

**CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE**

(Established under the section 42 (5) of the Electricity Act, 2003)

Phone: 6526484
Fax: 0253-2591031
E.Mail: cgrfnsk@rediffmail.com

**Office of the
Consumer Grievance Redressal Forum
Kharbanda Park, 1st Floor,
Room N. 115-118
Dwarka, NASHIK 422011**

No. / CGRF /NashikNUC/N.U.Dn.1/472/03-15/

Date: 22/05/2015

(BY R.P.A.D.)

In The Mater Of

Recovery Of Arrears For Change Of Tariff Category

Date of Submission of the case : 15/04/2015

Date of Decision : 22/05/2015

To.

1. M/s.Roshan Tyre Services
(Connection in the name of M/s Sweta Lamp
Components Pvt. Ltd.)
D-116, M.I.D.C.
Ambad, Nashik
Complainant
2. Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Urban Circle office, Shingada Talav,
Nashik
Distribution Company
3. Executive Engineer (Urban-1)
Maharashtra State Electricity Distribution Com. Ltd.
Kharbanda Park Dwarka Nashik.

DECISION

M/s. Roshan Tyre Services,. (hereafter referred as the Complainant). Nashik is the L.T. consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Respondent) running a unit with electricity connection standing in the name of M/s Sweta Lamps Components Pvt. Ltd. The Complainant has submitted grievance against MSEDCL for tariff difference recovery amount. The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. But not satisfied with the decision of the Respondent , the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Inward No.83 of 2015 on 15 /04/2015.

The Forum in its meeting on 15/04/2015, decided to admit this case for hearing on 05/05/2015 at 12.00 am in the office of the forum . A notice dated 16/04/2015 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Urban Circle Office Nashik, for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. C.C. Humane, Nodal Officer represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

1. Pursuant to the inspection conducted by the Flying Squad of MSEDCL in the month of Sept.2013, MSEDCL has issued a demand notice for Rs. 4,78,931/- reclassifying the consumers unit of “tyre retreading” under LT II (A) Commercial tariff, from April (August?) 2012 to Sept.2013. The consumer has paid all the bills raised from time to time based on the classification as per prevailing tariff schedule.
2. MERC has clarified in the tariff order in case no. 19 of 2012 that workshop and any other type of automobiles repair center LT II Commercial tariff shall be applicable whereas industrial related workshop shall be billed as per industrial tariff. After this tariff, with reference to regulation 13 of supply code classification/reclassification is the primary duty of licensee. For mistakes/faults of licensee the consumer cannot be burdened. If wrong tariff category has been made applicable the licensee is not empowered to recover arrears on account of difference of tariff. With reference to supply code 2005 section 50 of Electricity Act, 2003 that there is no provision for recovery in tariff difference. Instead of taking action against the erring officer, the licensee is raising bill upon consumer in contravention to the statutory provision.
3. With Reference to MERC order in Case No.24/2001 on 11th Feb.2003, the Hon’ble Commission has laid down that no retrospective recovery of arrears can allowed on the basis of any abrupt re-classification in spite pointing out the same by the Auditor.
4. The same matter has decided by Appellate Tribunal for Electricity (Appellate Jurisdiction) in ELR No. 1543 Appeal No. 131 of 2013 dated 07/08/2014 stating “that the arrears for difference in tariff could be recovered from the date of detection of the error”
5. MSEDCL has wrongly changed tariff category from Oct. 2014 as per commercial without consideration of consumer’s views and MERC tariff applicability for non-industrial premises.
6. As per the order of MERC and APTEL judgment, tariff recovery should be from date of detection i.e. from the billing month of Sept.2013.

Consumer's Demand :

Requested to decide the tariff applicability and give instruction for refund of amount paid Rs. 478931/- with RBI Bank rate of interest.

Arguments from the Distribution Company:

The Distribution Company submitted a letter dated 29/04/2015 from the Nodal Officer, MSEDCL, Nashik Urban Circle and other relevant correspondence in this case. Putting forth the arguments on the points raised in the grievance the representatives of the Distribution Company stated that:

- 1- rdtknkj xtgd ; kwh vl s uep dsys vkgs dh] Hkjkh i Fkd ; kwh ojhy m|ksxkph rikl .kh d#u R; kP; k vgokykuq kj vkkLV 2012 rs l IVcj 2013 dkyko/khps vks| kfxd rs okf.kT; hd njkus fcyh dj.; kps funk fnys i jarq egjkV^a oht fu; ked vk; ks %MERC% VfjQ vkmj LT-2 Non Residential Commercial ; kr vl s EgVys vkgs dh] Non Residential, Non Industrial Premises or Commercial Premises l kBh Commercial Tariff ykxq gkrks
- 2- Hkjkh i Fkd ; kwh rikl .kh dsh R; koGh Vk; j fjekMhps dke l # gkrs l nj dke gs okf.kT; hd njl drke/; s ekMrsegjkV^a oht fu; ked vk; ks vkmj i ek. ks vkkLV 2012 ikl u Vk; j fjekMhps fjD0gj dh<. ; kr vkysyh vkgs rh ; kX; vkgs vkkLV 2012 rs l IVcj 2013 ph fjD0gj fu; ekuq kj ; kX; vkgs

3- , dnjhr igkrk rdkjnkj k; k vtkr dkskrgh rF; ul Y; kps fnl u ; rj njh
xkgd xk&gk.ks fuokj.k epkl fourh dj.; kr ; rs dh] rdkjnkj es jks ku Vk; I Z
I fol d ; kpk vtZ [kkjht dj.; kr ; kok-

