

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

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

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Consumer Grievance Redressal Forum
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No. / CGRF /Nashik/Nagar Circle /Sangamner Dn./616/06-2017-18/

Date:

(BY R.P.A.D.)

In the Matter of

Refund Of Excess Amount Due to Wrong Application of HT I C Tariff Code from Date Of Supply

Date of Receipt : 20/04/2017
Date of Decision : 23/05/2017

To.

1 M/s. Malpani Food Products
S.R. No. 5211, Kasara Dumala,
Tq. Sangamner
Dist. Ahmednagar
(Con.No. 155019011500)

Complainant

2 Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Circle office, Ahmednagar,
3 Executive Engineer,
Maharashtra State Electricity Distribution Com. Ltd.
Sangamner Divn. Office
Dist. Ahmednagar.

Distribution Company

DECISION

M/s. Malpani Food Product (hereafter referred as the Complainant), Sangamner is the HT industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has grievance against MSEDCL for refund of excess collected amount due to wrong application of HT- I C tariff code from the date of supply to Oct.2016. The Complainant filed a complaint regarding this with the Internal Grievance Redressal Cell (IGRC) of the Maharashtra State Electricity Distribution Company Ltd. . But not satisfied with the decision of the IGRC , the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.75 of 2017 on 20 /04/2017.

The Forum in its meeting on 20/04/2017, decided to admit this case for hearing on 05/05/2017 at 11.30 am in the office of the forum . A notice dated 20/04/2017 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, Circle Office Ahmednagar for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. N.A. Patil, Dy. Executive Engineer represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

1. We had applied for new power connection on 13/07/2015 for our industry. With reference to our application, sanction of new power supply was granted on 28/08/2015 with keeping condition no.15 as "Government load restriction orders as prescribed and amended from time to time shall be

applicable to you. You will have to observe the staggering holidays as decided by the Government, which is at present Saturday."Accordingly, MSEDCL has released the new connection HT on 02/01/2016.

2. With reference to MSEDCL new connection sanction letter condition no.15, we have declared our factory Holiday on Saturday due to unavailability of power supply.
3. From the date of connection, MSEDCL has never informed us for withdrawing of condition of load restriction sanction letter. Also, MSEDCL has never informed for availability of supply on continuous basis.
4. MSEDCL has informed that in sanction letter clause no. 23 and agreement mentioned the applicability of tariff "HT-IC", application of HT-IC is correct.
5. MSEDCL sanction letter clause (15) and (23) contradictory to each other.
 - a. The tariff clause in the agreements not in consonance with the requirement of law namely the statutory regulations as the mandate of the order as passed by the Maharashtra Electricity Regulatory Commission.
 - b. In this regard, we are informing that the applicability of tariff "HT-IC" is applicable to those who have demanded the continuous supply. We never demanded the continuous supply.
 - c. As per Electricity Act 2003 Section 45 and MERC (Electricity Supply code and other Conditions of Supply) Regulations, 2005 Section 13, applying the correct tariff with reference to Commission's approved tariff category is the primary duty of licensee.
6. **Electricity Act 2003 Section 45. (Power to recover charges): ---**
 1. Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.
 2. The charges for electricity supplied by a distribution licensee shall be –
 - a. fixed in accordance with the methods and the principles as maybe specified by the concerned State Commission ;
 - b. published in such manner so as to give adequate publicity for such charges and prices.
 3. The charges for electricity supplied by a distribution licensee may include--
 - a. a fixed charge in addition to the charge for the actual electricity supplied;
 - b. a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.
 4. Subject to the provisions of section 62, in fixing charges under this section distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.
 5. The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

As per MERC (Electricity Supply code and other Conditions of Supply) Regulations, 2005 Section 13

"The Distribution Licensee may classify or reclassify a consumer into various Commission's approved tariff categories based on the purpose of usage of supply by such consumer:

Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission.

7. MSEDCL has equated the terms of 'Express feeder" with the "Tariff of Continuous and Non-Continuous'. The terms 'Express feeder and applicability of Continuous and Non-Continuous supply tariff' are different and have different meanings.
 - a. The term 'Express feeder' is defined under the MERC (SoP) Regulations, 2014 as below:
 - (m) "Express Feeder" is a feeder emanating from the licensee's substation to connect to a single point of supply which also includes dedicated distribution facility.
 - b. The term "applicability of Continuous and Non-Continuous tariff" is based on demand from Consumer and this has clarified by MERC in various tariff orders from FY 2008.
 - c. With reference to MERC ruling and tariff orders in reference to applicability of tariff code HT I C and HT I N, Hon'ble Commission Stated as under:

