

(A Govt. of Maharashtra Undertaking)

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Consumer Grievance Redressal Forum
“Vidyut Bhavan”, Gr. Floor,
L.B.S.Marg,Bhandup (W),
Mumbai – 400078.

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

Date

Case No. 660

Hearing Dt. 12.04.2016

**In the matter of wrong application of commercial tariff and calming excecive bill
charging commercial tariff and recovery of bill**

M/s. Geetanjali Pharmaceutical India Pvt. Ltd.,

(Occupier M/s. Tyre Grip Private Ltd.,)

Applicant

Vs.

M.S.E.D.C.L. Koperkhairane, 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.S.B.Tripathi – Consumer Representative

C - On behalf of Respondent

- 1) Shri. K.N.Zeruse, Addl. Executive Engineer, KoperKhair Sub Division.
- 2) Mrs. Swati Deshmukh, Assistant Accountant, Koperlhaire Sub Division.

ORDER

Consumer No. 000430016393

1. Above named consumer filed this complaint against respondent utility stating that the original LT consumer M/s. Geetanjali Pharmaceutical India Pvt. Ltd., having service connection No000430016393, is receiving and paying the bills regularly.

It is stated that the occupier of the unit M/s. Tyre Grip Private Ltd., executed Leave and License agreement on 14.10.2013 in favor of M/s. Geetanjali Pharmaceutical India Pvt. Limited. The said unit is registered and has license of an establishment and conducting industrial activities. Industrial supply of L.T.P.S. 200HP/125KVA is sanctioned by Executive Engineer, Vashi Division vide letter No.EE/Vashi/T/LT-2513/5849 dtd. 29.10.2013 in the name M/s. Geetanjali Pharmaceutical India Pvt. Ltd. subject to completion of required formalities L.T. power supply was connected on 08.11.2013. The unit having registration Certificate of S.S.I, MPCB consent and factory license in the name of company in Jan. 2014. On 30.09.2015 Addl. Ex. Engineer, Flying Squad-2, Kalyan, MSDECL, Division made spot inspection of the premises and verified the details. In the activity and details of occupier, he found irregularities.

2. It is contention of consumer that as per MERC tariff order August 2012, retreading remolding work should be considered as commercial tariff. However, it is only at the time of inspection it was revealed that the said unit was receiving the bill as per industrial tariff; therefore the Flying Squad Officer was required to study the documents and the report was prepared after verification. The Flying Squad Officer submitted report and reassessment of the bill which was amounting Rs. 59,45,830/-
3. The consumer was initially charged under Section 126 of E.A. and monthly bill was issued from 06.10.2015 to 03.11.2015. Thereafter the Addl. Exe. Engineer issued letter on 17.11.2015. After giving opportunity of hearing on 07.12.2015 the hearing was conducted and document was submitted after inspection of documents and hearing.

Addl. Executive Engineer stated that the tariff from industrial to commercial from LT VB II to LT II C should be applicable to the unit and additional 214995 units for the period from Jan 2014 to Sep. 2015 should be charged. Thus the supplementary bill was issued for Rs. 14,87,350/- on 12.02.2016 after applying commercial tariff for the period Jan 2014 to September 2015 (the amount

charged less the difference of tariff Rs. 12,23,178/-plus interest Rs. 1,94,641/-) and thereafter in the month of November 15 supplementary bill considering reclassification of consumer category was added to monthly bill in of February 2016. The supplementary bill was included in monthly bill of Feb. 16. Addition of DPC and interest was done and notice was issued on 29.02.2016, imposing liability to pay the bill by the consumer which is 15 days as per provision of E.A.

4. After receiving the said bill the consumer raised objection and dispute, initially before IGRC and filed the complaint before IGRC under Form No, 'X' on 09.03.2016. Thereafter IGRC issued notice of hearing against the complaint made by consumer before the Authority but IGRC was unable to hear the dispute within stipulated time on 2 month from the date of filing complaint before IGRC. Therefore consumer raised dispute and filed complaint before this Forum on 11.03.2016. It is contention of consumer that IGRC failed to decide the dispute within stipulated time and gave notice of demand of illegal application of category (commercial tariff) and claiming the dispute on the ground that the unit M/s. Tyre Grip Private Ltd. is registered and having SSI certificate of Maharashtra Provision Control Board Certificate.
5. Consumer mainly has objected for the application of commercial tariff. It is also objected by the consumer that recovery of accumulated bill in Jan 2014 for amounting Rs. 14.87 with retrospective effect is illegal and against the existing law and cases decided by the Forum as well as Hon'ble Ombudsman. Consumer referred judgment in Appeal No. 131 of 2013 Vianney Enterprises Versus Kerala State Electricity Regulatory Commission which has reported that retrospective recovery of bill is illegal. Hon'ble Commissioner relied on a ratio of various judgments of CGRF, Nashik Zone and also that of Hon'ble Ombudsman in case 124,125,126 & 4 2014. It is informed by the consumer that Hon'ble High Court in Writ Petition no. 6545 of 2015 passed an order that if status co against the respondent utility. In which respondent utility gave undertaking that there is not

