

**Maharashtra State Electricity Distribution Co. Ltd.'s  
Consumer Grievance Redressal Forum  
Nagpur Urban Zone, Nagpur**

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**Case No. CGRF(NUZ)/52/2012**

Applicant : M/s. MPM Pvt.Ltd,  
M-22, MIDC, Hingna Road,  
Nagpur – 16.

Non–applicant : Nodal Officer,  
The Superintending Engineer,  
MSEDCL,  
NUC, Nagpur.

Quorum Present : 1) Shri. Shivajirao S. Patil  
Chairman,  
  
2) Adv. Smt. Gouri Chandrayan,  
Member,  
  
3) Smt. Kavita K. Gharat  
Member Secretary.

**ORDER PASSED ON 23.10.2012.**

1. The applicant filed present grievance application before this Forum on 1.9.2012 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

2. At the outset, it is essential to mention some of the initial stages of these proceedings. Initially applicant presented his Grievance application before this Forum on 8.5.2012. As per the documents on record this Forum prima-facie examined the grievance application before admission stage of the matter and

found that cause of action for this grievance application arose in the year 2000 and therefore as per opinion of this Forum **“Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause has arisen”**. Therefore simple letter dated 8.5.2012 was issued to the applicant by office of this Forum that Grievance application is time barred and can not be admitted in the Forum. It is a part of record that this simple letter issued by the office of this Forum Dt. 8.5.2012 was challenged by the applicant before Hon’ble Electricity Ombudsman Nagpur in representation No.41/2012 which was decided on 27.8.2012. In the said order Hon’ble Electricity Ombudsman Nagpur held that cause of action about applicability of tariff category is continuing cause of action which can be challenged at any time, in the present case, appellant challenged the applicability of commercial tariff after the tariff order of MERC Dt. 12.9.2010 and hence it can not be said that grievance is barred by limitation. With this observations, Hon’ble Electricity Ombudsman Nagpur allowed the representation of the applicant partly, quashed and set aside the said communication Dt. 8.5.2012 by the forum to the appellant and the matter is remanded back to Forum with the directions to decide it on merits according to the rules and regulations applicable. The said order of Electricity Ombudsman received in this Forum on 1.9.2012 and therefore grievance application is deemed to be presented before this Forum on 1.9.2012.

3. The applicant's case in brief is that in the office premises in the factory of the applicant, M.S.E.D.C.L. charged commercial rate since long. In the tariff order of MERC for the year 2009-10, it has been clarified that office of industries should not be levied commercial tariff. In Case No. 128 / 10, Electricity Ombudsman has elaborated that in none of its tariff orders, M.E.R.C. has permitted recovery of electricity use for office of an industry on commercial rate. Therefore industrial tariff is applicable to the applicant and not commercial tariff. Being industrial consumer there is exemption from payment of electricity duty as per Government orders. But electricity duty is applicable on commercial tariff. Therefore as M.S.E.D.C.L. is applying commercial tariff to the office along with commercial tariff, electricity duty has also been recovered from the applicant. Therefore applicant claimed that industrial tariff should be applied to the office premises situated in the factory and also claimed refund of electricity duty amounting to Rs. 860912/-.

4. The Non-applicant denied the applicant's case by filing written submission Dt. 9.10.2012. It is submitted that energy consumed by this office is being rightly charged as per HT-II commercial tariff as per MERC order in case No. 111/09.

5. In the above it has been clearly stated that the electrical power used for ancillary activities like Canteen, Recreation room for staff, Gymnasium, time office, Guest House for visiting officers, should be charged as per Industrial tariff as factory can not function in absence of such ancillary activities. But

it is to state that load for which the consumer is being charged with the commercial tariff does not include any of the above ancillary activities. It is to note that MERC have mentioned “**TIME OFFICE**” in the ancillary activities. The time office in the industry is a small office where the record of attendance and time of entry and exist of the workers working in the industry is maintained. The papers showing the meaning and functions of Time Office downloaded from internet is enclosed as Annexure II for easy reference.

