

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

Case No. CGRF(NZ) 116/2017

Applicant : M/s. Maa Vaishnodevi Oil Industries, Arvi,
Flat No. 302, Satguru Vill Appt.
Gorakshan Road, Sahakar Nagar,
Akola-444004.

V/S

Non-applicant : Nodal Officer,
The Superintending Engineer,
O&M, Circle, MSEDCL, Wardha

Applicant represented by : 1) Shri. Ashish S. Chandarana,

Non-applicant represented by: 1) Shri Gayakwad, Executive Engineer Arvi,
2) Shri P.M. Thakare, Manager, Wardha Circle
3) Shri Suhas V.Barhate, Jr.Law Officer,
4) Shri Rajesh J. Jaiswal, Dy.Ex.Engineer Arvi,
5) Shri Kishor Chitale, LDC Wardha,
6) Shri S.P. Khade, UDC Arvi Sub.Dn

Quorum Present : 1) Shri Vishnu S. Bute,
Chairman.
2) Shri N.V.Bansod,
Member
3) Mrs. V.N.Parihar,
Member Secretary.

ORDER PASSED ON THIS 16TH DAY OF FEBRUARY 2018

2. The applicant mentioned above presented this grievance application under the provisions of Regulations 6.4 of the MERC (CGRF & EO) Regulations 2006. For the sake of convenience the parties are being referred to as the applicant and the respondent. The applicant is running industrial

Unit at ARVI. Tah. Arvi Dist. Wardha i.e. in Vidarbha Region. The applicant contend that Government of Maharashtra has granted exemption from payment of the electricity duty. However the respondent illegally recovered the said duty from him. The applicant claim the refund of the electricity duty with interest thereon. The applicant approached the IGRC Wardha vide application dt. 07.12.2015. The IGRC did not decide the grievance. So the applicant approached this Forum by an application dt. 20-12-2017.

3. The case was fixed for personal hearing on 24-01-2018. Shri Aashish Chandarana represented the applicant. Shri Gayakwad, Executive Engineer Arvi, Shri P.M. Thakare, Manager, Wardha Circle, Shri Suhas V. Barhate, Jr.Law Officer Wardha, Shri Rajesh J. Jaiswal, Dy.Ex.Engineer Arvi, Shri Kishor Chitale, LDC Wardha, Shri S.P. Khade, UDC Arvi Sub.Dn. were present for the respondent. Both the parties argued the case orally. They also submitted written notes / written statement.

4. Shri Chandarana contended that the applicant is an industrial consumer of the respondent. The Government of Maharashtra in exercise of powers conferred by Section 5 A of the Mumbai Electricity Duty Act. 1958 released a notification dated 7-7-2004. By this notification the Govt. of Maharashtra granted exemption from payment of the Electricity Duty to the Industries located in Vidarbha and Marathwada Region for a period of 5 years from 1-4-2004 to 31-3-2009. In pursuance of the said Government Notification, the Chief Engineer (Commercial) of the erstwhile Maharashtra State Electricity Board, Mumbai issued General Circular dated 21-7-2004

informing its officials about the Govt Notification dt. 7-7-2004 and calling upon them to implement the exemption from electricity duty with restrospective effect i.e. from 1-4-2004. By another notification dated 26-5-2009 the Govt. of Maharashtra extended the period of exemption till 31-3-2014. In pursuance of the said notification the Chief Engineer (Commercial) of MSEDCL, Mumbai issued circular no. 101 dt. 9-6-2009 informing the officials about the said Govt. Notification and instructing them to implement the exemption w.e.f. 1-4-2009. Now the exemption is extended till 31-3-2019 vide notification dt. 6-6-2014 and commefcial circular No. 196 dt. 5-7-2014.

However while implementation the MSEDCL Officers have not kept uniformity throughout the region. That resulted in illegal and arbitrary recovery of Electricity Duty.

The applicant brought this fact of the illegal recovery to the notice of the respondent. It was of no use. The applicant approached the IGRC Wardha on 19-12-2015. Thereafter the respondent affected exemption from Oct 2017 billing cycle.

The applicant stated that the respondent recovered the amount illegally and without authority.

It was further stated that the applicant got the copy of the written reply of the respondent. In response to the reply the applicant argued that the respondent wrongly ask the applicant to comply the formalities given in commercial circular no. 204 dated 8-8-2013.