claim of retrofactive recovery arrears in the bill. But the application of tariff as commercial tariff the issued is under consideration of Hon'ble High Court.

6. After filing the said complaint and considering all facts and circumstances as consumer was billed as per commercial tariff for the month of Feb. 16 and he is paying current bill with commercial tariff to their unit. After filing this complaint the notice was issued to the respondent utility. The respondent utility appeared and filed reply dated 06.04.2016.
7. It is contention of respondent utility that the supply given to consumer in the name of M/s. Geetanjali Pharmaceutical India Pvt. Ltd., at TTC, Industrial Area of Pawane MIDC, Navi Mumbai and there was contract and sanction demand load 94 KW and 75KVA was demand load on 29.03.2012. On the request of consumer additional load of 35 KV was enhanced. At that time there was change of the name of establishment as claim by the consumer for M/s. Tyre Grip Private Ltd., to M/s. Geetanjali Pharmaceutical India Pvt. Ltd., on 03.10.2015 flying squad, kalyan carried out inspection on the same premises and it is found the unit was bill as per industrial tariff which is required bill at the commercial tariff per direction of order of Respondent utility Authority. During the inspection of flying squad, kalyan they have recommended action FS under section 126 of E.A.2003. At the activity under taken at the unit was change and the bill charge at the industrial rate is not proper. The consumer was directed to submitted all relevant document and certificate for the perusal of Authority. Therefore the letter was issued on 05.08.2014 as per Circular issued by Respondent utility bearing Circular No.175 dated 05.09.2012 effect from August 2012 and direction on commission on Case no. 19/2012 clarified order for the purpose of "Automobile and any other type of repair centers, Retail Gas Filling stations, Petrol Pumps and Service Stations including Garages, Tyre Retreading/Valcanizing units" tariff the commercial tariff LT -II was made applicable. Therefore the circular was issued bearing 243 dtd. 03.07.2015 effect from June 2015. Which is clarified by commission in case No.121/2014 to be charge and LT II commercial tariff is

application as per Regulation No.13 MERC (Electricity Supply Code and Other Condition of Supply Regulation, 2005) power wasted to distribution licensee may reclassified and classified. The commission in various commission approved tariff is category said for the purpose of supply consumer provided that the distribution licensee shall not any tariff category other than the purpose approve by the commission and accordingly MF is correctly categories. The consumer to be charge under commercial consumer in view of the said circular application in August 2012.The tariff category of the consumer was from industrial to commercial and the charges are working-out and asses against the consumer amounting Rs. 12,23,178/- accordingly the letter was issued the recovery which is claimed for the period August 2012 to Oct.2015. The bill was raised and demanded in the month of Nov. 2015 in view of section 56(2) provided limitation available to the respondent utility for recovery of accumulated arrears of 2year as for which recovery purpose MSEDCL can exercise power and process for cutting of supply in this respect. The respondent utility lied on 2 judgment reported in AudeshAwadesh S. Pande V/s Tata power and M/s. Rototex Polister ratio of the this decision is reproduce. It is contention of respondent utility that the Writ Petition 10764/2011 is pending before Hon'ble High court in view of the obsidian under 56(2) arrears of 2 years accumulated unit recovery of the against this consumer. Therefore the legal notice and demand bill issued to the consumer by respondent utility is legal valid and proper the consumer filed receipt of payment of amt. Rs.1500 dtd. 20.02.2016 and filed copy the electricity bill dated Feb.2016 calming amount Rs. 1522080/- Payable on all before 29.02.2016 consumer also filed SSI certificate issued to their unit on 01July 2002 sanction letter dated 16.03.2012 Maharashtra Provision Control Board Certificate 11.10.2014 copy of the inspection report of flying squad kalian dated 03.10.2015 and correspondence made by respondent utility to the consumer as such I have perused all the relevant document filed before the Forum.