6. It is further submitted by M.S.E.D.C.L. that at Plot No. M-22 Hingna Road Nagpur M/s. MPM Pvt. Ltd. maintains full fledged office with 34 kW load in the factory premises from where all the commercial activities of the industry like marketing, sale of produced goods, accounting activities etc. are controlled. It is to note that this is the only office of M/s. MPM Pvt. Ltd. in the City. This can be confirmed from the letter head of MPM Pvt. Ltd. The office is well equipped with nearly 25 computers and 11 Air Conditioners to facilitate the employees working in the office. Such office can not be termed as time office included in the ancillary activities mentioned by MERC but is commercial load of industrial consumer. Had this office been situated at any premises other than Plot No. M-22, MIDC, a separate C.T. meter supply would have to be availed by the consumer with L.T. commercial tariff and consuming nearly 8000 units per month.

7. In the same order, MERC have specified that commercial load of industrial consumers or educational institutions

taking supply at HT voltage with separate sub meters, HT-II CL category tariff will be applicable, irrespective of whether metering is at H.T. side or L.T. side of the transformer. Accordingly M.S.E.D.C.L. office is correctly billing the applicant as per MERC orders issued from time to time. Therefore there is no question of charging commercial load in the industrial premises as per industrial tariff.

8. Applicant also applied for refund of excess bill raised by M.S.E.D.C.L. by charging office consumption as per commercial rate since January 2002. In this matter, it is submitted that consumer was rightly charged since the date of connection and therefore there is no question of any refund. Claim of recovery since the year 2002 is barred by the limitation according to section 56 (2) of Electricity Act 2003. The applicant is also claiming recovery of electricity duty on the ground that electricity duty is exempted in the industrial tariff. However, commercial tariff is applicable and there is no exemption of electricity duty in commercial tariff and therefore the applicant is not entitled for any refund. The applicant is giving reference of order passed by Electricity Ombudsman Mumbai Dt. 5.10.2010 in case No. 128/10 but facts of that case are far away from the facts of the present case. Case No. 128/10 which is in context, Maharashtra Metal Powder at Bhandara, Sub-meter connected recording the reading of canteen and small administrative office of the industry, which was included in the ancillary activities mentioned by MERC and hence electricity Ombudsman ordered to change the consumption of the canteen and small administrative office as per industrial tariff.

But taking the advantage of the said order, the applicant can not demand to change the full fledged commercial office at M-22 MIDC Hingna Road Nagpur by industrial tariff, on the grounds that it is situated in the premises where the industry is running. This will be injustice. Industries who are running their commercial activities from other offices situated in other premises that are being charged with commercial tariff. It can be clearly seen that applicant consumer is misleading this Forum by misinterpreting the wordings of MERC orders and taking chance to reduce the electricity bill. The consumer is being billed appropriately as per MERC orders and hence there is no question of bill revision or any refund to the consumer. The application may be dismissed.

9. Forum heard arguments of Mr. Khandekar, the representative of the applicant so also heard the arguments of Mr. Reshme, Superintending Engineer, NUC, Nagpur for Non applicant. Forum perused the entire record.

10. M.S.E.D.C.L. had produced PROFORMA – B – DETAIL INSPECTION REPORT OF H.T. CONSUMER PREMISES Dt. 13.4.2009 which is marked as Annexure 'A' and filed along with reply of M.S.E.D.C.L. As per this inspection report, office of the applicant is situated on same Plot No. M-22, MIDC Hingna Road Nagpur. As per this report in this commercial office of the applicant, there are 75 lights, 22 fans, 11 A.Cs., 1 Fridge, 1 Water cooler and other electrical equipments. Evidence on record shows that applicant is maintaining full fledged office with 34 kW load in the factory premises from where all commercial activities of the

industry like marketing, sale of produced goods, accounting activities etc. are going on and controlled. It is note worthy that from the letter head of the applicant it is clear that this is the only office of M/s. MPM Pvt. Ltd. in the City and there is no office of the applicant at Nagpur. In our considered opinion such office can not be termed as "Time Office" included in the ancillary activities mentioned by MERC but it is the commercial load of industrial consumer. Had this office been situated in other premises than Plot No. M-22, MIDC Nagpur separate C.T. metered supply would have been availed by the consumer with L.T. COMMERCIAL TARIFF and consuming nearly 8000 units per month.

11. In case No. 111/09 Dt. 12.9.2010 on Page No. 216 of 269, Hon'ble M.E.R.C. held as under :-

"Similarly, for commercial load of industrial consumers or educational institutions taking supply at H.T. voltage with separate sub-meter, the HT II Commercial category tariff will be applicable irrespective of whether metering is at HT side or LT side of the transformer".

