

Preamble

M/s. BSG Investment Corporation is initially having HT Industrial connection bearing no. 02291900 from 1985 with 184 Kw connected load and 152 KVA sanctioned contract demand at Gala no.112 of Minerva Industrial Estate, Mulund (W). In the month of April 2008, consumer applied for additional load of 77 KVA for commercial purpose, which was sanctioned on 17th July 2008. But Utility have accorded sanction for entire load for commercial purpose assuming the use of premises is for only commercial purpose and now charging them with commercial tariff for entire load. Aggrieved of this consumer approached directly to this Forum, as the matter was already delt with the higher authorities. Hence his case was registered on 09/03/2010 vide case no. 315 and accordingly hearing was fixed on 20/03/2010 which was postponed to 23/03/2010 on request of Utility officials.

Consumer Say: -

On behalf of consumer Mr. Prakash Saradar was present to represent the case. As per his statement M/s. BSG Investment Corporation has obtained a sanctioned of three phase connection with the connected load of 184 kw and contract demand of 152 KVA in year 1985. The purpose and activity of this premises was purely for Industry and accordingly Utility was billing them on Industrial tariff.

The electric supply for this connection was released from 11 KV HT network. These facts can be confirmed

from the agreement executed on 3 June 1985 between then MSEB and Consumer.

In the month of April 2008, the applicant submitted an application to the utility demanding additional load of 77 KVA for commercial purpose which was sanctioned vide order No. SE/ THUC/ HT/4116/ dt. 17 July 2008.

He further stated that prior to the sanction of this additional load the Utility vide their circular No. 80 dt. 10 June 2008 introduced HT II commercial category for commercial load of Industrial consumer. This necessitates to separate out the commercial load from mixed load of Industry.

Moreover the Chief Engineer commercial vide its circular no. PR3/Tariff/ 43619 dt. 16/12/2008 have issued guide lines under subject matter "levy of correct tariff rate for consumption of sub meter provided for HT consumers". This circular concludes with the instructions for exiting connection, wherever segregation of load is technically possible. All efforts should be made to fix up separate energy meters for recording the consumption under the relevant category.

The applicant produce the copy of said circular before the Forum.

According to this circular the concerned Executive Engineer of O&M, Mulund division vides his letter EE/MND/ T/ 3442 dt. 30th Sept 2009 requested to declare the list of commercial load in the premises and separate

the commercial load from industrial and asked for submission of electrical wiring completion report.

In pursuant to these instructions of EE, Mulund the additional load were separate out and then released a supply through 3X50/5 CT meter in October 2009.

In the present case while sanctioning and release of additional load for commercial purpose the utility executed the agreement with the consumer assuming the total load i.e the load sanctioned in the year 1985 and the present sanctioned of 77 KVA for commercial purpose. This is just because of misconceived by the Utility officials and hence this agreement is totally false agreement. The Applicant further added that once the agreement is executed by the Utility with the consumer it is not necessary to executes another fresh agreement for exiting consumer. Infact the agreement for commercial load is unwarranted under the code of commercial instruction. On the basis of this agreement, utility is charging the consumer for total load of Industrial and commercial on commercial tariff that too right from release of new additional load. Which is totally unjustified.

The Utility has recovered Rs 8,94503.38 from consumer through debit adjustment in bill of Nov 2009.

The cause of dispute is that Utility is charging of entire consumption including industrial and commercial on commercial tariff. In the bill Nov 2009, utility have billed consumer on commercial basis for entire consumption, which resulted in excess recovery of Rs. 67656/- for this

month and this erroneous billing continued on the same footing.

The applicant also reiterated that the concern S.E of the Thane Circle constituted a joint inspection committee of three Executive Engineer and account officer vide his order no SE/ TUC/ HT/ 375 dt. 16/01/2010. This committee had inspected the premises along with the representative of the consumer on 19/01/2010 and submitted a report on same day. The inspection report evident the following facts.

- 1) There is a production activity of transformer and control panel, which is an industrial activity.
- 2) The connected commercial load in the premises is shown 64 KW and is supplied through separate meter.

