

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

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

Dt- 06/07/2013

Complaint No.34/2013 to 39/2013

Complaint in the matter of grievance about levying and recovery of

Electricity Duty illegally with other reliefs

Quorum :

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

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|--|------------------------|-----|------------------|
| 1) M/s Khushbu Agro Industries,Akot | (Con.No.318739063950) | ... | Complaint No. 34 |
| 2) M/s Pransukh Manilal Sedani,Akot | (Con.No.318730257287) | ... | Complaint No. 35 |
| 3) M/s Navinkumar Nilkhi Kumar,Akot | (Con.No.318739062770) | ... | Complaint No. 36 |
| 4) M/s Maheshwari Agro Industries,Akot | (Con.No. 318739063960) | ... | Complaint No. 37 |
| 5) M/s Brijlal Kisan Gopal, Akot | (Con.No.318739060560) | ... | Complaint No. 38 |
| 6) M/s R.K.Rathi Ice Factory,Akot | (Con.No.318739060550) | ... | Complaint No. 39 |

...VS...

Executive Engineer, Akola,Rural Division	... Respondent
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Appearances:

Complainant Representative: Mr. Ashish S. Chandrana

Respondent Representative: Shri G.M.Agadte, Jr.Manager

1 As the facts involved in the matter being similar, so also the controversy hence this group of complaints are being heard and decided by this common order, as per the submissions made on behalf of both the parties. In nutshell, the grievance of the complaints here in is that the electricity duty has been levied and recovered inspite issuing the notification by the State Government, exempting the payment of electricity duty to the industrial establishments in Vidarbha Region, by making reference to the notification dated 7th July 2004

and 26th May, 2009. Such exemption is from 1/4/2004 to 31/3/2014. In fact, the N.A. licensee is required to comply with these notifications and even Departmental Circular NO.393 and 101 came to be issued in 2004 and 2009 respectively.

2. It is alleged that the complainants are the consumers of the N.A. licensee but it has failed to incorporate appropriate duty code. Because of negligence in the official duty of the concerned officers of the N.A. licensee the complainants are required to suffer and inspite of bringing to the notice, nothing was done. Reference has been made to the consumers of the Circle Office, Akola from whom no electricity duty has been recovered. The complainants had approached IGRC on 7/1/2013 and order dated 28/2/2013 came to be passed. By the said order direction has been given to the concerned officials, to take effective steps for refund of the electricity duty collected. However, no action has been undertaken by the N.A. licensee towards the compliance. The complainant have therefore approached this Forum, seeking the relief in the form of refund, of the electricity duty collected alongwith 12% interest from the date of collection till the refund with any other relief. Copies of the documents came to be filed in support of the complaint.

3. After receipt of the notice of this Forum, no reply came to be filed on behalf of the N.A. licensee, but subsequently request for extension of time for filing reply was granted. Ultimately, reply came to be filed on 10/6/2013 stating that the present matter pertains to only point in respect of refund of electricity duty and it has been stated that the said issue is to be dealt with the provisions of Bombay Electricity Duty Act, 1958 and the Rules there under.

Hence it is out of the purview of this Forum. It is also stated that the present matter is not as per the “grievance” as provided in the Regulation, 2006.

4. Reference has been made to the matter of M/s Shivam Oil Industries, Barshitakli and query of the Electricity Duty Inspector of Amravati vide letter 31/12/2012. It is stated that instead of making compliance, the complainant has chosen to file the complaint, which is illegal. Reference has been made to this on MERC (CGRF and Electricity OMBUDSMAN Regulation 2006).

5. It is stated that the N.A has filed the order of IGRC & that from February, 2013 the complainant has been exempted from payment of Electricity Duty.

6. It is stated that as the amount recovered by way of electricity duty has been deposited with the State Government, the N.A. is not liable for payment of interest as demanded. With regard to the issue of refund, the proposal has been submitted to the Electricity Duty Inspector who is alleged to be authorized and empowered to effect the refund and lastly stated that the complaint is liable to be dismissed alongwith costs of Rs. 5000/- for unnecessarily vexing this N.A. in litigation. Alongwith reply copies of some documents came to be filed.

7. Then the matter was posted for arguments. Heard, Shri Ashish Chandrana, the learned representative of the complainants and Shri G.M.Agadte, Jr. Manager, the learned representative of the N.A. licensee.

8. As already referred to above, there is short controversy in respect of refund of the electricity duty. As per the submissions made and the documents filed on behalf of the N.A. licensee it is clear that from February, 2013 no electricity duty is being levied. Copy of the bill in that respect has been filed from the side of the N.A. licensee and this has not been disputed from the side of the complainant. Now only question remains in respect of levying and collection of electricity duty by the N.A. licensee till February, 2013.

