

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

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

Dt- 19/07/2013

Complaint No.58/2013 and 59/2013

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 Skipper Engineers,Akola | (Con.No. 310219041790) | ... | Complaint No. 58 |
| 2) M/s Skipper Engineers,Akola | (Con.No. 310210787991) | ... | Complaint No. 59 |
| ...VS... | | | |
| Executive Engineer, Akola, Urban Division | | ... | Respondent |

Appearances:

Complainant Representative: Mr. D.M.Deshpande

Respondent Representative: Shri D.M.Mankar, Executive Engineer (U)Akola

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 30/3/2013 and order dated 30/5/2013 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 it came to be filed on 11/7/2013 after seeking adjournment, 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 complied with the order of IGRC & that from April, 2013 the complainant has been exempted from payment of Electricity Duty. It is further 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.

6. Then the matter was posted for arguments. Heard, Shri D.M.Deshpande, the learned representative of the complainants and Shri Mankar, Executive Engineer, the learned representative of the N.A. licensee.

7. Admittedly, short point is involved in respect of refund of electricity duty recovery from the complainants. Admittedly, since April,2013 no electricity duty is being levied and copy in that respect has been filled from the side of the N.A. This is not disputed by the learned representative of the complainants. Now only question remains in respect of levying and recovery of electricity duty by the N.A. till April, 2013.

8. 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 April, 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. According to the learned representative of the N.A. licensee the complainants have never raised objection about the levying and recovery of electricity duty. According to him, the complainants might be aware about the Government Notifications and they ought to have raised objection for levying and recovery of electricity duty. Whereas, as per the learned representative of the complainants, the complainants were not aware of such exemption and as soon as they came to know about such exemption has raised the grievance. Ultimately, approached to the IGRC. The order of IGRC is filed as Annexure A-7 with the complaint it is dated 3/5/2013. On going through the same as well as reply filed in this proceeding from the side of N.A. clearly show that this point was not raised any where in any case. As per the Government Notification the N.A. could not have levied the electricity duty in the bills, in any case after departmental circulars which have not been followed. It is also to be noted that the complainants averment and submissions that the consumers of the Circle Office have not been levied electricity duty after the notification and those consumers getting the benefit of these notifications, whereas the complainants and other consumers under the jurisdiction of other offices of the N.A. licensee have been required to pay the electricity duty as mentioned in the bill. This submission of the complainant has not been contravened from the side of the N.A. It is, thus, clear that different yardsticks have been applied to the consumers of the N.A. licensee. There cannot be discrimination amongst the consumers. It is well

settled position that the person who commits wrong/ illegalities cannot take advantage of wrong and illegalities committed by it.

9) 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.

10) 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.

11) 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.

12) 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.

13) 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. 58/2013 and 59/2013 are hereby allowed, in part. The N.A licensee is directed to refund the Electricity Duty collected from each of the complainants till April,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 imposing of monitory liability against the N.A. licensee.
- 4) Compliance report to be submitted within a period of one month from the date of this order.

Sd/-
(A.S.Gade)
Member

Sd/-
(P.B.Pawar)
Secretary

Sd/-
(T.M.Mantri)
Chairman