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

1] Whether the respondent utility entailed to recovery accumulated arrears bill charging commercial tariff to the consumer.

2] Whether consumer is entitled for any relief.

3] What ordered?

Reasons

9. We have given opportunity to the consumer and his representative and officer of the respondent utility both of the appeared before the Forum and submitted their complaint in details. It appears from the record original supply was given to the consumer under the name as M/s. Tyre Grip Private Ltd., at the time of claiming additional supply the month of March 2012 consumer undertaken to name of user from M/s. Tyre Grip Private Ltd., (M/s. Tyre Grip Private Ltd., into M/s. Geetanjali Pharmaceutical India Pvt. Ltd.,) and additional demand of supply was claim the dispute arose when Flying Squad, Kalyan visited the premises and found the activity undertaken at the unit or as retreading service and tyre remolding process with the help of machinery is conducted at the premises. The details of Infrastructure provided at the site was verified by the respondent utility officer. It is found the process of remolding and repairing tyre activity found under retreading tyre service and not tyre manufacturing as per approval of MERC tariff which is made applicable for the such tyre remolding and repairing service the tariff ought to have been charge as per commercial tariff in view of Circular 243 dtd. 03.07.2015 effective on 02.06.2015 it is clarified in case No. 141/2014 for tyre repairing and vulcanizing unit the tariff falls under the category of LT- II commercial the respondent utility officer empower as per *Regulation No. 13 of MERC Regulation 2005 which reproduce as under Classification*

and Reclassification of Consumers into Tariff Categories The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer: Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission.

10. Representative of consumer raised wrong objection and pointed out the activity calcification volume Statistic data Bank Micro and Small Medium Enterprises clarified the activity of the unit false under the category of industrial and commercial tariff cannot be applied the issued raised and objected by the consumer ultimately challenge the circular and approval of commercial tariff which effected from June 2015 which due respect this Forum has no jurisdiction to make any comment when the tariff to June 2015 is applicable including the activity undertaken by this consumer should have been false under the category of commercial tariff the certificate and licenses which is produce to my view does not seek anything about manufacturing of product of Tyre the activity undertaken by the consumer tyre retreading recycling service. It means original status of tyre does not change. But after process outlook and process under taken recycle the said tyre for review therefore per want of jurisdiction when the issued is subjudice in High Court in similar case the Forum not accepted to pass any commented the issue of applicability of commercial tariff it not answer. 1. The consumer is carrying out the activity of “tyre remolding (retreading)” and the Distribution Company has applied industrial tariff for the electric connection since the date of supply on 03/05/2000.. Later as per MERC tariff order dated 16/08/2012 [in case no. 19/2012] which is applicable with effect from 01/08/2012 , the activity of “tyre retreading” is brought under LT II :Non residential/Commercial . 2. The consumer has stated that his unit is a small scale

unit registered with the DIC and holding Factory License and claims to continue the industrial tariff. Remold is a synonym for retread. Tyre retreading or remolding is a process where the TREAD (the portion of the tyre which meets the surface of road) of an old tyre is replaced/ repaired using a vulcanizing solution to give fresh lease of life to the tyre. It cannot be termed as manufacturing as elaborate in the below mentioned paras. 3. The Hon'ble Supreme Court in the judgment dated 16/10/1979 in case of M/s P.C. Cheriyan v. Mst. Barfi Devi has addressed the issue related to "tyre treading" for recognition as "manufacturing". In the said judgment, Hon'ble Supreme Court has observed that: ".....But in the instant case, by retreading an old tyre does not become a different entity, nor acquires a new identity. The retreading process does not cause the old tyre to lose its original character. The broad test for determining whether a process is a manufacturing process, is whether it brings out a complete transformation for the old components so as to produce a commercially different article or commodity. This question as rightly emphasized by the learned Judge in Jack Zinader, is largely one of fact. In the case before us, all the courts below have concurrently answered this question in the negative. In our opinion, this finding of the courts below is unassailable. The retreading Case No.14-15 : Shri. Kambalat Subramaniam Babu Page No.3 of 4 of old tyres does not bring into being a commercially distinct or different entity. The old tyre retains its original character, or identity as a tyre. Retreading does not completely transform it into another commercial article, although it improve its performance and serviceability as a tyre. Retreading of old tyres is just like resoling of old shoes. Just as resoling of old shoes, does not produce a commercially different entity having a different identity, so from retreading no new or distinct article emerges. The old tyre retains its basic structure and identity....." 4. As per MERC order dated 12/09/2010 [Case no.111 of 2009] under the para 5.4 the tariff philosophy has been elaborated by the Commission. It is clarified that classification under Industry for tax purposes and other purposes by the Central or State

