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

Case No. CGRF(NUZ)/06/2012

Applicant : M/s. N.S. Motors
C-7, MIDC Hingna Industrial Area,
NAGPUR.

Non–applicant : Nodal Officer,
The Executive Engineer
MIDC Division, MSEDCL,
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 28.02.2012.

1) The applicant filed this grievance application on 12.01.2012 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

2) The applicant's case in brief is that, the applicant is running a Unit named as M/s. N.S. Motors, MIDC NAGPUR for fabrication, bodybuilding of vehicle, service centre, Sales division of TATA Motors. The applicant has two electric connections in their premises namely 1)

Consumer no. 419993233294 with tariff LT- V (industrial) since date of connection dated 06.01.2006 having a sanctioned load 45 HP for fabrication w/s. 2) Consumer no. 410017252180 with LT-II commercial tariff having sanctioned load 5 kw for sales division.

3) On dated 10.11.2009 Dy. E.E. MIDC had issued provisional bill amounting to Rs.1,02,750/- under section 126 of Electricity Act, 2003 for connection no. 419993233294 for change of category from industrial to commercial, assessed consumption for 12 months for 30399 units. Dy. E.E. MIDC has penalized applicant by imposing the tariff difference at double tariff rate. They have not issued any final bill in this assessment as provided under section 126. Applicant paid this bill under protest vide challan no. 694685 for Rs.1,02,750/-. This change of tariff is not acceptable to applicant because unit of the applicant is registered as SSI unit with District Industries Centre Nagpur. Nature and manufacturing is mentioned as repairing and fabrications on page no. 3 coloum no. 12 (a) of SSI certificate. Fabrication activity is a manufacturing activity. Therefore consumer no. 419993233294 is for industrial purposes. Therefore industrial tariff is applicable.

4) On 16.09.2011 Unit of the applicant was again inspection by Dy. EE Flying Squad Nagpur and has again issued a bill of Rs.1,66,771/- for tariff difference. The applicant lodged protest against this bill to Dy. EE Flying Squad on

24.12.2011 but no relief is given to the applicant. On the contrary Executive Engineer MIDC Division has issued a disconnection notice to the applicant without any date. Therefore applicant filed present grievance application and claim following relief namely.

a) Retain the industry LT-V tariff to connection no. 419992333294.
b) Set-aside the assessment of Rs.1,66,771/-.
c) Refund amount of Rs.1,02,750/- as wrongly assessed alongwith interest.
d) Restrain MSEDCL from disconnection till finalization of the matter.

5) The non-applicant MSEDCL denied the case of the applicant by filing reply on dated 03.01.2012. It is disputed that unit of the applicant is registered under DIC. It is disputed that the applicant is doing industrial work. It is submitted that during the inspection of Unit of the applicant, it is observed that supply is authorized for industrial purposes, billed as per industrial tariff LT-V but the supply is used predominantly for repairing and washing of vehicle and not for manufacturing. There is no activity of manufacturing. Hence according to the MERC tariff order in case no. 116/2008 decided on 17.08.2009 and its tariff determination philosophy, as there is no manufacturing activity, and supply is used is repairing purpose, it is proposed to bill as per LT-II (commercial)

tariff. Accordingly provisional bill for Rs.1,66,771/- (revised w.e.f. August 2009) is issued to the applicant.

6) Hon. MERC has classified in its tariff order in the case no. 116/2008 applicable from August 2009 that broadly the categorization of industry is applicable to such activity, **which entails manufacturer**. Further in its order dated 30.12.2009 (case no. 111/2009), the Commission has clarified that commercial category actual refers to all categories which has not been classified into any specific category. Similar view is taken by Hon. Electricity Ombudsman in case representation no. 10 / 2010 and 140 / 2009.

7) It is denied that inspection was carried out behind the back of applicant. On the contrary the inspection was taken in presence of the applicant / representative and signed by him, for the correctness that "the above mentioned details irregularities pointed out have been checked in my presence and he agreed with the same".

8) The premises of the consumer were inspected by Dy. E.E. S/Dn., - I on 10.11.2009 and charged assessment as per Section 126 of Electricity Act 2003 for Rs.1,02,750/- for the period 10.11.2008 to 10.11.2009 for commercial use on the said meter. The Dy. E.E. S/Dn-I MIDC had sanctioned single phase meter for commercial purpose as per guidelines of Corporate Office that separate meter should

be provided for different use in same premises. The said meter was connected on 06.05.2010. However, there is no manufacturing activities in the same premises. Therefore Dy.E.E. Flying Squad has charged LT-II tariff.

