



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph: – 2210707 & 2328283 Ext: - 122

Date of Grievance : 09/07/2012
Date of Order : 21/08/2012
Period taken : 42 days

ORDER IN THE MATTER OF GRIEVANCE NO.K/E/629/747 OF
2012-13 OF M/S. DAMSA VIDYUT APPLIANCES PVT. LTD.,
SHAHAPUR REGISTERED WITH CONSUMER GRIEVANCE
REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT
EXCESSIVE ENERGY BILL

M/s. Damsa Vidyut Appliances Pvt. Ltd.,
Plot No. E-1/1 to 5, Radheshyam
Industrial Complex, Vill. Asangaon,
Taluka Shahapur, Dist. Thane.

Here-in-after
referred
as Consumer

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Asst. Engineer,
Shahapur

Here-in-after
referred
as Licensee

(Per Shri. Sadashiv S. Deshmukh, Chairperson)

1. This Consumer Grievance Redressal Forum has been established under "Maharashtra Electricity Regulatory Commissioner (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievance of consumers. The regulation has been made by the Maharashtra Electricity Regulatory Commission vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003 (36 of 2003).

2. The consumer is a L. T. Industrial consumer of the licensee. The Consumer is billed as per industrial tariff. Consumer registered grievance with the forum on 09/07/2012 for Excessive Energy Bill.

The details are as follows -

Name of the consumer :- M/s. Damsa Vidyut Appliances Pvt. Ltd.,

Address : As given in the title

Consumer No : 0210118209561

Reason of dispute : Excessive Energy Bill

3. The set of papers containing above grievance was sent by forum vide letter No.EE/CGRF/Kalyan/0562 dated 09/07/2012 to Nodal Officer of licensee. The licensee filed reply vide letter No.SE/KC-II/Tech/3589 dated 31/07/2012 through Nodal Officer Kalyan Circle - II.

4. We the Members of the forum heard both sides in the meeting hall of the Forum's office on 01/08/2012 & 14/08/2012. Licensee is represented by Nodal Officer Shri.Giradkar, Shri. V. H. Kasal, Asstt. Engineer and for Consumer Shri. Rampratap Vishwanath Singh the proprietor.

5. This consumer is an industry engaged in manufacturing of transformers and having electric connection from 06/12/1998. The officers of licensee visited consumer's unit on 09/01/2012 and noted that in the said unit repairs of transformers are done. On its basis, letter was issued about said inspection to the concerned authority for raising a bill calculating the charges as per commercial tariff rather than industrial tariff. Accordingly, bill is issued on 31/03/2012 for Rs.5,94,900/- asking the consumer to pay it. For the said action, officers of licensee relied on the letter of Chief Engineer (Commercial) dated 09/02/2012 and even further bill for the period January 2010 to March 2012 is issued. However, for the bill dated 31/03/2012, consumer raised dispute by writing a letter on 05/04/2012 to Executive Engineer, Kalyan (R) with a copy to Supdt. Engineer, Chief Engineer and Asst. Engineer, Shahapur. Subsequently also letters are written disputing that aspect of change of tariff on 05/04/2012 & 18/05/2012.

6. Consumer after receiving the bill dated 31/03/2012 approached IGRC on 12/04/2012. The IGRC not passed any order, hence consumer approached this office Forum on 09/07/2012.

7. When this grievance is received, officers of licensee were made aware and according Nodal Officer submitted reply on 31/07/2012 and reiterated the stand with the support of letter dated 09/02/2012 of Chief Engineer (Commercial).

8. During the course of hearing, both sides made their respective submissions and they stuck up to their contentions. Consumer claimed that it is a unit engaged in manufacturing of transformers, no doubt, even repairs are done in the said unit, which is meager one considering the ratio of the work done therein. Accordingly, it is contended that when unit is an industry, manufacturing is done and only because some work of repairs is done, it will not covert the use as commercial.