Government shall not apply to the tariffs determined by the Commission. The relevant extract from the said order is reproduced below: “.....
A similar impression is conveyed as regards the „Industry“ categorization, with the Commission receiving several representations during and after the Public Hearings, from the hotel industry, leisure and travel industry, etc., stating that they have also been classified as „industry“ for the purpose of taxation and/or other benefits being extended by the Central Government or State Government, and hence, they should also be classified as „industry“ for the purpose of tariff determination. In this regards, it is clarified that classification under Industry for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003, and the import of the categorisation under Industry under other specific laws cannot be applied to seek relief under other statutes. Broadly, the categorization of „Industry“ is applicable to such activities, which entail „manufacture.....“ As such even if the consumer holds DIC Registration or Factory License , the industrial tariff will not be applicable unless , the consumer is carrying out a “manufacturing” activity . The present activity of “tyre remolding (retreading) ” carried out by the complainant does not entail “manufacture” and hence not eligible for industrial tariff. The Commission has categorically classified the activity of “tyre remolding (retreading) ” under commercial category (LT II) tariff. 5. There is no dispute that the tariff category LT II :Non residential/Commercial should be applied after detecting that the consumer is conducting business of “tyre molding/retreading”. The only question is about justification for asking retrospective recovery with effect from 01/08/2012. The Distribution Company itself continued to apply industrial tariff till the visit of flying squad on 10th July 2014. The consumer is not at fault for paying the bills under industrial tariff category from August 2012 to June 2014 as they were raised by the Distribution Company under the same category. 6 MERC under the order dated 11/02/2003 in Case No. 24 of 2001

regarding retrospective recovery on the basis of reclassification of the tariff category has directed as under: “.....no retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer.....Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively..... In all those cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective. ...” 7 The Appellate Tribunal for Electricity (APTEL) in the order dated 7th August, 2014 in Appeal No. 131 of 2013 [in the matter of Vianney Enterprises versus Kerala State Electricity Regulatory Commission] has held that “ the arrears for difference in tariff could be recovered from the date of detection of the error” 8 The Honb’le Electricity Ombudsman, Mumbai in his order dated 23/12/2014 [In representation no. 124 of 2014] in the similar matter of recovery of arrears after change of tariff category in a case of Mr. Ram Chimanlal Kanojiya (Chiman Automobiles) Vs MSEDCL has mandated as under: Case No.14-15 : Shri. Kambalat Subramanium Babu Page No.4 of 4 “.....The Representation is thus allowed. The Respondent is directed to recover arrears from the Appellant from billing month of March, 2014 without applying DPC and interest on the said arrears. The arrears already paid by the Appellant should be adjusted and balance amount be recovered from the Appellant” 9 The Honb’le Electricity Ombudsman, Mumbai in his order dated 23/12/2014 [In representation no. 126 of 2014] in the similar matter of recovery of arrears after change of tariff category in a case of Mr. Subhash Kailash Gupta (J. S. Auto Garage) has given the same decision denying the retrospective recovery. 10 On the basis of the orders of MERC, APTEL and the Electricity Ombudsman ,Mumbai as mentioned above , the Distribution Company is entitled to charge Commercial Tariff from July , 2014 onwards. However retrospective

recovery for the period August 2012 to June 2014 on account of tariff difference is to be set aside . The following order is hereby passed by the Forum for implementation