9) Explanation of "Industries" tariff category is also exhaustively given in the tariff order of Hon. Commission issued on 17.08.2009 in case no. 116/2008. No specific definition of different type of consumers are provided in the Electricity Act 2003 or in the order passed by the Commission. It is held by Hon. Supreme Court in the Civil appeal no. 1065/2000 that whether there is no specific definition given in the Act, therefore the expressions are to be given the common parlance meaning and must be understood in their natural, ordinary and popular sense. The Hon. Appellate Tribunal of Electricity (ATE) in appeal no. 116/2006, decided on 04.10.2007 held that, "It will not be correct to borrow the definition of "Industry" from 'other statutes' for the purpose of holding that the appellant ought to be billed as per Industrial Tariff. In Union of India Vs. Shri R.C. Jain (AIR 1981 SC 951), the Hon. Supreme Court refused to borrow the meaning of the words 'local fund' as defined in the General Clauses Act on the ground that it is not a sound rule of interpretation to seek the meaning of the words used in an Act, in the definition clause of 'other statutes'. In this regard it was held that definition of an expression in one Statute must not be imported into another."

10) In respect of representation no. 140/2009 decided on 02.02.2010. Hon. Electricity Ombudsman has rightly observed that the word 'Industry' is not specifically defined in the tariff order. Therefore it has to be understood in its natural, ordinary and popular sense, meaning thereby the industry should have some manufacturing activities, mass production of items and sells.

11) In respect of representation No. 05 of 2011 decided on 15.03.2011, the Hon. Electricity Ombudsman has rightly observed that, "Relying upon the judgment of Appellate Tribunal for Electricity (ATE) in appeal No. 116 of 2006, decided on 04.10.2007, the forum held that though the activity of the Appellant is industry under the definition given in the Factories Act, 1946, it will not be correct to borrow the definition from other statutes for the purpose of billing it at industrial tariff, determined by the Commission under the Electricity Act, 2003."

12) At the time of inspection and further applicant cannot produce anything to show that the applicant has license to manufacture and sale the manufacturing products. Therefore the applicant cannot logically claim that the applicant is a manufacture and doing the products.

13) It is also clarified in the tariff order that commercial category actual refers to all category using electricity for non-residential, non-industrial purpose or category, which has not been classified into any specific category.

In view of above as there is no manufacturing or production in the Unit of the applicant, therefore Commercial tariff is applicable. Application deserves to be dismissed.

Forum heard argument from the both the side at length and perused the entire record.

14) Following important points arose for determination of this Forum, namely ---

a) Whether this Forum has jurisdiction to entertain this grievance application.
b) Which tariff is applicable to connection of the applicant having consumer no. 419992333294.
c) Whether bill of Rs.1,66,771/- can be set aside and cancel.
d) Whether applicant is entitle for refund of Rs.1,02,750/- alongwith interest.
e) So far as jurisdiction of this Forum is concerned.

15) So far as jurisdiction of this Forum is concerned in the grievance application, applicant specifically mentioned that on date 10.11.2009 Dy. E.E. MIDC had issued a

provisional bill amounting to Rs.1,02,750/- under section 126 of Electricity Act, 2003 for connection no. 419992333294 for change of category from industrial to commercial. It is further mentioned by the applicant in his application that applicant paid this bill under protest vide challan no. 694685 for Rs.1,02,750/- and this change of tariff is not acceptable to the applicant. In prayer clause of grievance application in sub-para 2 of applicant,t claimed the relief of "refund of Rs. 1,02,750/- wrongly assessed alongwith interest."

16) Therefore as per admitted fact by the applicant in his application, so far as bill of Rs. 1,02,750/- is concerned, it is the action under Section 126 of Electricity Act, 2003. Applicant also produced copy of this provisional bill dated 21.11.2009 in which, it is specifically mentioned that "energy charges under Section 126 of Electricity Act, 2003"

17) According to Regulation 6.8 (a) of MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulation 2006, "If the Forum is prima-facie of the view that any grievance referred to it falls, within the purview un-authorized use of electricity as provided section 126 of the Act, same shall be excluded from the jurisdiction of the Forum. In this grievance application, applicant also claim relief about refund of Rs.1,02,750/- under section 126 of the Electricity Act 2003 and therefore this Forum has no jurisdiction to entertain this grievance.

18) Needless to say that so far as action under section 126 of the Electricity Act 2003 is concerned appeal is provided under section 127 of the Electricity Act 2003 to appellate authority. Therefore, Forum hold that, Forum has no jurisdiction to entertain the relief so far as refund of Rs.1,02,750/- is concerned.