The applicant stated that the Govt. of Maharashtra grant two types of electricity duty exemptions. First one is blanket exemption for Vidarbha and Marathwada Region irrespective of old industry or new industry. And second is Electricity Duty exemption granted to attract or to invite new investment in Maharashtra State.

The applicant further clarified that industries in Vidarbha and Marathwada are exempted from payment of electricity duty from 1-4-2004 to 31-3-2019 irrespective of any qualifying criteria other than being industry. Those industries do not require case to case eligibility certificate. This exemption needs to be affected by 97 code for Vidarbha region and 98 code for Marathwada region. Industrial consumers in rest of Maharashtra are subject to lavy of electricity duty. However package scheme of incentive meant for industrial growth grant various types of incentives. Exemption from payment of electricity duty is one of them. After fulfillment of certain criterion the industry is given the eligibility certificate.

Giving reference of para 3 of the reply of the respondent the applicant stated, the respondent is processing the case of the applicant according to the instructions given in circular no. 204 dt. 8-8-2013. However for Vidarbha and Marathwada exemption was first introduced from 1-4-2004. The exemption was governed by commercial circular no. 393. There is no reference of eligibility certificate in this circular. Thereafter the period of exemption was extended upto 31-3-2014 vide G.R. dt. 2-3-2009. Commercial Circular no. 101 dt. 9-7-2009 was issued accordingly. Further the period is extended upto

31-3-2019 vide G.R. dt. 6-6-2014. Commercial Circular no. 196 dt. 5-7-2014 was issued about the implementation. None of the above mentioned Commercial Circulars have mention of eligibility certificate.

In the preamble of circular no. 204 dt. 8-8-2013, reference of two letters from Govt. of Maharashtra is given. However the first letter is about the package scheme of Incentive and second letter is about the delegation of powers. So the respondent is wrongly giving a reference of circular no. 204.

The respondent is insisting for online application. However this facility is in addition to submission of offline application. The applicant already submitted offline applications on 19-12-2015. The respondent asked for the compliance from the applicants. However the DIC registration certificate was already given at the time of getting connection. Certificate of refund is to be issued by the MSEDCL authorities only. And offline application was already with the respondent. So the letter asking for information from the applicant has no force.

The reference of the CGRF order given by the respondent is irrelevant. That case has no application in the instant case.

The applicant finally prayed that the respondent may be directed to refund the amount of electricity duty collected by the respondent. Interest @ 10.80% p.a. may be awarded on the above said amount. Action may be ordered against the erring officers as directed by Hon Nagpur Bench of Bombay High Court in Writ Petition No. 4297 of 2014 order dt. 11-8-2016. The cost of application @ Rs.10,000/- may be awarded.

5. Shri Gayakwad, Exe.Engineer defended the case for the respondent. He stated that the applicant is an industrial consumer. The applicant applied to the IGR Cell for stopping the levy of Electricity Duty and for refund of the Electricity Duty collected by the respondent. However the applicant has to submit the online application and the eligibility certificate.

The exemption from payment of the Electricity Duty is given by the Government of Maharashtra. The mechanism for processing the Electricity exemption refund is specified in Commercial Circular No. 204 dt. 8-8-2013. As per circular the consumer has to make online application. He has to fill information in form "F" through website, www.mahadiscom.in. He has to submit the eligibility certificate to the concerned Superintending Engineer, O&M Circle. The applicant is aware of the procedure. The respondent also communicated the same vide letter dt. 30-8-2016 and 27-10-2016. The applicant has not submitted the information stated above.

The respondent is ready to refund the Electricity Duty after the approval from the Electrical Inspector. The applicant submitted the online application on 12-11-2017. The respondent submitted the proposal for refund of the Electricity Duty to the Electrical Inspector Wardha. The Electricity Duty shall be refunded back as soon as the Electrical Inspector approve the proposal.

In case no. 93/2016, M/s. Sarvadnya Ginning and Pressing Hingana Tah. Seloo, this forum directed the applicant to comply all the provisions of Commercial Circular No. 204 dt. 8-8-2013. The respondent finally requested that the application may be dismissed.

6. The Member Secretary of the Forum (the M.S. for short) submitted a dissenting note for consideration. The note reads as under.