On the other hand on behalf of licensee, it is contended that as per the letter of Chief Engineer (Commercial) dated 09/02/2012 said act is coming within commercial use and hence the action taken is correct.

At this stage, we find the sum and substance of the letter relied on by the officer of licensee is of utmost importance and relevant portion reads as under -

"In this action, this office received the reports from S.E. Bhandara and Nagpur Circles wherein it is informed that present tariff applicable to transformer repairs is industrial tariff (LT-V). However, during the inspection of the Repairing Transformers Units by Flying Squad, they stated as it is not industry and therefore assessment made as per LT-II (Commercial Tariff).

Similarly, representations from transformer repairers in Bhandara and Nagpur Circles were received to this office requesting not to charge commercial tariff as assessed by Flying Squad

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units during their inspection for the transformer
repairers and shall be considered their repair
units as industry.

All such facts were to be put up before the
recovery committee at H.O. on 29/12/2011.

The Recovery Committee at H.O. in its
meeting dated 29/12/2011 discussed the issue
and decided as under –

*'Considering the explanation given by
MERC in tariff order, the tariff made
applicable by Flying Squad to the
transformer repairers is correct and same
be uniformly applied to all such
consumers and assessment thereof shall
be recovered.'*

All Field Officers are therefore requested to take
note of the decision of the Recovery Committee
and take necessary action accordingly.....”

9. Accordingly, total thrust of the officers of licensee is based on this letter. Even said officer relied on the order of Ombudsman which is even relied by the consumer. The said order is on the Representation No.10 of 2010 dated 05/03/2010 in M/s. Envirocare Labs Pvt. Ltd. Vs. Maharashtra State Electricity Distribution Co. Ltd. In the said order, Hon'ble Ombudsman dealt the aspect pertaining to the appellant therein engaged in the Research & Development activity. It was a research development laboratory which District Industrial Center declared it as 'service enterprises' and on this basis it is treated that said appellant is not industry. Accordingly, the tariff applicable to LT-II (Commercial) is upheld and contention of appellant about applicability of tariff LT-V (Industrial) is not accepted. On this basis, it is contended that in respect of transformer repairs it cannot be an activity of

manufacturing as such and hence it will not be an industrial activity, but it will be an activity covering within four corners of commercial activity as per classification approved by MERC. However, Consumer claimed that this order speaks only in respect of commercial activity but consumer is having industry and partly of repairs.

10. Accordingly, a basic aspect is required to be considered whether consumer herein is totally a repairing unit or it is an industrial unit even engaged in manufacturing and repairing. Admittedly, as per the contention of both sides, consumer herein is engaged in manufacturing i.e. industry and even engaged in repairs. The consumer has enclosed with the details of its organization and registration certificate issued by District Industrial Center, Thane dated 03/03/2001 and in the said application, activity is stated as manufacturing of transformers and engineering. Accordingly, the status mentioned with the District Industrial Center is clear and it pertains to manufacturing of electric transformers, manufacturing of isolators, A.B. switches, Horn Gap Fuses. If once this aspect is considered, then it is clear that it is engaged in manufacturing activity. As admitted by consumer even repairs are done therein. It is not the contention of officers of licensee that during inspection on 09/01/2012 this unit was found 'only engaged in repairs'. Even it is not disputed that manufacturing is also done in the consumer's unit. Accordingly, undisputed position emerges that it is an industry set up for manufacturing of transformers, but even it is carrying out repairs of transformers.

