

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

Case No. CGRF(NZ)/24/2018

Applicant : Shri Ashok Kumar Kisanlal Gulati,
House No. 542,
Near Rahul Hotel,
Nagpur.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(D/F), NUC, MSEDCL, Nagpur

Applicant represented by : 1) Shri. Suhas Khandekar,

Non-applicant represented by: 1) Shri N. Vairagade, Exe.Engr, MSEDCL.
2) Shri Dahasahastra, SNDL, Nagpur.

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

ORDER PASSED ON 03-05-2018

The applicant filed present grievance application before this Forum on 17.03.2018 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as, said Regulations).

2. Non applicant, denied applicant's case by filing reply dated 25.04.2018.
3. Forum heard arguments of both the sides on 02-05-18 and perused record

4. Brief of the case

- A). The applicant Shri Ashok Kumar Kisanlal Gulati, (Hereinafter referred to as, the applicant) is a industrial consumer of MSEDCL bearing consumer no. 410017987902 stated in his grievance application that he is a consumer of the Non-applicant since 29-3-16, having a sanctioned load of 15 HP. The load was sanctioned as Industrial load. Prior to this, he was getting power supply as consumer No. 4100016734431 under the Commercial Category. He applied for the Industrial tariff. After due verification by the officials of Non-applicant, he was provided a new meter, a new consumer number and billed under Industrial Tariff.
- B) On 12.6.2017, a team of SNDL conducted a spot inspection, and on the same day, the Assessing Officer of SNDL gave him an order of provisional assessment under section 126.
- C) He submitted letter dated 16.6.2017 to the Vigilance officer requesting him to give reasons for assessing him under section 126 and providing him an opportunity to submit his say in the matter. Thereafter he also submitted letters dated 16.6.2017 and 22.6.2017 to the assessing Officer reiterating that he has not carried out any unauthorized use under section 126 of the Electricity Act.
- D) After this there had been no communication from Non-applicant on the subject, though he visited their office frequently, no final order was given to him.

E) All of a sudden on 23.12.2017, he received a notice from the Advocate of Non-applicant, asking him to pay as per the final order, and threatening to disconnect his power supply, if the same was not paid within 15 days.

F) He wrote in reply that he had not agreed with the provisional assessment, and had already submitted his say to the Assessing Officer. Moreover, he has also not received any final order. However, since, he was under threat of disconnection, he applied to CGRF under Regulation 6.5 of the CGRF & EO Regulations, requesting it to order SNDL to desist from disconnecting his power supply or not to take any other coercive action. During the first hearing held on 4.1.2018, it was confirmed by Non-applicant that the final order has not been served on the consumer and therefore CGRF directed to serve the same. The final assessment order was given to him on 15.1.2018. In the second hearing held on 16.1.2018, this was confirmed and the case was closed.

G) In between, it was observed from the bill for the month of August 2017 that SNDL unilaterally changed his categorization from Industrial to Commercial which is against the principles of natural justice.

H) He therefore applied to the IGR cell requesting for reliefs on lines and on grounds as mentioned below:-

I) He had not carried out any unauthorized use of electricity under section 126, and hence the assessment under section 126 was wrong ab initio. Moreover, since the final order has not been served within the stipulated time, the whole assessment under section 126 has become invalid and unenforceable. The same should be declared as void.

J) It was confirmed during the hearing before CGRF that a false and misleading notice was given to the consumer through the Advocate of Non-applicant forcing him to go to CGRF due to threat of disconnection. This was an unnecessary harassment and he should be given a compensation of Rs. 10000.00 for the same.

K) As per the tariff order of MERC in case No. 121 of 2014 dated 26.6.2015 as well as case No. 48 of 2016 dated 3.11.2016. Applicant's usage is covered under "Industrial tariff" Further, he pointed out that on page 215 & 216 of the tariff order of MERC in case No. 111 of 2009, consumer categorization should reflect the main purpose of the consumer premises. Since a major portion of his load is for "Industrial" activity and he is registered with MSME he should be applied, "Industrial Tariff" only.

L) The excess amount recovered from him from Nov. 2017 by applying Commercial Tariff should be refunded to him along with interest at the standard bank rate.