19) So far applicability of tariff is concerned, according to the applicant, Unit of the applicant is registered with District Industries Centre Nagpur and has SSI certificate. However we find no force in this allegation of the applicant because name of the applicant is **"M/s. N.S. Motors**". However applicant produced SSI certificate issued by the District Industry Centre, Nagpur in the name of **"M/s. Nangia Motors".** Record shows that applicant M/s. N.S. Motors and Nangia Motors are totally two different Units. Applicant did not produce any material on record to show that the applicant M/s. N.S. Motors and M/s. Nangia Motors is one of the same. Therefore in the opinion of the Forum M/s. N.S. Motors and M/s. Nangia Motors are totally different units. It is noteworthy that in the acknowledgement of SSI certificate issued in the name of M/s. Nangia Motors, office address is given as "shop no. 11, Yeshwant Stadium, Nagpur". However it is not address of the applicant M/s. N.S. Motors. Applicant did not produce any SSI certificate in the name of applicant M/s. N.S. Motors. Therefore in absence of evidence on

record, Forum hold that applicant M/s. N.s. Motors has no SSI certificate and it is not registered at District Industries Centre, Nagpur, Therefore Unit of the applicant is not a industry.

20) Further more even on SSI certificate in the name of M/s. Nangia Motors, there is specific note at the bottom to the effect "This memorandum issued on the basis of undertaking given by the applicant. Concerned may confirm regarding existence and production". Therefore even if, for the shake of argument, it is presumed that Nangia Motors has SSI certificate, even then certificate is issue only on the basis of undertaking given by the Nangia Motors and Nangia Motors has to prove the existence and production .

21) Merely because any Unit has SSI certificate, it does not mean that said unit is a manufacturer. In SSI certificate in the name of Nangia Motors it is simply mentioned regarding "repairs of vehicle".

22) In coloum no. 12 (a & b) of SSI certificate in the name of Nangia Motors in the description of manufacturing and production, it is simply mention "repairs /fabrication and repairs of vehicle. It is nowhere mentioned in this SSI certificate, even in the name of Nangia Motors that applicant is doing bodybuilding for vehicle. In our opinion mere fabrication, service centre, and repairs of

the vehicle is not manufacturing for application of the tariff.

23) During the inspection of Unit of the applicant by MSEDCL Flying Squad Unit, Nagpur date 15.09.2011 it is observed that supply is authorized for industrial purpose but supply used for repairing and Washing of vehicle and not for manufacturing and there is no activity of manufacturer. On carefully perusal of spot inspection report of Flying Squad Nagpur dated 15.09.2011, it appears that in coloum no. 22 there is signature of representative of the applicant in the remark coloum below the line "the above mentioned details and irregularities pointed out have been checked in my presence and he agree with the same." Therefore it is clear that the details and irregularities pointed out were checked in presence of representative of the applicant who agree for the same. Therefore we find no force in the contention of the applicant that inspection dated 15.09.2011 was conducted behind the back of the applicant. On the contrary fair opportunity was given to the applicant and principle of natural justice, were duly follow by the Flying Squad.

24) Record shows that applicant is only repairing and servicing the vehicle and there is no manufacturing activity in the unit of the applicant. Therefore industrial tariff is not applicable but commercial tariff is applicable to the Unit of the applicant.

25) In case no. 116/2008 Hon. MERC has clarified in its tariff order applicable from August 2009 that broadly the categorization of the industry is applicable to such activity **which entails manufacture.**

26) In this order in case no. 116/2008 it is held as under.:

"*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 regard, 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 tariffs 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 statues. Broadly, the categorization of 'Industry' is applicable to such activities, which entail 'manufacture'.*

27) In order dated 30.12.2009 in case no. 11/2009.

The Commission has clarified the commercial category actual refers to all category which have not been classified into any specific category.

In this order Hon. Commission held that..

"It is further clarified that the 'commercial' category actually refers to all categories using electricity for 'non-residential, non-industrial' purpose, or which have not been classified under any other specific category. For instance, all office establishments (whether Government or private), hospitals educational institutions, airports, bust-stands multiplexes, shopping malls small and big stores, automobiles showrooms, etc, are covered under this categorization. Clearly, they cannot be turned as residential or industrial. As regards the documents submitted by the Petitioners to justify their contention that they are 'Charitable Institutions' the same are not germane to the issue here, since the Electricity Act, 2003 does not permit any differentiation on the basis of the ownership. As regards the parallel drawn by the Petitioners' between the nature and purpose for which supply is required by Government Hospitals. ESIS Hospitals, etc, and Public Charitable Trust hospitals, the Commission clarifies that it has been attempting to correct historical anomalies in the tariff categorization in

a gradual manner. In the impugned Order, the Commission had ruled that Government Hospitals, ESIS Hospitals, etc; would be charged under LT I category, even though they may be supplied at HT voltages. This anomaly has been corrected in the subsequent Tariff Order, and all hospitals, irrespective of ownership, have been classified under HT II Commercial category".

