

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

Case No. CGRF(NUZ)/025/2012

Applicant : M/s. Hindustan Transformers,
Block No.C-15/5,
Hingna MIDC 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 2.5.2012.

- 1) The applicant filed this grievance application on 7.3.2012 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 registered under D.I.C. Nagpur as SSI Unit. The applicant is unit for manufacturer / repairs as SSI Unit.

Tariff L.T.-V A (L.T. Industrial) is made applicable since commencement of electricity supply w.e.f. 20.3.1993. Dy. Executive Engineer, Flying Squad, M.S.E.D.C.L, Nagpur has inspected the unit of the applicant on 4.11.2011 and made following observations / remedial action namely –

- I) Applicant unit is in Industrial tariff and supply is authorized for industrial manufacturing purpose only.
- II) Supply is used for Transformers and electrical apparatus repairing purpose and not for manufacturing purpose.
- III) As per MERC tariff order, Industrial tariff order is applicable to industries which entail manufacturing only. Hence tariff shall be changed.

Following remedial action is proposed namely –

- I) Change the tariff L.T.-VA to L.T.-II.
 - II) Recover the assessment for past period.
- 3) Spot Inspection is carried behind the back of the applicant. The applicant is doing manufacturing therefore industrial tariff is applicable. Therefore the applicant filed present Grievance application and prayed that L.T.-V A(L.T. Industrial) tariff should be applied to unit of the applicant and not Commercial tariff. The claimed withdrawal of assessment of Rs. 91,770/-.

4) Non applicant denied the case of the applicant by filing reply on Dt. 21.3.2012. It is submitted that electric supply is given to above consumer for industrial purpose. Dy. Executive Engineer, Flying Squad had inspected the unit on Dt. 4.11.2011 and observed that the supply is used for transformer repairing and not for manufacturing. As per M.E.R.C. order No. 116/08, if supply is not used for manufacturing activities, the electric charges are to be charged as for L.T.-II (Non Domestic). Mere registration as Small Scale Unit would not ipso-facto result into categorization of the unit in question to industrial tariff. It is to be demonstrated that the unit in question was engaged in the manufacture or production of some goods but that is not even the case of Applicant. Therefore the action as proposed by Flying Squad that category should be changed from L.T.-V to L.T.-II and recovery of past period assessment is correct action on the basis of MERC orders. The assessment made by M.S.E.D.C.L. of Rs. 91,770/- is for the period August 2009 to Oct. 2011. As per Interim hearing of the Forum on Dt. 9.3.2012, electric supply to the premises of the applicant has not been disconnected. Assessment made by M.S.E.D.C.L. is correct.

5) During the pendency of the matter the applicant also claimed Interim relief under Regulation 8.3 of the said Regulations and on the basis of joint pursis filed by both

the parties this Forum has passed Interim order Dt. 9.3.2012.

6) Forum heard arguments of both the sides and perused the record.

7) We have carefully perused the spot inspection report of Director of Vigilance & Security, Flying Squad, M.S.E.D.C.L. Nagpur Dt. 4.11.2011. In this inspection, it is specifically mentioned that –

i) Supply is authorized for Industrial manufacturing purpose only but supply is used for repairing purposes and not for manufacturing purpose.

ii) As per MERC tariff order No. 116/08 Industrial tariff is applicable to industries which entail manufacturing only, hence tariff shall be changed. The remedial action proposed is –

I) Change the tariff L.T.-V to L.T.-II.

II) Recover assessment for past period.

8) It is pertinent to note that this inspection report of Flying Squad is duly signed by representative of the applicant Shri Yuvraj Kumare under the remark that “abovementioned details & irregularities pointed out have been checked in my presence and I agree with the same”. Therefore, Para 20 of the Inspection report shows that the details and irregularities pointed out were checked in

presence of the representative of the applicant and said representative agreed with the same. I signed inspection report. Therefore, we find no force in the contention of the applicant that spot inspection report was prepared behind the back of the applicant. Record shows that the applicant is only doing repair works of the transformer and there is no manufacturing work by the applicant. Therefore commercial tariff is applicable and not industrial tariff.

- 9) 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.**

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'.

- 10) 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”.

- 11) 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”.

12) During the inspection in presence of the applicant / representative, it was asked to provide the manufacturing details and final goods manufactured by unit of the applicant, but applicant failed to show any manufacturing details and no evidence was produced by the applicant to prove that they are manufacturing the products. Record shows that the applicant is carrying out the work of only repairing, maintenance of failed transformers.

13) 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.”

- 14) 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."

- 15) On close scrutiny of the case, it appears that the applicant is doing work of repairing of transformers only and he is not doing any manufacturing work. Therefore we hold that commercial tariff is applicable to the applicant and not industrial. Therefore commercial tariff applied by M.S.E.D.C.L. is perfectly correct, legal and valid and therefore assessed bill issued by M.S.E.D.C.L. to the applicant is perfectly justified and needs no revision.
- 16) Therefore the Forum finds no force in the Grievance application and application deserves to be dismissed.
- 17) We must mention here that Forum has passed Interim Order on the basis of Joint pursis filed by both the parties on Dt. 9.3.2012 till disposal of this grievance on merits. Now we are dismissing this grievance on merits and therefore it is necessary to modify and cancel the interim order Dt. 9.3.2012. Consequently, the Forum proceeds to pass following order : -

ORDER

- 1) The application is dismissed.
- 2) The interim order dated 9.3.2012 passed by this Forum is hereby modified and cancelled.

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

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