The said report is signed by all committee members mentioning that the total load of 64 KW is for commercial activity and rest is for industrial.

The Utility's own inspection report Cleary speaks that there is a mixed load and if such is the case the commercial circular no. PR- 3/ Tariff/ 43619 dt. 16/12/2008 should have been implemented. In his rejoinder dt. 25/03/2010 the Appellant submitted a certificate issued by DIC dt.01/09/1981, which shows that the activity is art, silk fabrics manufacture in the name of BSG Investment Corporation. As activity of the industry had been changed from Tape woven Fabrics to servo control and solid-state voltage stabilizer from date

02/11/2000. The Appellant also produce copy of the same (DIC certificate) which issued vide SSI-II/ RGN/ 80/2001/2010 dt. 23/02/2001 which clearly shows that the activity is for industry.

Prayer of the Appellant :-

To rectify the bill under dispute by charging relevant tariff considering use of connected load as given in circular No. PR-3/ Tariff/ 43619 dt. 16/12/2008.

Utility Say :

1) The H.T. power supply was sanctioned to above consumer in the year 1985. Since, there was no separate commercial tariff in existence at that time for commercial category consumer the bills were issued as per industrial tariff. There is no any document on record such as certificate of director of industries; the consumer has not produce such kind of document till date.

2) In the month of April 2008 the consumer has applied for sanction of 77 KVA additional load for commercial purpose with connected load of 184 KW for expansion of existing undertaking for commercial purpose.

3) Accordingly to the consumer's application for commercial purpose, the load is sanctioned vide sanction order no. SE/TUC/HT/ 4116 dt. 17/07/2008, where commercial purpose is specifically mentioned for the complete 184 KW connected load in the sanction order. As per the sanction order the consumer has paid all the

necessary charges to this office i.e. the consumer has accepted the sanction order issued by the this office for commercial purpose.

4) The consumer has also executed the agreement with this office for using power supply up to 184 KW connected load & 152 KVA contract demand for commercial purpose.

5) The consumer has submitted fresh test report for 178 KW before release of above commercial load. If the consumer wanted sanction for part of commercial load, he should give test report for that part load only, not for whole load. The consumer has asked for sanctioned of whole load for commercial purpose. Hence load sanction is given for commercial purpose.

6) As per MERC tariff order dt. 01/06/2008 the HT commercial tariff came into force w.e.f 01/06/2008. Prior to 01/06/2008 the separated HT commercial tariff was not in existence. The consumer has not produced any valid certificate from director of industries as a "Manufacturer" Further the consumer has it self applied for commercial tariff. The new contract demand for commercial purpose is higher than the previous contract demand. On the basis and all these facts commercial tariff is applied to consumer.

7) As per the application of consumer, our sanction letter & the agreement executed by consumer, test report submitted to this office. This office has released total commercial load to consumer & applied appropriate tariff

from the date of release. The consumer has not raised any objection to above up to Dec 2009.

8) As per clause no. 6.1 of MERC (ESC & OSS) Regulation 2005, the distribution, licensee should execute the agreement with consumer for enhancement of sanctioned load above 50 KW irrespective of category. Hence, the agreement is executed with consumer for commercial purpose.

9) The additional HT power supply is sanctioned to the consumer on dt. 17/07/2008 Prior to 17/07/2008 the consumer's connected load was 184 KW & contract demand was 75 KVA.

10) The consumer has applied for additional load on 24/04/2008. The consumer has submitted the copy of partnership deed dt. 15/10/1992. It is mentioned in the partnership deed that the firms name is M/s. BSG Investment Corporation of manufacturers/traders in cloth, plastic woven sacks etc. However, the consumer has mentioned in his grievance that his activity is manufacturing of LT transformers & control panels. But the consumer has not produce any license issued by director of industries regarding that purpose.

11) The consumer has applied for commercial purpose & therefore commercial tariff is applied to consumer. The consumer has never produced any certificate from director of industries mentioning the consumer as a 'manufacturer'.

