any authority. How electricity duty inspector is necessary party in the present proceeding could not be explained from the side of the N.A.licensee. It is pertinent to note that no relief is claimed against electricity duty inspector or State Govt. The amount of electricity duty has been illegally included in the electric bills of the N.A.licensee. The amount in that pretext has been illegally recovered in such circumstances the N.A.licensee cannot disown its liability in illegally recovering of electricity duty.

15 In the same manner the learned representative of the N.A.licensee could not substantiate as to how claim is time barred considering the definition of the "Grievance" in Regulations and recovery of electricity duty, in illegal manner, so continued for years together by the N.A.licensee. The learned representative for the complainant has rightly relied upon Judgment of Hon.ble High court Bombay in the writ petition No.9455 of 2011 in the matter of M/s Hindustan Petroleum Corporation limited, against the N.A.licensee itself. The Hon.ble High Court in the said judgment has dealt with what is meant by cause of action. The said judgment is applicable to the present case in hand and the N.A.licensee being party thereto is binding on it. It is surprising that inspite

thereof such attempt has been made to raise untenable pleas, more particularly in the background that it is one of the submission in defence that by mistake, the electricity duty has been recovered. Hence this forum is not impressed with the submissions made on behalf of the N.A.licensee. The learned representative of the complainant has also referred to the judgment of the Hon.ble Supreme Court in the matter of Lucknow Development authority versus M.K.Gupta and Girdharilal & Sons versus Balbirnath Mathur and others in support submissions in respect of claim for compensation/interest and the aspect of interpreting particular statute. On going through the provisions of the regulations it is apparently clear that when the electricity duty was not leviable but has been wrongly levied, so because of the mistake on part of concerned officer/staff of the N.A. Licensee the complainant has been put to losses. The substantial amount for sufficient long period has been blocked so the complainants claim for compensation/interest in such circumstances cannot be said to be unjust or unreasonable. The judgment in the matter of Lucknow Development authority is clearly applicable.

16 As far as next submissions made on behalf of the N.A.licensee that as the amount has been deposited with the Govt. it is not liable for interest or compensation but this aspect has been covered in foregoing discussions. Because of mistake the electricity duty has been levied and recovered inspite govt. circular as well as departmental circulars of the N.A.licensee itself. Now an attempt has been made to justify its action stating that certain compliances are to be made before the electricity duty inspector. This forum finds substance in the submissions made on behalf of the complainant that the complainant has no role therein, specially when the recovery of the electricity duty was made illegally at the hands of the staff of the N.A.licensee. Now it cannot be asked to await further more. Huge amount has been blocked without any use thereof to the complainant. It is for the N.A.licensee to take appropriate steps but it cannot make excuse of non-payment of the amount to the complainant on such grounds. As the amount has been illegally levied and recovered by the N.A.licensee, inspite govt resolutions and departmental circulars, it is its liability to refund the same to the complainant. Thereafter it can take recourse for getting the amount from electricity duty inspector/Govt. Consequently this forum finds substance in the grievance of the complainant, hereby the complainant is entitled for appropriate relief. Needless to say that the N.A.licensee has been put to undergo the litigations because of mistake on the part of concerned staff/officer in illegal recovery of electricity duty. It can recover the amount of compensation /interest which it has to pay to the complainant from those

concerned staff/officer apart from taking other appropriate action as per rules, with such observations this forum proceeds to pass following order, unanimously.

ORDER

1 Complaint 28 of 2013 and 29 of 2013 are hereby partly allowed. The N.A.licensee is directed to refund the amount of Rs.4,70,994.84 (to the Complaint No.28 of 2013) and Rs.6,72,467.63 (to the Complaint No.29 of 2013) by making adjustment in the forthcoming bills commencing from the next electricity bill payable .

2 The N.A.licensee is also liable to pay interest/compensation @ 6% per annum on the above referred amounts to the respective complainants from the date of filing of present complaint till making full payment thereof.

3 The N.A.licensee is also liable to pay Rs.2000/- towards cost of the proceeding to each of the complainant.

4 The N.A.licensee to take appropriate steps against the concerned officer/staff who have committed mistake in making illegal recovery of electricity duty from the complainants, resulting in monetary liability on N.A.licensee because of this proceeding.

5 Compliance report to be submitted within a period of three months from the date of receipt of this order.

Sd/-
(A.S.Gade)
Member

Sd/-
(P.B.Pawar)
Secretary

Sd/-
(T.M.Mantri)
Chairman