MAHAVITARAN
Maharashtra State Electricity Distribution Co. Ltd.

(A Govt. of Maharashtra Undertaking)
CIN : U40109MH2005SGC153645

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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. 659 Hearing Dt. 12.04.2016

In the matter of illegal change of tariff from Industrial to commercial and incorrect accumulated bill issued by respondent utility

M/s. Rumbcomp Industries Pvt. Ltd., - Applicant

Vs.

M.S.E.D.C.L. Koperkhairene, 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, KoperKhaire Sub Division.
2) Mrs. Swati Deshmukh, Assistant Accountant, Koperlhaire Sub Division.

Consumer No. 000313130495

1. Above named consumer having consumer No. 000141445987 connecting Load 94KW demand load 75KVA and meter No. 00218825 under the category of 71LT II commercial, date of connection 26.07.2009 filed this complaint against respondent utility stating that the above consumer received the said connection for the industrial unit situated at TTC, Pawane, MIDC, Navi Mumbai. Earlier

consumer was doing the business of removing, holding and repairing tyre at the premises.

2. It is contention of consumer that flying squad visited the factory premises and carried out inspection and informed that in view of Case No.19/2012-2013 and as per circular issued by MSEDCL authority, tyre retreading falls under the category of commercial tariff. Thus they have claimed the difference of industrial and commercial tariff amounting to Rs. 1271642=78. This was added to the bill for the month of October 2015. It is shown as debit adjustment. Denying the application of commercial tariff, consumer approached the office It is contention of consumer that they are undertaking the business which falls under the industrial unit. It is contention of consumer that- a] unit of the consumer is registered under Small Scale Industries b] no commercial activity under taken at the unit c] the unit has S.S.I. Registration No.27-021-12-04107 d] the consumer has obtained license and registration certificate form Maharashtra Pollution Control Board and Factory Act establishment Licenses.

3. According to consumer the bill in the month of Oct. 2015 is illegal as the change of tariff from Industrial to commercial is illegal. Also there is threat of disconnection due to which to heavy financial loss to the consumer is likely. Therefore, consumer filed this complaint initially before IGRC on 10.01.2016. Since there was no reply from the respondent utility, he approached this Forum on 24.02.2016.

4. After filing this complaint notice was issued to the respondent utility along with an interim order. Respondent utility was directed to calculate the bill and not to disconnect the supply on further terms and conditions.

5. After service of notice respondent utility appeared and filed reply on 07.04.2016. It is contention of respondent utility that the supply given to consumer was in the name of M/s. S.M. Tyre Retraders 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 M/s Rubcomp Industries On 03.10.2015 flying squad, kalyan carried out inspection of the same premises and it was found that the unit was billed as per industrial tariff which should have been the commercial tariff as per direction of the Authority.

6. During the inspection of flying squad, kalyan they recommended action under section 126 of E.A.2003 at the activity undertaken at the unit was changed and the bill charged at the industrial rate was not proper. The consumer was directed to submit all relevant documents and certificates 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 effective from August 2012. Directions of commission in Case no. 19/2012 clarified that for "Automobile and any other type of repair centers, Retail Gas Filling stations, Petrol Pumps and Service Stations including Garages, Tyre Retreading/ Valcanizing units", commercial tariff LT -II was made applicable. Therefore, the circular was issued bearing no 243 dated 03.07.2015, effective from June 2015. This is clarified by commission in case No.121/2014.

7. As per Regulation No.13 MERC (Electricity Supply Code and Other Condition of Supply Regulation, 2005) power vested to distribution licensee to classify/ reclassify the categories. The consumer to be charged under commercial category in view of the said circular made applicable in August 2012.

8. The tariff category of the consumer was changed from industrial to commercial and the consumer was assessed as Rs. 7,48,930/-. Accordingly the letter was issued for the recovery which is claimed for the period of August 2012 to Oct.2015. The bill was raised and demanded in the month of Nov. 2015 In view of limitation provided under section 56(2) recovery of accumulated arrears of 2 years is permissible, failing which, option of disconnecting the supply is available to MSEDCL for recovery. The respondent utility relied on 2 judgments reported in Audesh S. Pande V/s Tata Power and M/s. Rototex Poliester. Ratio of this decision is reproduced.

