



(A Govt. of Maharashtra Undertaking)

CIN : U40109MH2005SGC153645

PHONE NO. : 25664314/25664316

FAX NO. 26470953

Email: cgrfbhandupz@mahadiscom.in

Website: www.mahadiscom.in

Consumer Grievance Redressal Forum

“Vidyut Bhavan”, Gr. Floor,

L.B.S.Marg,Bhandup (W),

Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/101/577

Date:16.03.2017

Case No. 101/2016

Hearing Dt. 22/2/2017

In the matter of dispute about application of wrong tariff change the category form industrial to commercial and claiming arrears accumulated since 2012 to December 2016 supplementary bill to the consumer initially filed the dispute before IGRC vide No.91/2016-17 on 12.08.2016

Mr. Neenand Ratnakar Shah

Proprietor M/s New Bombay Tyre work ,

Shop No. 8, Sector-4/E,Truk Terminal Kalamboli

Taluka- Panvel, District-Raigad-410218

- Applicant

Vs.

M.S.E.D.C.L. Kalamboli Sub Division

- Respondent

Present during the hearing

A - On behalf of CGRF, Bhandup

- 1) Shri. Anil P. Bhavthankar, Chairperson, CGRF, Bhandup.
- 2) Shri.Ravindra S. Avhad, Member Secretary, CGRF, Bhandup.
- 3) Dr. Smt. Archana Sabnis, Member, CGRF, Bhandup.

B - On behalf of Appellant

- 1) Shri. Tripathi H.B – Consumer Representative

C - On behalf of Respondent

1) Shri.Tekale Additional Executive Engineer, Vashi Sub Divison.

Consumer LT No. 028652870220 connected/Sanction Load 50HP contract demand 63KVA Kalmaboli sub division Panvel Urban Division Vashi Circle

1. Consumer complainant occupied the said premises and running Tyre retreading company having LT industrial having situated at Shop No.8 Sector-4/E, Truck Terminal, Kalamboli, Taluka-Panvel, District-Raigad-410218. The consumer sanction under from tyre retreading work since 2004. Consumer having all requirement of document SSI Registration and NOC required for his establishment under in the said business and the power supply is applied and received from the same purpose. The said premises is checked by Addl. Executive Engineer, Flying Squad Kalyan II on dated 25.05.2016 and as per remark since August 2012 tariff order tyre moulding retreading activity should be billed under commercial tariff. However under the consumer was receiving the bill under industrial tariff. Therefore supplementary bill was raised for amounting Rs.5,55,500/- on dtd.06.06.2016 claiming difference of tariff category from industrial to commercial with effect from 01.08.2012. In persuasion of this letter of Additional Executive Engineer attach EE/FS/KLN-2/35dtd. 30.05.2016. The provisional bill was issue demanding retrospective recovery made as per MERC tariff order August 2012 and the tariff of tyre retreading as commercial under LT II (C). The MSEDCL charge change of category from industrial to commercial with effect from July 2016 and sent supplementary bill. The consumer raised grievance before IGRC claiming illegal recovery of difference of arrears retrospective effect from Rs.5, 55,500/- with retrospective period. Consumer relied the decision of MERC case

No.24/2001 dated. 11.02.2003 and also referred judgment of APTEL Tribunal Electricity Appeal No.131/2013 in the matter of *M/s. Viney Enterprises Vs Kerala State Electricity Regulatory Commission* who rejected retrospective recovery of KSEB distribution company and not permitted to claim arrears of difference tariff for earlier period. Consumer also relied the Case No.124,125 and 126 of Electricity Ombudsman Mumbai dated 23.12.2014 rejected retrospective recovery of distribution Company. Consumer also relied on CGRF Nasik Zone decision in case No. 85 & 121 dated. 25.06.2015 and 26.06.2015 and claim refund of deposited amount with interest. Consumer also relied the decision given by this Forum in case 653,659,660 orders dated. 19.07.2016 and 17.06.2016. Consumer pray that the provision al bill claiming arrears for retrospective period for 01.08.2012 till July 2016 amounting Rs. 5,56,170.49/- is illegal and in proper as the supply is given under industrial category situated in area of CIDCO approved by Government of Maharashtra and pray seeking reliance on the various APTEL judgment the recovery of retrospective period arrears claim by utility is wrong should be withdrawn and set aside. IGRC decided the said complaint of consumer on 12.08.2016 and given six month instalment for payment of arrears without charging interest and DPC and penalty. Being aggrieved by the said decision consumer approach to the Forum and filed in grievance in Form no.'A' and claim that appropriate relief of refund of deposited amount and change category of tariff from industrial to commercial is wrong and illegal and claim relief for refund and challenge the IGRC order.

