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

Case No. CGRF(NUZ)/95/2012

Applicant : Maharashtra Industries Association,
Test Lab & Research Center,
At Plot No. P-26, MIDC,
NAGPUR : 440 028.

Non–applicant : Nodal Officer,
The Executive Engineer,
(O&M) Dn. M.I.D.C. Dn.,
M.S.E.D.C.L., 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 DT. 25.10.2012

1. The applicant filed present Grievance application on Dt. 10.9.2012 under regulation 6.4 of the MERC (CGRF & Ombudsman) Regulations 2006 (hereinafter referred to as the Regulations).

2. The applicant's case in brief is that the applicant is receiving the bills with Industrial Tariff from the date of connection. However, on 3.10.2011, there was inspection of Dy.

Executive Engineer, Flying Squad and in that inspection, following irregularities were pointed out namely –

A) Service connection is in industrial tariff and supply is authorized for industrial manufacturing purpose only.

B) Supply is used for testing laboratory R & D laboratory i.e. for non industrial (Non manufacturing) purpose.

C) As per tariff order of Chief Engineer (Com.) Circular, the tariff for R & D laboratory and testing laboratory is commercial and hence tariff shall be changed. In inspection report of Flying Squad, following remedial action is proposed –

a) Change the tariff L.T. V to L.T. – II 20-50 kW.

b) Recover the tariff difference for past period.

On the basis of this action, provisional bill for tariff difference of Rs. 132900/- is issued to the applicant. It is further submitted by the applicant that testing of products, manufactured by M.I.A's members industries is a part and parcel of manufacturing activities and therefore testing of products can not be termed as commercial activities but it is manufacturing activities only. Hence applicant claimed following reliefs namely –

I) Retain the Industrial tariff.

II) Refund the amount of Rs. 132900/- with 18 % interest.

3. Non applicant denied the case of the applicant by filing reply dated 1.10.2012. It is submitted that Dy. Executive Engineer, Flying Squad has inspected the said premises on

3.10.2011 and found that electricity supply was used for testing laboratory and R & D laboratory i.e. for non industrial purpose. As per MERC order No. 116/08, tariff applicability for industry was for industries only where manufacturing activities are going on. As such, Dy. Executive Engineer, Flying Squad has changed the category to be charged from Industrial LT – V to LT-II (Non domestic) as electrical supply is used for commercial purpose and not for manufacturing purpose. Hon'ble Electricity Ombudsman, Mumbai in representation No. 5/11 decided on 15.3.2011 in the matter of Automotive Research Association of India Vs. M.S.E.D.C.L. clearly upheld the tariff applicability of L.T.-II (CL) for testing laboratory and R & D. Mere registration as Small Scale Industry can not ipsofacto fall into categorization of the unit in question to industrial tariff. It is even not the case of the applicant that unit in question was engaged in manufacturing or production of goods but according to the applicant they are doing the work of testing of products only. Therefore the action proposed by the Flying Squad that category should be changed from L.T. V to L.T.-II is correct and legal and therefore recovery of past period assessment is correct action on the basis of MERC order as there is no manufacturing activities in process. Therefore industrial tariff can not be applied as per Hon'ble MERC order in the case no. 116/08.

4. M.S.E.D.C.L. office has raised the assessment bill for Rs. 132900/- and said amount is paid by the consumer under protest on 17.12.2011. Therefore grievance application may be dismissed.

5. Forum heard arguments of both the sides and perused the record.

6. We have carefully perused spot inspection report of Flying Squad Nagpur Dt. 3.10.2011. It is noteworthy that this report is duly signed by the consumer / representative of the consumer below the endorsement in column No. 20 of the report that "The above mentioned details and irregularities pointed out have been checked in my presence and I agree with the same". Therefore this inspection is not arbitrary or exparte but it is duly signed by the applicant.

7. It is noteworthy that it is even not the case of the applicant in his application itself that applicant is doing manufacturing work or production work of any articles. Simply according to the applicant testing of products is a part and parcel of manufacturing activities. There is nothing on record to show that applicant is doing any manufacturing work or production work. In our opinion simply testing of products already manufactured by members of M.I.A. industries can not be treated as part and parcel of manufacturing activities.

8. It is pertinent to note that electric supply was used by the applicant for testing laboratory and R & D laboratory. It is also pertinent to note that similar & identical matter is decided by Hon'ble Electricity Ombudsman Mumbai in representation No. 5/11 decided on 15.3.2011 in the matter of

Automotive Research Association of India Vs. M.S.E.D.C.L. As per facts of that decided matter appellant was R & D Division, Certification Division, Testing Division, Service Division and Management Support Division. Therefore facts of the present case and facts of the matter in representation No. 5/11 are similar & identical and therefore said authority is applicable to the case in hand squarely.

9. In representation no. 5/2011 before Hon. Electricity Ombudsman Mumbai in the matter of the Automotive Research Association of India Vs. MSEDCL decided on 15.03.2011 it is held that as under. ….