9. Admittedly, the State Government has granted exemption from payment of electricity duty for the industries in Vidarbha Region, copies of the notification of 7th July, 2004 and 26th May, 2009 in that respect are undisputed. In spite thereof, the electricity duty has been recovered from the complainants. The submission on behalf of the complainants, that even directions have been given by the Mumbai office of the N.A. licensee in respect of electricity duty have not been followed, apart from the Government Notifications. This has not been disputed from the side of the N.A. licensee. It is tried to be submitted on behalf of the N.A. licensee that the order of IGRC has been complied with and since February, 2013 no electricity duty has been levied in the bills. As far as the refund of the electricity duty already recovered for the period prior there to, it is submitted by the learned representative that the proposal has been made with the Electricity Duty Inspector, Amravati and according to him, thereby; the N.A. licensee has complied with the order. Suffice to say that this submission has no basis at all specifically when the Government Notification is of 2004 and of 2009 and no electricity duty could have been levied. The submission made on behalf of the complainant by the learned representative that the Circle Office Akola did not levy the electricity duty in the bills has not been contravened from the side of the N.A. licensee. So it is clear that in spite of Government Notifications, directions in the departmental circulars, the concerned office of the N.A. licensee has levied the electricity duty and the pretext is being made that it has been deposited with the State Government and this issue is to be dealt with under the provisions of the Payment of Electricity Duty Act, 1958. On behalf of the complainant this has been strongly opposed. This Forum does not find any substance in the submissions made on behalf of the N.A. licensee, in that respect, when there was already exemption by the State Government in respect of the Electricity Duty it could not have

been included in the bills. So apparently, because of mistake/latches/negligence it has been levied and the amount has been recovered. So apparently, it was illegally recovered. IN view there of the question of making reference to anybody else, does not arise at all. It is the liability of the concerned office of the N.A. licensee.

10) In the like manner the objection in respect not falling under “grievance” raised by the N.A. licensee is of no consequence. The complainant has rightly relied upon the provisions, so also there is no reply to the submissions made on the part of the complaint on the basis of the judgment of Hon’ble High Court in the matter of M/s Hindustan Petroleum Corporation Vrs. MSEDCL. In view of the provisions under the regulations coupled with the judgment there is no merit in the objection raised on behalf of the N.A. licensee.

11) On behalf of the complainant bunch of documents, with written note of arguments, came to be filed and the letter of Electricity Duty Inspector, Amravati also clearly shows that there is no merit in the defense raised by the N.A. licensee. The Electricity Duty has been illegally recovered and therefore it has to be refunded to each of the complainants.

12) The next point is in respect of claim of interest and costs. Though the amount has been illegally recovered from the complainants the N.A. licensee is opposing this claim on the ground that the amount has been deposited with the State Government and hence it is not liable to pay interest. As far as the costs, according to the defense reply, the N.A. licensee has claimed the cost against the complainant that it has been unnecessarily involved in the litigation. When the Government has exempted from levying the electricity duty, it could not have been included in the bills, so from that stage itself it

was illegal action on the part of the N.A. Licensee. Suffice to say that from the record it is clear that the consumers of the Circle office have not been levied with the electricity duty. In spite of the exemption, departmental circulars, the electricity duty has been levied illegally/ recovered illegally and the responsibility for such action has to be borne by the N.A. licensee. The learned representative of the complainant has relied upon common order of the Hon. Electricity OMBUDSMAN, Nagpur, dealing in respect of the point of interest, as well as the costs in the similar type of matter, where in 9.5% interest has been awarded. Though the complainant has claimed interest @ 12%, in the present proceedings, however there is nothing to substantiate the claim for such rate of interest. The complainants claim for awarding cost has to be dealt with appropriately as they have been required to approach the authorities such as IGRC and ultimately this Forum. This has been also covered in the order of Electricity OMBUDSMAN, referred to above.

13) In view of these findings the claim made by the N.A licensee for costs is totally irrelevant. The learned representative of the complainant has referred to and relied upon the judgment of Hon. Apex Court in the matter of Lucknow Development Authority Vrs. M.S.Gupta (1994 SecII Vol (1) 243.

14) It is clear that because of the mistake/ latches/ negligence on the part of the concerned officer/staff the electricity duty has been levied illegally in the bills, resulting in the present litigation. Consequently, the N.A. licensee to take appropriate steps against the erring officers/staff including that of recovery of the monitory liability being imposed on the N.A licensee in pursuance to this order, with such observations this Forum proposed to pass the following unanimous order:

ORDER

- 1) Complaint Nos. 34/2013 to 39/2013 are hereby allowed, in part. The N.A licensee is directed to refund the Electricity Duty collected from each of the complainants till February,2013 alongwith interest @ 9.5% per annum from the dates of recovery, till adjustment of the entire amount in the forth coming electricity bills payable by each of the complainants.
- 2) The N.A. licensee to pay costs of Rs. 1000/- to each of the complainants.
- 3) N.A. licensee to take appropriate action including recovery of monitory liability, against the erring officers/staff for the mistake/negligence/latches, which resulted in the monitory liability against the N.A. licensee.
- 4) Compliance report to be submitted within a period of 3 months from the date of this order.

Sd/-
(A.S.Gade)
Member

Sd/-
(P.B.Pawar)
Secretary

Sd/-
(T.M.Mantri)
Chairman