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

Case No. CGRF(NUZ)/032/2012

Applicant : M/s. Midland Diesel Services Pvt.Ltd.,
W-46, MIDC, Hingna Road,
(Hingna Industrial Area),
NAGPUR.

Non–applicant : MSEDCL represented by
the Nodal Officer-
Executive Engineer,
MIDC Dn., 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 DT. 8.5.2012

The applicant filed Grievance application under regulation 6.5 of the MERC (CGRF & Ombudsman) Regulations 2006 (hereinafter referred to as the Regulations).

1. The applicant's case in brief is that the applicant is industrial consumer of MSEDCL having a contract demand of 31 KVA. The applicant has also another meter in the same premises w.e.f. Jan. 2010 with a contract demand of 26 KVA under Consumer No. 419996740693 and was being billed as per industrial tariff.

2. On 1.11.2011, Flying Squad of M.S.E.D.C.L. visited the premises of applicant and on the basis of their report, MSEDCL served a bill of Rs. 1,76,608/- and Rs. 1,52,703/- against old connection and new connection respectively. The applicant wrote a letter to Dy. Exe. Engineer, Flying Squad to provide the details of calculation. The applicant also requested the Executive Engineer, MIDC Dn., MSEDCL, to keep the bills in abeyance till the matter is finalized.

3. In the mean while, in February 2012, the applicant received regular bills of both the connections showing the arrears of Rs. 1,52,703/- and Rs. 1,76,608/- respectively against the new and old connections. On request of the applicant he was allowed to pay current bill for this month. However, for the other connection the applicant was not allowed any additional time. Therefore the applicant made the payment of bills against the new connection under protest. Both the payments were made on 28.2.2012. They received bill of Rs. 1,95,160/- showing the arrears of Rs. 1,90,137/- in the first week of March 2012. The applicant also received the notice under section 56 of Electricity Act to pay the bill on or before 17.3.2012.

4. The unit of the applicant is industrial unit having SSI certificate and therefore industrial tariff is applicable. However, as per Flying Squad report Dt. 1.11.2011,

commercial tariff is applied to the unit of the applicant. There the applicant filed present main grievance application under regulation 6.5 of the said regulation and claimed relief that industrial tariff should be applied to the unit of the applicant.

5. In the main application, the applicant also claimed Interim Relief to stay the notice of disconnection Dt. 3.3.2012 for non payment of Rs. 1,84,049/- and that interim relief matter was decided by this Forum as per Interim Order Dt. 17.3.2012.
6. Therefore the applicant filed present Grievance application.
7. Non applicant denied the case of the applicant by filing reply Dt. 10.4.2012. It is submitted that Dy. Executive Engineer, Flying Squad has inspected the premises on 1.11.2011 and found that electric supply is used for servicing of Cummins Diesel Engines and D.G. Generator sets. There is no manufacturing activity in this premises, hence according to Hon'ble M.E.R.C. tariff order in Case No. 116 /08, decided on 17.8.2009, as supply is used for repairing and servicing of D.G. Sets and Diesel engines, L.T. II (non-domestic) tariff was made applicable and provisional bill for Rs. 1,76,608/- was issued to the applicant on 2.11.2011. Consumer never approached Flying Squad nor office of M.S.E.D.C.L. for revision of provisional bill. As per M.E.R.C. order, tariff for industry shall be applicable where there is manufacture. Further, in its order Dt. 30.12.2009, the Commission has clarified

that Commercial Category actually refers to all those categories, which have not been classified into any specific category. Similar view has been taken by Electricity Ombudsman in Case No. 140/2009. Therefore the application deserves to be dismissed.

8. Forum heard arguments of both the sides in detail and perused the record. We have carefully perused report of M.S.E.D.C.L. Director (V&S), Flying Squad, Nagpur Dt. 1.11.2011. It shows that supply is authorized for industrial manufacturing purpose only, but supply is used for Dealer office of M/s. Midland Diesel Services for office and other allied purposes and not for any manufacturing purposes. As per tariff order of Hon'ble M.E.R.C. industrial tariff is applicable to industries which entail manufacturing, hence tariff shall be changed from L.T.-IV to L.T.-II (non-domestic) and assessed for past period. It is note worthy that in Column 20 of this Inspection Report there is specific remark "The above mentioned details and irregularities pointed out have been checked in my presence and I agree with the same". Below this remark, there is signature of representative of the applicant Shri Dharmaji Dhote. Therefore, we find no force in the contention that spot was inspected arbitrarily and behind the back of the applicant.
9. Record shows that the applicant is not doing any manufacturing or production but supply is used for servicing of Cummins Diesel Engines and D.G. Generator

Sets. There is no manufacturing activity in the premises and therefore merely pocketing SSI certificate is not sufficient.

10. 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'.

11) 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".

12) 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".

13) During the Inspection in presence of the applicants representative, it was asked to provide the manufacturing details and final goods manufactured by the unit of the applicant, but the applicant failed to show

any manufacturing details and no evidence was adduced that they are manufacturing products.

14) Record shows that the applicant is carrying out the work of only "Servicing of Cummins Diesel Engines and D.G. Sets.

15) 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."

16) 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."

17) On close scrutiny of the case, it appears that the applicant is doing the work of servicing of Cummins Diesel Engines and D.G. Generator sets only and applicant is not doing any manufacture work. Therefore, relying on these cited authorities that commercial tariff is applicable to the applicant and not the industrial tariff. Therefore commercial tariff applied by M.S.E.D.C.L. is correct, legal

and valid. Therefore assessed bill issued by M.S.E.D.C.L. to the applicant is absolutely justified and needs no revision.

18) Therefore, the Forum finds no force in the Grievance application and the application deserves to be dismissed.

19) We must mention here that Forum has passed Interim order Dt. 17.3.2012, till disposal of this Grievance application on merits. Now we are dismissing this Grievance application on merits. Therefore, it is necessary to modify and cancel interim order Dt. 17.3.2012. Resultantly, Forum proceed to pass following order.

ORDER

1. Grievance application is dismissed.
2. Interim order Dt. 17.3.2-12 passed by this Forum is hereby modified and cancelled.

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

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