> *"Now in order to appreciate the Appellant's argument, it will be necessary to understand as to which category of consumers can be considered as industrial. Documents and submissions made by the Appellant undisputedly show that it is a Research and Development Association. The Appellant has also not claiming that it is doing mass production of items and sells them. Instead, the Appellant carries out R & D, testing, certification, service and management support and makes prototypes which in turn, is used by Automotive manufactures for mass production and sale. The Appellant, therefore, cannot logically claim that it manufactures the products. The word "manufacture" as is defined in the Oxford dictionary means "make something on a large scale using machinery, making of goods on a large scale using machinery". The Appellant has not produced anything to show that it has a*

license to manufacture and sell the products. Therefore, it is difficult to accept the contention that it should be classified as an activity to get the HT Industrial tariff. The Commission has also clarified that the 'Commercial' category actually refers all categories using electricity for non industrial purpose or which have not been classified under any other specific category."

10. As we have already pointed out, facts of the present case and facts of representation No. 5/11 decided by Electricity Ombudsman, Mumbai are similar and identical. Therefore said authority / order is applicable to the case in hand. Relying on all these authorities Forum holds that applicant is using the electrical supply for testing laboratory and R & D laboratory and therefore it is not industrial work or production work and therefore industrial tariff is not applicable but commercial tariff is applicable. Therefore Flying Squad unit had rightly held that commercial tariff is applicable to the unit of the applicant.

11. It is a matter on record that date of inspection of flying squad is 8.10.2011. Record shows that assessment is revised w.e.f. August 2009 amounting to Rs. 132900/-. According to limitation Act, there can be recovery within a period of 3 years and hence so far as recovery is concerned, according to limitation act there is 3 years limitation and hence

assessment w.e.f. August 2009 amounting to Rs. 132900/- is correct and legal.

12) According to the applicant he is placing his reliance on order of MERC Dt. 11.2.2003 in case No. 24/01 in the matter of M.S.E.B. tariff rate applicable to Street Lights Services in Murbagh and additional Murbagh Industrial Area and differential tariff recovery through supplementary bills raised by M.S.E.B. On the basis of this M.E.R.C. order, it is the contention of the applicant that no retrospective recovery of the arrears can be allowed on the basis of any abrupt reclassification of the consumer and such recovery should be prospective only. However, in our opinion facts of the present case are totally and different and distinguishable from the facts of the said MERC case No. 24/2001. MERC case No. 24/2001 is the case of the year 2001. As per the facts of the present case, it is absolutely not a matter of abrupt reclassification of the consumer. On the contrary as per the facts of the case in hand, though the applicant was not doing manufacturing or production work since beginning , filed an application for industrial tariff and thereby misled officers of M.S.E.D.C.L. Under the garb of SSI certificate applicant applied for electrical connection and after the connection was released for industrial tariff applicant started to use it only for testing purpose i.e. commercial purpose. In fact, the applicant should be thankful to M.S.E.D.C.L. and flying squad unit that they have not applied Section 126 of Electricity Act 2003 and specific note is mentioned in letter of Dy. Executive Engineer, Flying Squad

bearing No. Dy.EE/FS/Nag/482 Dt. 8.11.2011 that assessment is not according to Section 126 of Electricity Act 2003. In fact it is a case of correct classification of commercial tariff since beginning and it is not a case of abrupt reclassification of the consumer. Therefore facts of the present case are totally different and distinguishable and hence order of MERC Dt. 11.2.2003 in case No. 24/01 are not applicable to the case in hand.

13) M.E.R.C. case No. 24/2001 is the case of the year 2001. However, MERC case No. 116/2008 is the case of the year 2008. As per directions of MERC in Case No. 116/2008 tariff order is applicable from August 2009. Therefore this subsequent order of MERC in Case No. 116/2008 shall prevail and applicable.

14) Applicant also relied on representation No. 14/12 Dt. 1.6.2012 before Hon'ble Electricity Ombudsman Nagpur. However, as per the facts of that matter also it was the case of abrupt reclassification of consumer. However, present case is not the case of abrupt reclassification of consumer and therefore as the facts of the present case are different and distinguishable, order by Electricity Ombudsman, Nagpur in representation No. 14/12 Dt. 1.6.2012 is not applicable to the case in hand.

15) On the contrary, facts of representation No. 5/11 decided by Hon'ble Electricity Ombudsman, Mumbai

decided on 15.3.2011 in the matter of automotive research association of India Vs. M.S.E.E.D.C.L. and facts of the present case are similar and identical and therefore relying on the said authority we hold that difference of tariff can be recovered w.e.f. August 2009 amounting to Rs. 132900/-. Furthermore, in Case No. 116/08 decided by Hon'ble MERC, it is clarified in its tariff order applicable from **August 2009**. Therefore this tariff order of MERC in case No. 116/08 is specifically applicable from August 2009 and hence assessment being difference of tariff w.e.f. August 2009 amounting to Rs. 132900/- is perfectly legal and valid.

16) For these reasons, in our opinion, assessment w.e.f. August 2009 amounting to Rs. 132900/- is perfectly correct and legal and needs no interference.

17) For these reasons, Forum finds no substance and no merits in this matter and grievance application deserves to be dismissed.

18) Hence Forum proceeds to pass the following order :-

ORDER

1. Grievance application is dismissed.

Sd/- Sd/- Sd/-

(Smt.K.K.Gharat) (Adv.Smt.GauriChandrayan) (ShriShivajirao S.Patil)

MEMBER MEMBER CHAIRMAN SECRETARY