28) Similar view is taken by Hon. Electricity Ombudsman Mumbai in case of representation no. 140/2009. In the matter of M/s. Atul Impex Pvt. Limited V/s. MSEDCL decided on 02.02.2010 it is held that . . . . . .

"Here the word 'industrial' is not specifically denied in the tariff order. Therefore, it has to be understood in its natural, ordinary and popular sense, meaning thereby the industry should have some manufacturing activities. As is seen, from the above that the Appellant is a research and development establishment which can be clearly distinguished from the industrial / manufacturing purpose. Therefore, the Appellant's prayer that it should be categorized under the HT I – Industrial tariff (which is meant for industrial purpose / consumers) does not sound to reason, especially when read with the provisions of the tariff orders, effective from 1st June, 2008 onwards".

29) In Appeal no. 116/2006 decided on 04.10.2007 Hon.

Appellate Tribunal for Electricity (Appellate Jurisdiction) held as under) :----

"It will not be correct to borrow the definition of "Industry" from 'other statutes' for the purpose of holding that the appellant ought to be billed as per Industrial Tariff. In Union of India Vs. Shri R.C. Jain (AIR 1981 SC 951), the Hon. Supreme Court refused to borrow the meaning of the words 'local fund' as defined in the General Clauses Act on the ground that it is not a sound rule of interpretation to seek the meaning of the words used in an Act, in the definition clause of 'other statutes'. In this regard it was held that definition of an expression in one Statute must not be imported into another."

30) 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 licence 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".

31) Relying on these authorities we hold that as there is no manufacturing in the Unit of the applicant industrial tariff is not applicable but commercial tariff is applicable, Therefore the tariff i.e. "Commercial LT-II applied by MSEDCL to Unit of the applicant is perfectly correct and legal.

32) So far as assessment as Rs.1,66,771/- is concerned as Forum hold that commercial tariff LT-II is applicable to the Unit of the Applicant and therefore on the basis of the authorities discussed above. Forum hold that

assessment of Rs.1,66,771/- is legal and valid and there is no reason to set-aside this assessment.

33) So far as refund of Rs.1,02,750/- is concerned, as We have already discussed above, it is the action under Section 126 of Electricity Act 2003, therefore this Forum has no jurisdiction. Further more it is an admitted fact that on 10.11.2009 Dy. E.E. MIDC had issued a provisional bill amounting to Rs.1,02,750/- under section 126 of the electricity act 2003. According to Regulation 6.6 of the MERC (CGRF & Electricity Ombudsman) Regulation 2007 " Forum shall not admit any grievance unless it is filed within the two years from the date on which the cause of action has arisen". So far as provisional bill of Rs.1,02,750/- under section 126 of the Electricity Act 2003 is concerned, this bill is issued on 10.11.2009 and applicant paid this bill under protest vide challan no. 694685. Therefore cause of action has arrows on 10.11.2009. Therefore for this bill limitation expired after two years i.e. on 10.11.2011. The present grievance application is filed on 12.01.2012. Therefore so far as bill paid by the applicant for Rs. 1,02,750/- and refund thereof is concerned this prayer is also barred by limitation, therefore deserves to be dismiss.

34) So far as interim relief claimed by applicant is concerned, notice under section 56 of Electricity Act 2003 was issued calling upon the applicant to pay the bill within 15 days i.e. on or before 18.12.2011 failing

which electric supply shall be disconnected. However the applicant presented the application on 12.01.2012 but till filing of the application though many days were passed, MSEDCL had not disconnected the supply even after 18.12.2011 in pursuance of the notice under section 56 of Electricity Act 2003. According to Regulation 8.3 (proviso) it is specifically mentioned that "provided that the Forum shall have powers to pass such interim order in any proceeding, hearing or matter before it as it, may consider appropriate if the consumer satisfies the Forum that Distribution Licensee has threatened or likely to remove or disconnect the electric connection, and has or is likely to contravene any of the provision of the Act or any rule and Regulation made there-under or any order of the Commission, provided that Forum has jurisdiction on such matters".

35) In this matter consumer did not satisfied the Forum that Distribution Licensee is likely to contravene any of the provision of the Act or any rule and Regulation made there-under for any order of the Commission and therefore in the opinion of the Forum there was no necessity to pass any interim order in favour of applicant because even after expiry of the notice period, there was no disconnection and hence no interim order was passed by the Forum. Now we are dismissing the grievance application on merits itself.

36) For these reason we find no substance and no merits in

this grievance application, and application deserves to be dismissed.

37) Resultantly, Forum proceed to pass the following order.

ORDER

The grievance application is dismissed.

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