12) On dt.16/01/2010 the inspection of consumer premises is carried out & found that the administrative office of above consumer is having 6.5 KW commercial load on ground floor.

On first floor office of M/s. Kilburn Engineering is seen working. Its connected load is 57.5 KW. The nature of activity of M/s. Kilburn Engineering is account office, which is commercial activity.

13) For application of industrial tariff, the consumer should produce the valid certificate of director of industrial as a 'Manufacturer' then it will be possible to us to apply the industrial tariff for manufacturing activities having license as a manufacturer.

14) The consumer is having commercial load of commercial activities of itself & commercial activities of M/s. Kilburn Engineering, hence the commercial tariff applied by us for commercial purpose is appropriate.

15) Recently, the Hon'ble Ombudsman has given decision in case no. 10 of 2010 in the matter of M/s. Envirocare Labs Pvt. Ltd., for application of Industrial tariff the consumer should be a manufacturer within the meaning of sec.2 of consumer Protection Act. 1986. The Hon'ble Ombudsman has rejected the case of M/s. Envirocare Labs. Pvt. Ltd. because it has not any certificate as a 'Manufacturer'.

The same principles are applicable in the present case; the consumer has not produce any certificate as a 'manufacturer'. Therefore HT-II Commercial tariff is

applied to consumer as per Hon'ble MERC tariff orders and billing mechanism of MSEDCL, it is not possible to Utility to apply dual tariff to a consumer.

The circular issued by Chief Engineer (Comm.) vide PR-3/Tariff/43619 dtd. 16/12/2008 referred by consumer is applicable to exiting consumers with mixed load as on 01/06/2008 (mentioned in last Para of circular) M/s. BSG Investment Co. is not a mixed load consumer on dt. 01/06/2008. As per above circular, no new connection to be released with mixed load after 01/06/2008. On the contrary separate individual connection under relevant category to be given in case of mixed load. Since the consumer has not applied for any new connection, but applied for expansion of his already exiting business for commercial purpose, his total load was released under commercial purpose.

If consumer wants industrial tariff to be applied to his activities on ground floor, he should apply for new connection for industrial purpose with all necessary documents.

It is therefore kindly requested to reject the complaint of consumer on the grounds stated herein above.

Observation :

The matter was heard on 23/03/2010. Both the parties were present during the hearing. Facts of the case and proceedings during the hearing reveal that the Applicant M/s. BSG Investment was having HT industrial

connection with the sanction load of 184 KW with the and 152 KVA contract demand. Since 1985 the utility was billing this consumer on industrial tariff i.e. HTP-1. In the month of April 2008 the applicant submitted an application in 'A'-I form for additional contract demand of 77 KVA for commercial purpose.

The Utility accorded sanctioned on commercial basis for total load of 185 KW with contract demand of 75 KVA exiting load and 77 KVA fresh additional load totaling to 152 KVA. As stated in Utility's submission. It is true that the applicant mentioned at column 5(ii) in annexure to be submitted for connected load of above 50 KW that additional power is requires for expanding an existing undertaking.

From the above forum observed that this happens only because of misunderstanding that consumer's exiting activity is an commercial and as there was no HT commercial tariff in existence before June 2008, hence Utility was billing the consumer on HT industrial tariff. The Utility had concluded, as consumer was demanding for enhancement of load on commercial purpose for expansion of his business and accordingly fresh load was sanctioned under commercial basis.

In the defense statement of Utility, the Utility mentioned that while applying for additional load to the consumer, he has mentioned that he want to expand the existing activity Forum observed that in the same application form, consumer has also mention that this activity of expansion is for commercial office. The

expansion of his business could be of any kind i.e. selling of his own product, exhibition of his own product or office purpose as is in the present case.

The Forum therefore could not agree with the contention of Utility that the expansion of business for other category exhibits its existing category of use for commercial purpose. Moreover the joint inspection report of Utility's committee also clears that part of total load is for commercial and rest for industrial and should have billed accordingly by providing separate metering units.