11. On behalf of consumer, details are provided as to how the activity of repairs is done on the available machinery used for manufacturing. It is stated that there is no independent unit for repairs. It is contended that consumer being a small scale industry utilizes the machinery for manufacturing and at times same is used for repairs also. As consumer was required to demonstrate the activity and quantum of production therein, he placed on record an affidavit dated 14/08/2012 clarifying the ratio of manufacturing and repairing for the year 2010-11 as 97.18% and 2.82%, for the year 2009-10 as 95% and 5%. In addition, consumer has placed on record the necessary assessment for the year 2009-10 & 2010-11 towards sale of transformers manufactured and the assessment year 2009-10 and 2010-11 towards repairs of transformers. Accordingly, factual aspect is supported with this material. In addition, the details of audited accounts, are placed on record. There is nothing from licensee side to dispute this ratio of manufacturing and repairing. Accordingly, basing on the aforesaid aspect, it can be easily inferred that predominant aspect is of manufacturing which is on an average more than 95% and hardly 4% or 5% is of repairs during these three years.

12. Now question comes up whether the so called letter of Chief Engineer (Commercial) relied on by the officers of licensee can be made applicable to this case. In this regard, the order of CGRF Nagpur Urban in case No.025 of 2012 dated 02/05/2012 **M/s. Hindustan Transformers Vs. Nodal Officer, Nagpur** is available on record wherein CGRF on the basis of record concluded

that applicant therein was only doing the repair work of transformers and there was no manufacturing work at all and on that basis claim of licensee in the said matter was upheld. Now said aspect is not applicable to present matter as it is not the contention of the licensee that consumer is doing exclusively the work of repairs. No doubt aforesaid matter is pending before Ombudsman (Nagpur) in representation.

13. In addition, on behalf of consumer, reliance is placed on the order of Ombudsman (Mumbai) in Representation No.10 of 2010 dated 05/03/2010 referred above. He more particularly relied on para Nos.22, 23 and 27 wherein the definition of 'manufacture' from Consumer Protection Act, 1986 is considered. On this basis, it is claimed that when manufacturing activity is very well available in the consumer's unit, it cannot be ignored. At this stage, for ready reference, those paragraphs are reproduced as under -

"22. Now, as explained earlier, although the word 'industry' has not been specifically defined under the Electricity Act, 2003, the word 'manufacturer' has been defined in the Consumer Protection Act, 1986 as under -

*'CHAPTER I
PRELIMINARY
2. Definitions -.....*

-
(j) 'manufacturer' means a person who -
(i) makes or manufactures any goods or part thereof; as
(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or
(iii) puts or causes to be put his own mark on any goods made or*

*manufactured by any other
manufacture*

.....
.....

23. It is clear from the above definition that to qualify as manufacturer, one should make or manufacture goods or assemble parts thereof. Broadly, the term 'industry' has to be understood in the light of the Commission's clarification given above as such activities which entail manufacture". The word 'manufacture' is to be understood in its normal sense and in the light of the definition extracted from the Consumer Protection Act, 1986. It should also be understood that provisions of the Consumer Protection Act, 1986, do have an overriding effect, over the provisions of the Electricity Act, 2003, in case of inconsistency in laws as stipulated in section 173 and 174 of the Electricity Act, 2003. Here, the Electricity Act, 2003, does not provide any definition of 'industry' or 'manufacture'. In such a situation, it will be fair and logical to adopt and follow the definition of the word 'manufacture' from the Consumer Protection Act, 1986. In the light of these elaborations, in order to qualify for industrial tariff, it is necessary that the consumer must broadly be classified as 'industry' who undertakes some manufacture. In the present case, the Appellant does not manufacture anything. Instead, by its own admission, it is engaged in providing testing / Laboratory services. Certificate from the Industries department also confirms this fact. It also mentioned Activity : Laboratory services namely Monitoring & analysis Research and development. The Appellant provided few documents on record such as MPCB clearance certificate, occupancy of the premises in the MIDC industrial area, etc. However, these documents are neither relevant nor useful to categorize consumer for the purpose of electricity tariff. It is the provision of approved tariff and clarifications

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provided by the Commission in this behalf which
alone, are useful in deciding the tariff category.