9. 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 was issued to the consumer by respondent utility is legal valid and proper. The consumer filed receipt of payment of Rs.4,00,000/- dtd. 22.02.2016, copy of electricity bill dated 10.11.2015 claiming Rs. 16,87,925/- payable on or before 24.11.2015, SSI certificate issued to unit on 1st July 2002, sanction letter dated 16.03.2012, Maharashtra Provision Control Board's Certificate dated 11.10.2014, copy of inspection report of flying squad kalyan dated 03.10.2015 and correspondence between respondent utility and consumer.

10. We have perused all the relevant document filed before the Forum. After perusing the rival contentions of consumer and respondent utility, following points arose for our consideration:

1] Whether the respondent utility entitled to recovery of accumulated arrears .

2] Whether consumer is entitled for any relief.

3] What ordered?

Reasons

11. We have given opportunity to both the parties, who appeared before the Forum and submitted their say in details. It appears from the record that original supply was given to the consumer under the name M/s. S.M. Retreading Tyre. At the time of claiming additional supply in the month of March 2012, unit was undertaken by M/s. Rubcomp Industrial (M/s. S.M. Tyre into Rubcomp Industries Tyre Ltd.,) and additional demand of supply was claimed. The dispute arose when Flying Squad, Kalyan visited the premises and found the activity undertaken at the unit was retreading service and tyre remove/ holding process with the help of machinery.

12. The details of Infrastructure provided at the site was verified by the respondent utility officer. It is found that the process of remove holding and repairing tyre activity falls under retreading tyre service and not tyre manufacturing. As per approval of MERC tariff which is made applicable for such tyre remove holding and repairing service the tariff ought to have been charged 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 is empowered *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.* 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 falls under the category of industrial and commercial tariff cannot be applied. The issue was raised and objected by the consumer. He ultimately challenged the circular and approval of commercial tariff which was made effective from June 2015.

13. This Forum has no jurisdiction to make any comment either on time of applicability of this tariff order or categorization of the activity. To my view activity of this consumer does not have manufacturing of any product. In Tyre retreading/ recycling service, original status of tyre does not change. Similar Also, since the issue is subjudiced in High Court in similar case, the Forum cannot pass any comment on the issue of applicability of commercial tariff.

14. 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: Nonresidential/Commercial.

15. 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 rethread. Tyre retreading or remolding is a process where the THREAD (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 elaborated in the below mentioned paras.

16. 3. The Hon’ble Supreme Court in the judgement 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 the 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 Subramanium 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 improves its performance and serviceability as a tyre.

17. Retreading of old tyre 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……"

18. 4. As per MERC order dated 12/09/2010 [Case no.111 of 2009] under 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 tariff 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 tariff determined by the Commission under the EA 2003, and the import of the categorization 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.

19. There is no dispute that the tariff category LT II: Nonresidential/ Commercial should be applied after detecting that the consumer is conducting business of "tyre moulding/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. 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. …" 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"

20. The Hon'ble 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"

21. The Hon'ble 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

22. The Representative of the consumer requested 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 mater 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 change of tariff is to be made applicable. Though consumer has already paid current bill, demand of retrospective recovery should not be allowed.

23. We have given minute consideration to the request and we came across with the judgment and order passed by Hon'ble High Court in writ petition No. 124, 125, 126 & 94. Hon'ble High Court granted status-co against the order of Hon'ble Ombudsman in which similar issue was raised and utility gave an under taking not to charge retrospective recovery till the decision of the said issue by Hon'ble High court. Under the Rule of parity similar relief should have been given to the consumer in this case also.

24. Therefore, I am inclined to allow the complaint. Respondent utility should be allowed prospective recovery from the date of flying squad inspection and application of tariff in October 2015.Retrospective recovery demanded in supplementary bill ought to have been quashed and set aside till the decision of writ petition.We also came across with various decisions given by CGRF Sashet, Pune, Ahmadnagar CGRF in similar matter arising out of applying commercial tariff to tyre reading and recycling unit that it should have been charged as commercial tariff only. Retrospective recovery is not allowed till the final decision of Hon'ble High Court. I feel even in this matter no retrospective recovery should be allowed.The consumer complaint partly and proceed to pass following order.

ORDER

1. Consumer compliant no 659 of 2015 is partly allowed.

2. The respondent utility to charge as commercial tariff from the date of detection of error and claim the bill as per commercial tariff until the final decision of writ petition.

3. The bill and demand notice issued by respondent utility and accumulated retrospective recovery is quashed and set aside.

4. No order as to the cost.

Proceedings closed.

Both the parties be informed accordingly.

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