11. The Representative of the consumer made request and pointed out that the retrospective recovery at claim form Jan. 2012 to October 2015 is not permissible as in many cases reported judgment of Hon'ble Ombudsman and MERC in view of APTEL Judgment 131/2013 IN THE MATTER OF M/s. Vianney Enterprises versus Kerala State Electricity Regulatory Commission retrospective recovery request is not consider by the Higher Forum. Therefore at least from the date of inspection of Flying Squad as the change of tariff made applicable and current bill issued the consumer has already paid but demand of retrospective recovery should not be allow. We have given minutely consideration to the request and we come across with the judgment and order pass by Hon'ble High Court in writ petition No. 124,125,126&94 Hon'ble High Court grated stucco against the order of Hon'ble Ombudsman in which similar issue is raised and utility under MSEDCL give there under taking not to change retrospective recovery till the decision of the said issued by Hob'le High court under the Rule of parity in similar relief should have been given consumer in this case also. Therefore I am inclined of allow the relief consumer true the extend of respondent utility should allow to pay prospective recovery from the date of flying squad inspection and application of tariff in October 2015 the claim of retrospective recovery demand in supplementary bill ought to have been quash and set aside till the decision of writ petition. We also come across with the following various decision given by CGRF Sashet, Pune, AhmadNagar CGRF in similar matter arising out of applying commercial tariff to tyre reading and recycling unit should have been charge as commercial tariff only retrospective recovery is consider as not allow till the final decision of this and undertaken by respondent utility MSEDCL as their status co order. I fill given in this matter no

retrospective recovery should be allow the consumer complaint partly and proceed to pass following order.

12. Consumer attached SSI certificate of their unit and detailed of difference of unit claim wrong application of tariff till the date of connection additional supply was sanction .The consumer also produce copy of Leave and Licenses factory registration certificate sanction letter of Executive Engineer Vashi Sub Division dated 29.10.2013 and details of connecting load and sanction load additional to the unit
13. After perusing the said document it is necessary to submit that the unit M/s. Tyre Grip Private Ltd., is not consumer within the definition of section 2 of Electricity Rules and Regulation neither M/s. Tyre Grip Private Ltd., Have entered any agreement separately with the respondent utility MSEDCL no such document is filed on record to enforce the agreed government condition in favor of consumer all the document relied and submitted by the consumer reflect original agreement additional sanction of load referred to M/s. Geetanjali Pharmaceutical India Pvt. Ltd.,. To my view when there is no agreement is in existence the respondent utility cannot legally found to obey any terms and condition to grant any relief in favor of consumer.
14. However for the same reason the M/s. Tyre Grip Private Ltd., false under the category of user and occupier of the supply therefore they are liable to pay the charges so far as dispute is raised by the consumer application of tariff instated of industrial to commercial in view of the circular as referred commercial tariff which is applicable for charging of electricity bill therefore claiming of accumulated arrears form Jan 2014 to Feb. 2016 when the M/s. Tyre Grip Private Ltd., started business in the month of Feb. 2013 the liability of payment of bill has undertaken in view of agreement relied by the consumer

15. It is necessary to mention that the supplementary bill issued against the M/g. M/s. Geetanjali Pharmaceutical India Pvt. Ltd. claiming difference of tariff and aggregate unit was charge as per LT II commercial should be application in this contested the Appeal No. 131 decided by the Appellate turbine in case of M/s. Vianney Enterprises versus Kerala State Electricity Regulatory Commission the issued subjudice before Hon'ble High Court is Writ Petition No, 6545 of 2015 in this matter status co order is pass which is communicated to the Forum therefore the dispute which is raised should be consider only for imitated purpose this Forum cannot pass any findings on the issue of legality and prosperity in charging commercial tariff to the M/s. Tyre Grip Private Ltd., should be bill as a commercial tariff normal so far as repayment of bill till Feb. 2013 commercial tariff is already applicable on date of status co order the application of commercial tariff should be continued. We heard argument of learned representative appeared for consumer and also Responsible Officer of respondent utility to appeared before the forum consideration the various judgment reported in application of tariff in the category of M/s. Tyre Grip Private Ltd., pronouns by various CGRF and Hon'ble Ombudsman only relief was granted. To the consumer for application of tariff on from the date of detection of error and here in this case application of the commercial tariff and which was billed in Feb. 2016 along with the current bill issued to the consumer the liability shall be continued under the rule of paternity of following the judgment . I am in client to similar relief to this consumer also. I proceed to pass following order.

ORDER

1. Consumer compliant 660 of 2015 is partly allowed to the extent of continuing to pay bill under the commercial tariff since Feb2016.

2. The Respondent utility cannot claim accumulated recovery prior to date of detection of error. The supplementary bill along with arrears required to kept abeyance till the decision of Writ Petition 6545/2015.
3. The consumer shall continued to pay the current bill as commercial tariff till the final decision of Writ Petition.
4. No order as to the cost.

Proceedings closed.

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