24. The Appellant took exception to the observation made by the Forum that it is having R & D Laboratory and tariff category for R& D Laboratory is not specifically defined or covered in the tariff and therefore the Forum has no other alternative but to reject its prayer to bill it on industrial category. The Appellant has also objected to Respondent's submission that the Consumer is billed as per LT II tariff due to his R & D activity on the basis of information obtained by questioning some worker during its site inspection. It is on record that the "ENTERPENEURS MEMORANDUM ACKNOWLEDGEMENT", issued by District industries center, Thane, on 7th June, 2007, states Activity as Laboratory service namely Monitoring & Analysis Research and Development. Assuming without holding that the Appellant is not having any R & D activity now, Appellant's objection to the observation made by the Forum and submission made by the Respondent does not come to its rescue, as the Appellant does not qualify for industrial tariff since it does not manufacture any goods or products..

25....

26....

27. As explained above, the Appellant does not fall in the LT V: LT-Industrial category for the reasons elaborated above. As such, it logically falls in the LT II: LT - Non Domestic tariff category. The Respondent has accordingly categorized the Appellant as LT II: LT-Non Domestic category as stipulated in the tariff effective from 1st June, 2008, and LT II : LT - Non Residential or Commercial category from 1st August, 2009. In fact, such classification could have been done with effect from 1st June, 2008 while the Respondent did this with effect from February, 2009. This does not, however, now

entitle the Respondent to go for retrospective effect. In the result, it has to be concluded that the Appellant has not been able to make out any case to claim the tariff under LT – Industrial category. The representation deserves to fail and is, therefore, rejected on the above grounds.”

14. Further reference is made by the consumer to the order passed by the appellate authority under the Electricity Act while dealing appeal u/s.127 in Appeal Case No.13 of 2011-12 **Nathuram Balaram Tatkare Vs. Deputy Executive Engineer, Flying Squad, Vashi** dated 24/01/2012. He submitted, predominant use is also required to be considered. In the said matter, appellate authority relying on the letter of licensee i.e Chief Engineer’s (Commercial), Mumbai bearing No.PR-3/Tariff-24637 dated 05/08/2011, observed that predominant purpose is required to be considered. Accordingly, on behalf of consumer, it is contended that predominant aspect in the consumer’s unit is of manufacturing.

15. On the basis of aforesaid factual aspects and legal position considered by the Hon’ble Ombudsman, even by appellate authority u/s.127 of the Electricity Act is clear. Consumer herein is not engaged in doing repair work exclusively in the unit. The said work is hardly less than 10%, which is supported with audited accounts, bills, etc. hence statement on affidavit. When there is no contention in the inspection report of the officer of licensee about exclusive repair activity, it cannot be imported into and hence the letter of Chief Engineer (Commercial) dated 09/02/2012 relied on will not be applicable. Hence considering the aforesaid legal position the tariff rate made applicable treating it as commercial is

not proper. Predominant use is of industrial purpose and we are clear about the factual aspect that repairing activity exclusively may not require a machinery which is useful for manufacturing probably. Manufacturing unit may repair the transformers, but repairing unit may not be able to manufacture the transformers. Accordingly, we find, the action of officers of licensee taken on the basis of inspection dated 09/01/2012 issuing bill on 31/01/2012 charging at commercial rate is not legal and proper. Subsequent bills issued treating it as commercial use is not proper. In result, this grievance is to be allowed.

Hence, the order –

ORDER

Grievance of consumer is upheld. Bill issued by the officers of licensee dated 31/03/2012 treating the use as commercial found not legal and proper. It is set aside. Continuation of such classification for further month by issuing bills to that effect found not legal and proper. Accordingly, bills issued on 31/03/2012 and till to this date treating use as commercial are set aside. Officers of licensee are directed to issue corrected bills treating the use as industry charging accordingly and if any charges found paid by the consumer more than industrial tariff be adjusted in further bills.

(Mrs.S. A. Jamdar) (R. V. Shivdas) (Sadashiv S. Deshmukh)
Member Member, Chairperson,
C.G.R.F. Kalyan C.G.R.F. Kalyan C.G.R.F. Kalyan