It is clear from the above that there is a dispute in terms of rates of tariff category charged to the applicant from June 2008. The applicant consumer was charged under commercial category for his entire load, which was just because of misunderstanding between consumer and Utility. But new tariff was came in to force from 1st June 2008 which was introduced by commission i.e. HT-II. On this basis utility directed to the field officers that mixed load in their premises should be charged under relevant category, However in this CE Commercial letter it is mentioned that the existing consumers having mixed load should be separated with individual connection under relevant category. It they also mentioned that for the existing connections wherever segregation of load is technically possible all efforts should be made to fix up separate energy meters for recording the consumption under relevant category.

Accordingly letter was issued by the E.E of the Mulund division to the above consumer, requesting to

separate out their commercial load from industrial load and submit electrical wiring report, which shows that the above consumer is having industrial load also. From the statement of the Utility that as per directives issued in Utility's letter no. PR-3/ Tariff/ 43619/ dt. 16/12/2008 that only separate new connection should be issued for relevant category in case of mixed load. In such circumstance, Forum feels that the utility should have refuse to sanction the additional load in the premises of mixed load and should have asked to the consumer applicant to apply for fresh connection. But in the present case Utility has not taken due care of it.

As stated in the Utility submission that consumer has executed the agreement for commercial purpose and hence tariff is applied accordingly. Forum observed it so was the case why consumer should disputed for application of commercial tariff for whole of its load Forum feels that merely execution an agreement could not be a ground for application of proper tariff. As per commission tariff order of 2008. it is very explicit ad clear that as per use or Utility of consumer the relevant tariff should be applied. If only execution of agreement is consider as tools for application of tariff there should be no case change of tariff and recovery of tariff difference. Hence Forum could not incline upon this statement of Utility.

Forum also observed that as stated in the submission of utility that CE commercial letter no. PR-3/ Tariff/ 43619/ dt. 16/12/2008 restrained from sanctioning any additional load in mixed load premises and insisted to

release new connection in the mixed load premise with the relevant category with the effect from 01/06/2008. However utility had accorded a sanction with the commercial category for the total load on 17/07/2008, Forum does not understand that when the letter from commercial dep't is issued in Dec. 08 how can it relate with that the utility was restrained from release of additional load in the mixed load premises in month July 2008.

Forum also observed that the utility's circle office had constituted a joint committee for inspection and verification of the premises to clarify the fact, whether the consumer's load is of mixed category. The said committee submitted it's report which is on record which clearly says that there is a mixed load. In the same report it is recommended to provide a separate meter to record the commercial load and should be billed accordingly. But no cognizance was taken of their own committee's report to apply the correct tariff.

Moreover Forum also observed from the record produced by the Representative of consumer Applicant in this rejoinder on dt. 25/03/2010 which shows that the joint director of industries (BMR) have declare this consumer Applicant's unit as a small scale industrial unit vide his letter No. SSI-II/RGN/B-33/80/2010 dt. 23/02/2001. This shows that consumer is having this certificate before sanctioned of his load on commercial tariff.

From the above Forum concluded that Utility should have provided separate sub metering unit to the additional load of 77 KVA and billed it on commercial tariff

as directed in its own letter issued by the CE commercial vide PR-3/ Tariff/ 43619/ dt. 16/12/2008 and this should be done with the effect from release of additional load. In case sub meter is provided belated; the billing should be done on basis of proportionate use of relevant activity. Accordingly in this case billing should be done considering as 77 KVA CD for commercial purpose and 75 KVA contract demand for industrial purpose.

O R D E R

1) The Utility should revise the bill as narrated above in forgoing paragraphs of observation

The compliance should be reported within 30 days from the date of receipt of this order.

No orders as to cost.

Both the parties be informed accordingly.

The order is issued under the seal of consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup on 27th March 2010.

Note : 1) If Consumer is not satisfied with the decision, he may go in appeal 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 go in appeal before the Hon. High Court within 60 days from receipt of the order.

MRS. M.P. DATAR
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