2. After filing the said dispute on 13.10.2016 notice was issued to the respondent utility. After service of notice respondent utility appeared and filed reply on 29.11.2016. Respondent utility submitted the detail of supply and

address demand and sanction load date of connection 10.06.2004. Respondent utility submitted the LT power supply is release under tariff category LT industrial LT II B as per prevailing tariff category and the activity is carried out in the premises is tyre retarding. According to respondent utility Flying Squad Kalyan carried out inspection on 30.05.2016 and gave the report requiring to change the tariff category form industrial to commercial .Certificate produce by consumer issued General Manager industries Centre activities carried out in the premises is tyre retreading and the classified in the category of service category and not manufacturing. Respondent utility submitted that as per Circular No.175 dated 05.09.2012 August 2012 as decided by MERC in case No19/2012 has clarified LT II commercial tariff is applicable for Auto Mobile and other type repairing Centre, Retail Gas Filling Stations, Petrol Pumps and Services stations including Garages, Tyre Retreading/ Vulcanizing units. As per commercial Circular No.243/03.07.2015 effect from June 2015 as decided by Hon'ble Commission in 121/2014 clarified LT II commercial applicable to the auto Mobile and any other type of repairing centre Tyre Retreading/ Vulcanizing units .As per Regulation 13 of MERC supply Code and Condition Supply Rules and Regulation 2005 Distribution of Licensee may classified or reclassified consumer into various Commission approved tariff category base on purpose of supply of such consumer provided the distribution licensee shall not create any tariff category other than those approve by commission and according to i commercial category classified by MSEDCL is correct. In view of MSEDCL has classified this consumer under LT II commercial as per Hon'ble Commission under commercial category since August 2012 and recovery of tariff arrears from industrial to commercial since August 2012 is assessed and calculated difference of amount Rs. 5,55,500/- .As per order of IGRC dated.

12.08.2016 supplementary bill and demand has raised against the consumer is legal valid and proper. IGRC gave the six monthly instalment to the amount of difference of arrears without charging interest and DPC and Penalty as it is public money revenue required to be recovered .Respondent utility strongly objected the pray of consumer and pray to dismiss the complaint to prevent revenue loss. Respondent utility attach copy of commercial circular no 200 dated 08.07.2013 and copy of spot inspection report, copy of supplementary bill already issue to the consumer. I have perused all the relevant document filed by consumer and respondent utility. I have also gone through the judgment given by IGRC on 12.08.2016

After perusing the rival contentions of consumer and respondent utility, following points arose for our consideration:

1. Whether respondent utility entitled to recover to difference of arrears under provisional bill since August 2012 to July 2016.
2. Whether consumer is entitled for any relief.
3. Whether consumer was entitled for any refund of amount with interest.
4. Whether consumer was entitled for change of tariff from commercial to industrial.
5. What order?