8. "Only HT industries connected on express feeders **and demanding continuous supply** will be deemed as HT Continuous Industry and given continuous supply, while all other HT Industrial consumers will be deemed as HT Non-Continuous Industry."
9. We never demanded for continuous supply though it was connected on Express feeder as informed by MSEDCL, and also we have not operated our industry on Saturday as per instruction of MSEDCL as mentioned on power sanction letter. So there is no question of exercising option for Non-Continuous industry by us as stated by MSEDCL.
10. On the basis of the order dated 12/09/2008 in case no. 44/2008 By MERC, Clarificatory order dated 12/09/2008 in Case no. 44/2008 by MERC, MSEDCL Commercial Circular no.88 dated 26/09/2008 and the order dated 26/12/2012 in Case no. 107/2012 by MERC, with main contention of applying the HT IC tariff who has demanded the continuous tariff, we have requested to apply non-continuous tariff as we are not demanded the continuous supply and refund the excess collected from the date of connection.
11. Hence, from the above it is clear that we never demanded Continuous supply though it was connected on Express feeder. The wrong tariff has applied from the date of connection.

Relief Sought:

Give order for refund of excess collected amount due to tariff difference HT IC to HT IN, due to wrong application of tariff code from the date of connection to Oct. 2016 with interest as per EA,2003 Section 62(6) from the month of deposit of excess amount to actual month

Arguments from the Distribution Company:

The Distribution Company submitted a letter dated 04/05/2017 from the Nodal Officer Ahmednagar Circle. MSEDCL, and other relevant correspondence in this case. The representative of the Distribution Company stated that:

es ekyi k.kh QMI - 155019011500 ; kuk fn- 02@01@2016 jksth oht tkM ns kr vkyk- R; kP; k QeL dKMs kue/; s Clause No. 23 e/; s applicable tariff Industrial Exp. Feeder vl s ueñ dsys vkg s rlp Agreement e/; s I ñnk HT-IC Tariff pkp mYyç k vkg s o l njpk oht tkM Express Feeder o#up fnyk vkg s i s xtgdkus Contract Demand deh dj. kl kBh vtZ fnyk o xtgdkyk Contract Demand deh d#u fnyk rñgk Continuous to Non Continuous l kBh vtZ fnyk gkrk R; kurj R; kuk 18@12@2016 jksth i= nou oj ueñ ckchph dYi uk ns kr ; ou nñ & k Non Express Feeder o#u fot i j oBk ns ks l kbps gkby- R; koj v | ki i ; r mRrj vkys ukgh R; keçs dsys vkdkj .kh ; kX; vkg s

ufou tkM.kh nrðGñ xtgdkl kr tks djkj >kyk vkg s R; ke/; s Continuous Tariff i æk.ks fotn s ds vnk dj. ; kps xtgdkus ekU; dsys vkg s o R; ki æk.ks n s ds ns kr vkyh vkg r o xtgdkus R; kpk Hkj .kk n s khy dsysk vkg s R; ki s xtgdkus R; kph Contract Demand deh dj. ; kl kBh vtZ dsys vkg s o R; kl ñ/kP; k djkje/; s I ñnk xtgdkus Continuous Tariff i æk.ks fotn s ds vnk dj. ; kps ekU; dsys vkg s v'kk i f j fLFrhr xtgdkph Continuous Supply ph ekx .khp u0grh vl s Eg.krk ; skkj ukgh-

R; keçs xtgdkl yko. ; kr vkysys Continuous Tariff ; kX; vkg s

Action by IGRC:

1. Internal Grievance Redressal Cell, Ahmednagar Circle conducted common hearing on 21/01/2017 for the complaints submitted by M/s Malpani Foods and others on 07/12/2016 .
2. After hearing both the parties IGRC gave decision as per letter dated 25/01/17 as under:
Lknjhy xtgdkph oxbkj h o xtgdkl vkdkj . ; kr vkysyh fotn s d ; kX; o cjkçj vkg r-R; kpi æk.ks xtg d ñ 155049004600 ; k oht tkM.khl yko. ; kr vkysys Transmission & Wheeling charges gs eç ; dk; kÿ; kP; k l pui æk.kp yko. ; kr vkysys vkg r o rs ; kX; vkg r-

Observations by the Forum:

1. The complainant has stated that they have not demanded continuous supply .However the documents submitted before the forum reveal as under:

- ✓ As per the sanction letter no. 12003, dated 28/08/2015 issued by Superintending Engineer , Ahmednagar Circle , it clearly mentioned that (clause 23) the supply is given from Industrial Express Feeder and the tariff applicable is HT-IC (Industrial Continuous)
- ✓ As per the agreement signed by the complainant with the Distribution Company for new connection in the month of December 2015 , there is a mention of HT-IC tariff against clause no. 8(a) [Charges of Supply]
- ✓ Also as per the agreement executed by the complainant with the Distribution Company for reduction of the Contract Demand on 28th September 2016 there is again mention of HT-IC tariff at clause no. 8(a) [Charges of Supply]
- ✓ The complainant has been paying the bills as per HT-IC tariff since date of supply .
- ✓ There is nothing on the record to show that the complainant has objected to this. If the complainant has not demand/want the continuous supply, it should have been objected :
 - i. at the time of sanction or
 - ii. at the time of agreement for supply or
 - iii. at the time of agreement for reduction of the Contract Demand or
 - iv. at the time of paying bills

Hence the argument by the complainant that they have not demanded the continuous supply is not tenable.