An Applicant Maa Vaishnavodevi Oil Industries,Arvi is an industrial consumers of MSEDCL (Herein after referred as Non-applicant) registered with SSI. It has come to the notice of the applicant that by Government of Maharashtra's notification dt.7.7.2004 and 26.05.2009 the industrial consumers in Vidharbha and Marathwada regions were exempted from the payment of electricity duty for a period of five years from 1.4.2004 to 31.03.2009.and same was extented upto 31.03.2014and now upto 31.03.2019 vide notification dt.06.06.2014.The Non-applicant vide circulars no.393 dt.21.07.2004 and 101 dt.09.06.2009 instructed the officials to implement the same.The mechanism for processing of the exemption /refund is specified in commercial circular no.204 dt 8.8.2013 such as online application etc. and as per commercial circular no.268 dt.27.09.2016, the committee was formed to take decision in the matter of Electricity Duty.

Therefore in the instant matter applicant was supposed to apply as per procedure given in commercial circular no.204. The applicant was supposed to submit proper certificate from the competent Authority to the concerned Superintending Engineer, O&M Circle. Even though applicant was well aware of this online procedure, applicant neglects to submit the online form and proper certificate. Record shows that by submitting the online form and proper certificate, all other eligible consumers are getting exemption from the electricity duty and they also got the refund but in the instant matter, applicant failed to complete requisite formalities.

In the instant matter, date of connection is 12-04-2008. Applicant claimed refund of ED of Rs.490237.66/-from the date of connection dated 12-04-2008. Applicant has asked for the exemption for the first time on 19.12.2015 directly from IGRC. Till filing of this grievance with IGRC, applicant has neither questioned about the said recovery nor requested

Non-applicant for refund of electricity duty. It is a common sense that before approaching to IGRC or CGRF, initially it is necessary for the consumer to file a plain application to MSEDCL that he is entitled for exemption of Electricity duty in response to Government notification and hence entitled for refund of electricity duty. In this case it is no where mentioned in grievance application or anywhere on record that since the date of connection dated 12-04-2008, at any time applicant filed any application in writing to the concerned officer of MSEDCL that applicant is exempted from electricity duty and that electricity duty amount should be refunded to him. As per the procedure it is necessary for any consumer, first to claim anything in writing and if his application is not allowed by MSEDCL thereafter only it can be said that applicant has a "grievance" about any order of MSEDCL or due to passing any order by MSEDCL on his application and thereafter only applicant can file grievance to IGRC or CGRF as the case may be. In the instant case it is clearly seen that applicant did not file any application to officer of MSEDCL with request to refund amount of electricity duty even on plain paper as Applicant could not produce any copy of such application written on plain paper addressed to MSEDCL Therefore without filing the application to MSEDCL, direct application of applicant to IGRC or CGRF is not tenable at law and deserves to be dismissed. On this count only grievance application of the applicant deserves to be dismissed.

2. According to Regulation 6.6 of the MERC CGRF and EO Regulation 2006 “The Forum shall not admit any grievance unless it is filed within two (2) years from the date on which cause of action has arisen”. To claim refund from 12-04-2008 it was necessary for applicant to file application on or before 12-04-2010 but actual grievance application is filed on 19-12-2015 and therefore it is hopelessly barred by limitation. On this count grievance application of the applicant deserves to be dismissed.

3. The applicant's representative relied on the fact that since the Electrical Inspector, Amravati vide his office letter 1988/2012 dt.12-11-2012 informed the Superintending Engineer, O&M Circle, Amravati that ED should not be recovered from industrial consumers in the Amravati region as per Govt. Notification dt.26.05.2009; hence recovery of Electricity duty from Industrial consumers of Nagpur region by Non-applicant is erroneous. On this point, I have to say that, Present matter is pertaining to the jurisdiction of Nagpur zone which falls within jurisdiction of Electrical Inspector Nagpur. An Electrical Inspector Nagpur vide his letter no.4940/2016 dt.20.08.2016 specifically informed the concerned Superintending Engineer, O&M Circle, Wardha regarding ED refund matter that, It is mandatory for the consumer to submit certificate of Eligibility in order to get exemption in Electricity duty, submission of online application by the consumer, DIC certificate etc. Accordingly on dt 18.11.2017, the proposal for refund of Electricity Duty is submitted by NA to EI Wardha, After getting the approval of EI, the same will be refunded to consumer. Also, Electrical Inspector Nagpur in specific case of consumer by name M/s Mahatma Sugar and power ltd wardha replied to Superintending Engineer, O&M Circle, Wardha as per his office letter dated 20-08-2015 that it is necessary for consumer to submit Certificate of Eligibility from DIC, in

order to get exemption from Electricity duty. Similarly DIC Wardha vide letter no.4726 dt.18.10.2017 filed on record by NA endorsed the similar requirements. Hence in absence of guidelines from EI Nagpur similar to EI of Amravati region for recovery of Electricity duty from industrial consumer's of Wardha region, recovery made by Non-applicant is justified.