Action by IGRC :

1. Internal Grievance Redressal Cell Nashik Urban Circle conducted hearing on 30/01/2015 for the complaint submitted on 08/01/2015
2. After hearing both the parties IGRC gave decision as per letter dated 23/02/15 as under:

RkØkjnkj xkgd ; kuk vdklj.; kr vkyyk vks| kfxd rs okf.kT; hd njl dnr gk
; kX; vkgs ijr q ek- l pkyd ¼ pyu½ epbl ; kps i= da 24156 fn-
18@07@2009 e/; s ueq dY; kuq kj RkØkjnkj xkgd ; kuh fourh dY; kl vkkLV
2012 rs I IVcj 2013 ; k dkyko/khP; k QjdkP; k jDdeps rø<s glrs d#u
ns ; kr ; kor-

Observations by the Forum:

1. It was noted by the Forum that the complainant is M/s Roshan Tyre Services whereas the electricity connection stands in the name of M/s Sweta Lamp Components Pvt. Ltd. Hence the Forum asked the complainant to submit documents explaining the relationship between original connection holder and the complainant. Accordingly the complainant submitted the documents from which it is revealed that the lease of the plot no. D116 in additional MIDC Area ,Nashik belonging to M/s Sweta Lamp Components Pvt. Ltd. has been transferred in the name of M/s Roshan Tyre Services by MIDC as per letter by RO,MIDC Nashik dated 09/05/2000. The complainant has also submitted a provisional SSI certificate dated 07/04/1997 from DIC, Nashik for the activity of “tyre remolding (retreading)”. But this certificate had validity for 5 years only which expired on 06/04/2002 . On the basis of MIDC letter , M/s Roshan Tyre Services seems to be the legal occupier of the premises and consumer of electricity through a connection standing in the name earlier owner. However the complainant has not explained as to why the connection is not yet transferred even after lapse of 15 years in his name. Neither Flying Squad nor the IGRC has noted this fact. The Forum therefore directs that the complainant should get the connection changed in their name . The change of name is essential because M/s Sweta Lamp Components Pvt. Ltd. is no more occupier of the said plot no. D-116 and user of the electricity connection.
2. The consumer is carrying out the activity of “tyre retreading” and the Distribution Company has applied industrial tariff for the electric connection since beginning. Later as per MERC tariff order dated 16/08/2012 [in case no. 19/2012] which is applicable with effect from 01/08/2012 , the activity of “tyre retreading” is brought under LT II :Non residential/Commercial .
3. However, the Distribution Company continued to apply industrial tariff till the visit of flying squad in September 2013. There is no dispute that the tariff category LT II :Non residential/Commercial should be applied after detecting that the consumer is conducting business of “tyre retreading”. The only question is about justification for asking retrospective recovery with effect from 01/08/2012.
4. The consumer is not at fault for paying the bills under industrial tariff category from August 2012 to August 2013 as they were raised by the Distribution Company under the same category.
5. MERC under the order dated 11/02/2003 in Case No. 24 of 2001 regarding retrospective recovery on the basis of reclassification of the tariff category has directed as under:

“.....no retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer.....Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively..... In all those cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective.

- 6 The Appellate Tribunal for Electricity (APTEL) in the recent order dated 7th August, 2014 in Appeal No. 131 of 2013 [in the matter of Vianney Enterprises versus Kerala State Electricity Regulatory Commission] has held that “ the arrears for difference in tariff could be recovered from the date of detection of the error”
7. The Honb’le Electricity Ombudsman, Mumbai in his order dated 23/12/2014 [In representation no. 124 of 2014] in the similar matter of recovery of arrears after change of tariff category in a case of Mr. Ram Chimanlal Kanojiya (Chiman Automobiles) Vs MSEDCL has mandated as under:

“.....The Representation is thus allowed. The Respondent is directed to recover arrears from the Appellant from billing month of March, 2014 without applying DPC and interest on the said arrears. The arrears already paid by the Appellant should be adjusted and balance amount be recovered from the Appellant”

Also the Honb’le Electricity Ombudsman, Mumbai in his order dated 23/12/2014 [In representation no. 126 of 2014] in the similar matter of recovery of arrears after change of tariff category in a case of Mr. Subhash Kailash Gupta (J. S. Auto Garage) has given the same decision denying the retrospective recovery.

8. On the basis of the orders of MERC, APTEL and the Electricity Ombudsman ,Mumbai as mentioned above , the Distribution Company is entitled to charge Commercial Tariff from September , 2013 onwards. However retrospective recovery is set aside and the complainant is entitled to the refund of the amount recovered with statutory interest.
The following order is hereby passed by the Forum for implementation:

ORDER

1. The complainant should get the name changed within 15 days from date of this order.
2. Distribution Company is directed to refund, within 30 days from date after the electricity connection is transferred in the name of the complainant , the amount recovered for the period August 2012 to August 2013 on account of tariff difference along with interest equivalent to the Bank Rate under Section 62 (6) of the Electricity Act, 2003 from the date of deposit till the date of refund.
3. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.
4. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.

5. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Rajan S. Kulkarni)
Member

(Ramesh V.Shivdas)
Member-Secretary
& Executive Engineer

(Suresh P.Wagh)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , Urban Circle office, Nashik.