Reasoning

3. After perusal of consumer complaint and reply given by utility it appears that so far as registered address and establishment of unit New Bombay Tyre works retreading by proprietor by Neenad Ratnakar Shah on given address is not disputed so far as sanction load and connecting load admittedly the supply was installed and use at the premises of consumer till date of inspection and the supply is continued. The action of changing tariff category

from industrial to commercial occurred after the inspection note. The work and procedure followed by respondent utility is required to be access and verified. Various directions given in the circular issued by competent authority are in billing nature. The decision made by MERC application of tariff category as it is define the activities carried out as the premise as Tyre Retreading/ Vulcanizing units should be assess as per earlier Circular No. 175 dated 05.09.2012 which effect from august 2012 second Circular No.243 dated 03.07.2015 effect from June 2015 confirm the tariff category should be applicable LT II commercial for activities of unit Tyre Repairing Centre and Tyre Retreading/ Vulcanizing units. On face of record it cannot be said that utility was wrong in application of tariff as per direction. The supplementary bill was raised claiming difference of arrears of since August 2012 to 06.06.2016 which is accumulated period this action of calculation of accumulated arrears is absolutely wrong and illegal. Reliance place by consumer in various decisions of MERC and Hon'ble Ombudsman is place on record. In view of APTEL judgment in case No.131/2013 *M/s. Viney Enterprises Vs Kerala State Electricity Regulatory Commission* decided tariff category difference should be calculated from the date of detection of error even Hon'ble Ombudsman decided this issue in the various case 125,126,dtd.23.12.2016. It is pertaining to note that the said issue is now pending before Hon'ble High Court in Writ Petition No. 6545/52/53 2015 and Hon'ble High Court issued status-co against the respondent utility in showing the arrears in current bill. I have verify this aspects in various angle at the one instance the calculation of alleged commercial tariff with effect from 01.08.2012 is applicable commercial tariff as per commercial Circular No.175 and 243. It is necessary at this stage for me to mention that under change of tariff category by circular issued by MERC in judgment of 01.11.2016 the category of tyre remounting and tyre

vulcanizing unit should be charge as industrial tariff and therefore application of proper tariff from 01.11.2016 as admittedly change as industrial purpose. Therefore, I have no other option to allow the grievance of consumer that since 01.11.2016 the category should be assessing for the tariff LT industry against this consumer effected form 01.11.2016. Therefore the order pass by IGRC and reply given by utility claiming retrospective arrears and provisional recovery bill is wrong and illegal. Therefore the recovery bill and the order of IGRC required to be stands set aside as it is against the judicial decision. However to prevent loss of revenue the respondent utility should be allowed to claim commercial tariff form the date of inspection 30.05.2016 to 01.11.2016 as commercial and assess and reissue corrected provisional bill recovery against the consumer by charging commercial tariff only valid for this period.

4. It appears that total period of 01.08.2015 to 25.05.2016 claim in accumulated bill undertaking should have been taken from consumer under indemnity bond liable to be recovered subject to decision of writ petition No. 6545/52-53 - 2015 pending before Hon'ble High Court. Hence I am inclined to allow the claim of consumer complaint and proceed to pass following order.

ORDER

1. The consumer complaint No. 101/2016 is partly allowed.
2. Provisional bill accumulated period from August 2012 to 25.05.2016 claiming commercial tariff difference amount is stands set aside the order of IGRC dtd.12.08.2016 stands quash and set aside.

3. The respondent utility shall issue revised bill claiming difference of arrears between 25.05.2016 to 01.11.2016 under commercial category tariff and issued the corrected bill only of this period.
4. The category since 01.11.2016 shall be industrial application of tariff to the consumer unit is appropriate.
5. The relief of claiming arrears of 01.08.2012 to 25.05.2016 Indemnity Bond shall be executed by consumer liability of payment till the decision of writ petition No.6545/52-53 of 2015 decision pending before Hon'ble High Court.
No order as to the cost.

Proceeding close.

Both the parties be informed accordingly.

The order is issued under the seal of Consumer Grievance Redressed Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup.

Note:

1) If Consumer is not satisfied with the decision, it may proceed within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman
The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),
Mumbai - 400 051

2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I Agree/Disagree

I Agree/Disagree

DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP

ANIL P. BHAVTHANKAR
CHAIRPERSON
CGRF, BHANDUP

RAVINDRA S. AVHAD
MEMBER SECRETARY
CGRF, BHANDUP