2. As per the MERC tariff order dated 26th June 2015 [In Case No. 121 of 2014] applicable from 1st June 2015 till 31st October 2016, the provision at para 6.10.7 regarding the change of tariff from Continuous to Non-Continuous is as under :

The Commission clarifies that the consumer availing supply on express Feeder may exercise his option to choose between Continuous and non-Continuous supply anytime during a financial year but only once in such financial year with one month prior notice. Such consumer shall be required to submit a written request to MSEDCL, giving one month's notice and the Tariff applicable to non-Continuous supply shall apply, from the ensuing billing cycle.

3. As per MERC tariff order dated 26/06/2015 , Distribution Company has applied the complainant HT-IC tariff as a "continuous" category since the date of supply i.e. 02/01/2016, because the connection was given from the express feeder . This was done fully with the knowledge and consent of the consumer.
4. In case if the complainant at all wanted to change the tariff from HT-IC to HT-IN, he should have submitted a written request to the Distribution Company in the FY 2015-16 any time from June 2015 to March 2016. But there is no such written request submitted during FY 2015-16.
5. It is seen that the complainant first time requested to change the tariff from HT-IC to HT-IN by an application to the Superintending Engineer, Ahmednagar submitted on 10/10/2016.
6. All these facts as elaborated above , indicate that the complainant **agreed , wanted , availed and paid for** the supply in HT-IC category and now it seems to be an afterthought to demand for retrospective application of HT-IN category saying that it has not demanded the continuous supply.
7. In view of the MERC tariff order dated 26th June 2015, Chief Engineer (Commercial) MSEDCL, Mumbai has issued circular no. 246 dated 11th August 2015 giving guidelines for permitting change of category from HT continuous to HT non-continuous. According to this circular :
 - ✓ Powers are re-delegated to respective Superintending Engineer to permit a consumer to switchover from HT continuous tariff to HT non-continuous tariff. But the circle office shall be competent only to permit prospective implementation & shall ensure that no retrospective effect is given to any consumer without prior approval of Head Office.
 - ✓ Change of categorization is to be implemented with effect from ensuing billing cycle after expiry of one month notice period i.e. change of categorization from Continuous to Non-Continuous in respect of consumer who has made application in the period 26th June 2015 to 30th June 2015 shall be made effective from 1st August 2015 as HT billing cycle starts from 1st of month, and the consumers who applies from 1st July to 31st July will be effective from 1st Sept . Similar procedure

for actual implementation of change of categorization shall be followed for application received thereafter.

- ✓ Before the actual benefit is passed to the consumers, the concern Superintending Engineer shall verify whether the consumer is in arrears or otherwise & such permission will be given only on recovery of arrears from consumers.
- ✓ The consumers connected on Express Feeder having continuous supply, if demands Non-Continuous option, shall submit an undertaking thereby agreeing to not to utilize power supply during the period as may be informed by MSEDCL, so as to cope up the situation of Load Shedding/Staggering Day if the situation arise.
- ✓ In case such consumer defaults in his undertaking of not utilizing of power during specified hours will automatically mean the consumer is utilizing continuous supply and will be treated as a HT Continuous consumer & will be billed accordingly w.e.f. such change has been implemented.

As per this circular , the tariff would have been changed from the bill of December 2016 , on the basis of the application dated 10/10/2016. But meanwhile the MERC has issued the tariff order dated 03/11/2016 [In Case No. 48 of 2016] applicable from 1st November 2016. As per this order the Commission has now merged the Continuous and Non-Continuous sub-categories of the respective HT consumer categories. Hence the complainant automatically gets benefit of merged industrial tariff with effect from 01/11/2016 and there is no more difference in Continuous and Non-Continuous tariff.

Hence demand to change the tariff category from HT-IC to HT-IN since the date of supply till October 2016 can not be considered

After considering the representation submitted by the consumer, comments and arguments by the Distribution Company, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum :

ORDER

1. The grievance is rejected
2. 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

(Sandip D. Darwade)
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. , Circle office, Ahmednagar .