M) No Electricity Duty should be levied to his bill, as Industries in Vidarbha are exempt from payment of the same, and the duty recovered from him since his categorization under Industrial Tariff i.e. from April 2016 should be refunded to him along with interest at standard bank rate from the date of payment. In support of this, he had also attached a copy of registration certificate as an Industry.

N). In its order IGR cell has given only partial relief. It has recommended that the assessment should be done only for part load and that too only for the difference of tariff and not on two times basis. It has further recommended that the tariff should be changed to Industrial but a separate .

meter should be installed for the commercial portion of the establishment. The commercial tariff should be charged for that area. Accordingly Non-applicant has now issued to him a bill for Rs. 37370.00. However there is no clarity on the calculations.

5. Non applicant, denied applicant's case by filing reply dated 25.04.2018.

It is submitted that the applicant M/s. Kishanlalji dairy Milk Utpadan is LT Industrial consumer with consumer no.410017987902 since 29-03-2016 with sanctioned load of 15 HP. On 12-06-2017 the vigilance team inspected the premises of the applicant and found that in addition to industrial load part of the total load was used for commercial activities i.e. sale of sweets and other Dairy products in the same premises. The supply was given for milk processing/chilling plant (Dairy) which comes under the MERC's Tariff Category of LT V(B) i.e. industry general. But since the sale of milk products comes under commercial activities, the vigilance officer has given an assessment bill for assessed units (only commercial purpose) of 10103 for amount of Rs.1,66,090/- for the period of 12 months under Section 126 of the Electricity Act, 2003.

6. As per MERC's various tariff order since 2015, under tariff category of LT V (B) i.e. Industry General, the milk processing plant/Dairy is included. Such category is also applicable for use of electricity/power supply for administrative office/canteens, Recreation Hall/sports club or facilities/Health Club or facilities/Gymnasium/swimming pool exclusively for employees of the industries, Lifts, Water pumps, fire-fighting pumps and

equipment, street & common area lighting, Research & Development units etc. But, nowhere in MERC tariff, it is mentioned that commercial activities can be done in industrial premises. Whatever activities mentioned in the tariff category are related to welfare of employees of industry. But, in the instant case, power is not used for any one of above activities, rather it is used for commercial use i.e. sale of products of the industry. Hence the say of the applicant that his commercial activities are permitted by MERC's tariff order is totally wrong & baseless.

7. In all other references of MERC Orders referred by the applicant in his grievance application, there is no mention of commercial activities in any industrial premises. And, only due to this reason, the activities done by the applicant in his premises comes under unauthorized use of electricity under Section 126 of the Electricity Act 2003. Since the partial load is used for commercial activities, the assessment for only proportional load needs to be done and that too without applying the penalty of two times the tariff rate. The assessment towards difference of tariff needs to be done.

Secondly, the applicant has an objection on calculation of connected load especially the wattage of deep fridge. The vigilance officer has taken the wattage of deep fridge on his own and not as per name plate details. Therefore, the applicant has submitted his calculation of assessed units based on name plate details of the equipment has to be considered. The applicant has raised doubt over working hours and number of days in a month. Therefore, for correct calculation of assessment the guidelines of load

factor/number of hours and number of days in a month needs to be taken from MSEDCL's Commercial Circular No.133 dt.15-02-2011. The wattage of deep fridge needs to be calculated on the basis of name plate details provided by the applicant. As per name plate details, the total wattage of the deep fridge comes out to be $(0.53+0.46+0.44)=1.43$ KW instead of 1.95 KW calculated by the vigilance officer. And, considering the revised wattage of deep fridge, the total connected load comes out to be 2.48 KW instead of 2.89 KW as calculated by vigilance team.

9. The demand of waiving of electricity duty cannot be considered as the supply is not exclusively used for industrial purpose. On the contrary, the supply is used for mixed load i.e. industrial & commercial which is not authorized by MERC's tariff order. However, the applicant needs to be directed to obtain separate electric connection for commercial purpose

10. IGRC considered above facts and as per IGRC order dt. 22-02-2018, the previous assessment bill amount of Rs.166090/- has been revised and fresh assessment bill of Rs.37370/- given to the applicant.