Nevertheless, it is already admitted by Non-applicant the fact that on submission of proper online form and requisite certificates from competent authority and on receipt of approval from Electrical Inspector, Electricity duty refund shall be given. But for exemption in ED

it is mandatory for applicant to establish that applicant is doing industrial work having particular manufacturing activity or they are indulged in some production activity in order to avoid misuse of this facility by the industrial consumers such as floor Mill, Mobile Towers as they too fall under industrial category.

Even if for the sake of argument, it is presumed that it is Industry, even then exemption from electricity duty is to be given by Government to the specific category of the consumers and they have to follow due procedure for it .For this I rely on industry ,Energy, labour department of government of Maharashtra's circular dt 8-07-2016, and Departmental circulars no.204 dt.08.08.2013 and 268 dt.27.09.2016, which clearly states that the industrial consumers have to make application with concern Electricity Company and after due verification concern company shall submit the same application duly recommended to the concern Electrical Inspector within 7 days. In commercial circular no.204 issued by Chief Engineer (Commercial), MSEDCL, Prakashgad, Mumbai procedure for refund of electricity duty to exempt consumer is specifically given. As per contention of applicant's representative during hearing, it is understood that IGRC has also

informed to the consumer that the consumer has to apply along with relevant papers for the refund of electricity duty, and that without following due procedure, applicant is not entitled for refund of electricity duty. For these reasons, I hold that applicant has to file online application and fill online information in form "F" through website of MSEDCL and applicant has to submit original duty Exemption certificate to concerned Superintending Engineer O&M Circle. After following due procedure as per relevant circulars, MSEDCL shall pass suitable legal order of refund, if any.

4. Applicant also relied on judgement of Hon'ble Electricity Ombudsman Nagpur in case No.45/13 dated 07-06-2013 against the order of CGRF Akola in case no.42/2012 The hon'ble chairman,CGRF Nagpur has already stated in the order of case no 93/2016

M/s Sarvodnya Ginning and pressing ,Wardha Vs. SE,O&M,MSEDCL Wardha *"however the point involved before Hon'ble Electricity Ombudsman was simply whether order of the rate of interest Rs.6% p.a. is justified or not and Hon'ble Electricity Ombudsman hold that it is necessary to grant interest @ Rs.9.5% p.a. it is not the judgment on the point of the procedure for refund of electricity duty. Therefore judgment of Hon'ble Electricity Ombudsman Nagpur in case no.45/2013 is only on the point of rate of interest amount.*

Applicant also relied on Hon'ble High Court order in writ petition no.4297/ 2014 and its permission to withdraw the said petition. After perusal of both the documents it is clearly seen that the said order was not pertaining to unlawful recovery of ED made by company but it was regarding inaction on the part of officials of the company who have not followed the forum order.

Therefore facts of this case are different and distinguishable from the facts of case no.45/2013 and Hon'ble High Court order in writ petition no.4297/ 2014 hence that judgment is not applicable to this case."

5. Hence it is most appropriate that every applicant shall follow MSEDCL's circular no.204 and 268 thereby applicant shall make online application and fill in online information in Form "F" through website of MSEDCL and applicant shall submit requisite certificates to concerned Superintending Engineer O&M Circle and shall complete all requisite formalities if not done already. On completion of requisite formalities by the applicant, on receipt of approval from the Electrical Inspector, non-applicant shall refund electricity duty to the applicant which is permissible under Law & Regulations and also consider point of limitation for refund of the amount if any.

In the present case Non-applicant has already contended in their reply that procedure has been followed on dt 18.11.2017 and the said proposal is already submitted to Electrical Inspector, Nagpur, on receipt of the same ED shall be refunded to the applicant.

As such applicant's grievance application deserves to be dismissed in light of aforesaid analysis.

We have perused and discussed the dissenting note submitted by the M.S. of the Forum.

Main points raised by the M.S. are as under

(1) The applicant should follow the procedure prescribed in Commercial Circular no.204 dt. 8.8.2013. The applicant should present online application, he should submit information in form F, he should produce a copy of the registration certificate, he should produce a copy of the eligibility certificate etc.