12. Therefore relying on cited authority we hold that commercial tariff is applicable to this commercial office of the applicant. In our opinion present grievance application is nothing but misinterpretation of decision in case No. 116/09 by M.E.R.C. It appears that applicant is intending to mislead the Forum with sole intention to minimize the consumption illegally in legal tariff. Therefore under no stretch of imagination industrial tariff can be

applied to commercial office of the applicant on sole ground that office is situated in the same premises.

13. Consumer is relying on the order passed by Electricity Ombudsman Mumbai in case No. 128/10 Dt. 5.10.2010. However, in our opinion facts of that case are totally different and distinguishable from the facts of the present case. As per the facts of Case No. 128/10 it is in context to the Maharashtra Metal at Bhandara, Sub meter connected recorded reading of the canteen and small administrative office of the industry which was included in ancillary activities mentioned by M.E.R.C. and therefore it was ordered to change the consumption of the canteen and small administrative office as per industrial tariff. However, as per facts of the case in hand office of the applicant is not "Time Office" or small office but is full fledged office with 34 kW load in the factory premises from where all the commercial activities of the industry like marketing, sale of produced goods, accounting activities etc. are controlled. Office is well equipped with about 25 computers and 11 A.Cs. Such office can not be termed as time office within the meaning of order of M.E.R.C. and therefore commercial tariff is applicable. Hence as the facts of the present case are different and distinguishable therefore said order of electricity Ombudsman Mumbai Dt. 5.10.2010 in case No. 128/10 is not applicable to the case in hand.

14. Furthermore, the applicant is challenging the applicability of commercial tariff after the tariff order of MERC Dt. 12.9.2010 and applicant claimed refund of excess bill raised by



MSEDCL by charging the office consumption as per commercial tariff since January 2002. It is note worthy that order of MERC Dt. 12.9.2010 has no retrospective effect and it has only prospective effect. Therefore even if, for the sake of argument, it is presumed that order of MERC Dt. 12.9.2010 is applicable, even though it can be applicable on or after 12.9.2010 and one can not go back up to the year 2002, because this MERC order Dt. 12.9.2010 has definitely no retrospective effect. Hence the entire imagination of the applicant is misconceived and illegal. Therefore applicant can not claim refund of excess bill raised by MSEDCL by charging office consumption as per commercial rate since January 2002 on the basis of MERC order Dt. 12.9.2010. One can not go 8 years back to MERC order Dt. 12.9.2010 claiming any refund as it has no retrospective effect.

15. For these reasons, in our opinion commercial tariff is applicable to this commercial office of the applicant and there is no need to change the tariff.

16. Applicant claimed refund of excess bill raised by M.S.E.D.C.L. by charging the office consumption as per commercial rate since January 2002. As we have already pointed out, M.S.E.D.C.L. has rightly charged since the date of connection and therefore there is no question of any refund. So far as claiming refund of recovery since the year 2002 is concerned, according to MSEDCL, it is barred by time according to Section 56 (2) of Electricity Act 2003.

17. However, in representation No. 41/12 Hon'ble Electricity Ombudsman Nagpur decided on 27.8.2012 held as under :-

*“It may be noted that the cause of action about applicability of a tariff category is a continuing cause of action which can be challenged at any time. In the present case, the appellant challenged the applicability of commercial tariff after the tariff order of MERC dated 12.9.2010. Hence, it can not be said that the Grievance is barred by limitation”.*

18. Therefore the point of limitation is already decided by Hon'ble Electricity Ombudsman and hence this Forum has no voice on this point.

19. Needless to say that if industrial tariff applies then only there can be exemption in electricity duty but if commercial tariff is applicable there can not be exemption in electricity duty. For the reasons discussed above, in our opinion, commercial tariff is applicable and therefore there is no question of any exemption of any electricity duty to the applicant. As commercial tariff is applicable, it is bounden duty of the applicant to pay electricity duty. Therefore applicant is not entitled for any refund either in difference of tariff or any refund of electricity duty etc.

20. For these reasons we find no substance and no merits in this case and grievance application of the applicant deserves to be dismissed.

21. Resultantly, Forum proceeds to pass the following order :-

ORDER

1. The Grievance application is dismissed.

Sd/-	Sd/-	Sd/-
(Smt.K.K.Gharat)	(Adv.Smt.GauriChandrayan)	(ShriShivajirao S.Patil)
MEMBER	MEMBER	CHAIRMAN
SECRETARY		