We agree with the argument of the applicant that submission of the online application is additional facility available to the applicant. In fact the applicant already submitted offline application. The applicant gave registration certificate at the time of getting electricity connection. The eligibility certificate is to be given by the respondent itself. So in fact the respondent should have processed the application.

Secondly we agree with the applicant that circular 204 did not refer to the Govt. of Maharashtra G.R. granting exemption to the industrial units established in Vidarbha and Marathawada region.

(2) The M.S. raised point that the application is barred by limitation. The M.S. stated that the applicant has not claimed the refund within two years.

In this regard we relied upon the decision of the Division Bench of Hon. High Court, Nagpur Bench in W.P. No. 9455/2011, M/s. Hindustan Petroleum Corp. Ltd. v/s MSEDCL and others. Hon. High Court held that the cause of action for submitting grievance arose when the IGRC rejected the grievance of the complainant. So we disagree with the M.S.

7. We have heard the arguments of both the parties. We have perused the record.

The respondent did not deny to refund the Electricity Duty collected from the applicant. However the respondent insist that the applicant should follow the instructions given in Commercial Circular no. 204 dt. 8-8-2013.

In our opinion respondents insistence for compliance of circular 204 is not proper for the following reasons.

(1) The exemption from payment of Electricity Duty was initially given by Govt. of Maharashtra notification dt. 7-7-2004. Erstwhile MSEB issued Commercial Circular dt. 21-7-2004. Govt. of Maharashtra extended the period vide notification dt. 26-5-2009. The MSEDCL issued a

commercial circular No. 101 dt. 9-6-2009. Govt. of Maharashtra extended the period of exemption vide notification dt. 6-6-2014. The MSEDCL issued commercial Circular No. 196 dt. 5-7-2014. All the three circulars of the respondent dt. 21-7-2004, 9-6-2009 and 5-7-2014 did not say anything about submission of eligibility certificate.

(2) Circular No. 204 dt. 8-8-2013 refer to two Govt. of Maharashtra letters under reference. The letters are dt. 17-11-2008 and dt. 5-7-2013. First letter is about package scheme of incentives and the second one is about the delegation of powers. There is no reference of exemption of electricity duty to the industries in Vidarbha and Marathwada region.

(3) We agree with the contention of the applicant that the submission of online application is in addition to the submission of offline application. The DIC registration was submitted by the applicant at the time of taking electricity connection. So it was already with the respondent. The certificate of refund is to be given by the respondent itself.

In view of the above we are of the considered opinion that the respondent is insisting for compliance of the circular 204 under wrong presumption.

Finally the respondent said that the application of the applicant is submitted to the Electrical Inspector. There is a committee. It takes decision about the application. One officer from the MSEDCL is a member of the committee. So the respondent is taking care to refund the amount at an early date. In such situation we fail to understand as to why the respondent is resisting the application.

The applicant contended that the respondent collected the Electricity Duty. The amount is retained for a long time without any valid reason. So an interest may be awarded to the applicants. The applicant relied upon case No. 45/2013 decided on 7-6-2013 by Hon. Electricity Ombudsman Nagpur. We think the aforesaid judgement is applicable in the instant case.

The applicant further stated that in spite of the fact, the Govt. of Maharashtra granted exemption and the Superior Officers of the respondent issued the commercial circulars thereabout, the officers collected the electricity duty. They also retained the amount for a long time. It is the mistake of the officers that the respondent has to pay the interest on the amount. Since there is no fault on the part of the MSEDCL, the responsibility may be fixed upon the erring officers. The applicant referred to the case of Hon. Supreme Court, Lucknow Development Authority v/s M. K. Gupta, reported in 1994 SCC (1) 243.

We have given the interest on the amount of Electricity Duty to be refunded to the applicants. So we are not inclined to grant cost of representation / damages.

So we pass the following order, by majority.

ORDER

- (a) The application is partly allowed.
- (b) The respondent shall refund the amount of electricity duty recovered from the applicant / make adjustment in the next billing cycle.
- (c) The respondent shall pay the interest equivalent to the Bank rate from the date of recovery till making adjustment in future bills.

- (d) The respondent shall take appropriate action against the erring officers in the light of the observations of Hon. Supreme Court in Lucknow Development Authority v/s M.K. Gupta reported in 1994 SCC (1) 243.
- (e) The claim for damages is hereby dismissed.

Sd/-
(Mrs. V. N. Parihar),
MEMBER SECRETARY

Sd/-
(N. V. Bansod)
MEMBER(CPO)

Sd/-
(Vishnu S. Bute),
CHAIRMAN