Hence, on these aforesaid grounds, they requested the Forum to reject the applicant's grievance application.

16. Not satisfied with these arrears, applicant approached the IGRC.

16. The IGRC by its order dated 22.02.2018 given the verdict as follows"

1) Revise the assessment amount by considering the total load of 2.40 KW, LFXDF of 50% and working hours of 10 and number of days of 25 in a month should be considered for calculations of assessed units for load other than

deep fridge. And, for calculation of assessed units of deep fridge, the working hours of 24 & number of days of 30 & LF X DF of 50% should be considered. Difference of tariff rate should be considered for calculation of assessment amount without applying any penalty.

2) Change tariff from commercial to industrial immediately and revise the bills from Aug-2017 till the change of tariff, considering industrial tariff and give credit of balance amount in the ensuing bill of the applicant.

3) The applicant should be asked in writing for obtaining separate electric connection for Commercial purpose and till then assessment bills as above shall be issued.

17. Aggrieved by this order, the applicant approached this Forum on 17.03.2018.

18. During hearing, Non-applicant reiterated the facts already stated in their written submission.

19. After the hearing was over the case was discussed among the Members of the Forum. The Chairman and the Member/Secretary were of the same opinion, However the consumer representative was of the different opinion. Therefore as per provision given in clause 8.4 of MERC (CGRF & EO) Regulation 2006 which reads as under.

8.4 "Provided that where the members differ on any point or points the opinion of the majority shall be the order of the Forum. The opinion of the minority shall however be recorded and shall form part of the order".

Hence, the Judgment is based on majority view of chairman and Member Secretary. However the separate dissenting note of Hon'ble Member (CPO) is noted in the judgment and it is part and parcel of the judgment. But the judgment is based on majority view and reasoning thereof is as under:

The Member (CPO) was requested to give a dissenting note, which is as follows.

20. Arguments heard and perused all the papers on record and order of MERC Case No. 24/2001 as well as reference to last para page No. 215 of Tariff for F.Y. 2010-2011.

- (1) It is an admitted fact that applicant is consumer of SNDL prior to 29-3-2016 having consumer No. 410016734431 under Commercial Category. He came to know that he was eligible for Industrial Tariff as was registered with MSME Govt. of India/D.I.C. Nagpur and on application & necessary inspection for Industrial connection, new meter, New consumer No. 410017987902 as well as billed under Industrial Tariff.
- (2) Applicant said as per spot inspection on 12-6-2017 by S.N.D.L, assessing officer gave provisional assessment under section 126 for use of Industrial to Non domestic. Applicant vide letter dated 15-6-2017 requested non applicant to give reasons for assessing U/S 126 as well as to provide opportunity of hearing and gave other letters dated 16-6-2016 & 22-6-2016, reiterating of no unauthorized use under section 126 of the electricity Act. and no reply or no final order was given and notice of Advocate dated 23-12-2017, asking to pay as per final order & threaten of disconnection within 15 days.
- (3) Applicant was not agreeable to the notice of provisional assessment and filed grievance before CGRF under Reg. 6.5 of CGRF & EO Regulations desisting SNDL from disconnecting power supply.
- (4) Applicant said non applicant unilaterally changed categorization from Industrial to Commercial, against principal of Natural Justice as well as due to

Industrial Registration in Vidarbha area is exempted from payment of electricity duties.

(5) Applicant sought the reliefs as under.

(A) The assessment bill of Rs.37370/- dated 13-3-2018 should be scrapped and entire premises should be treated as one and Industrial Tariff should be applied.

(B) Excess amount recovered from Nov. 2017 towards commercial tariff should be refunded with interest from the date of payments of such amounts.

(C) No electricity duty should be levied in the bill from April 2016 and recovered amount should be refunded with interest from date of payment & compensation of Rs.10000/- for harassment faced due to false legal notice served on the applicant.

(6) IGRC recommended, the assessment should be done only for part load and that too only for the difference of tariff and not on two times basis. IGRC further recommended that the tariff should be changed to Industrial, but a separate meter should be installed for the commercial portion of the establishment and commercial tariff should be charged for that and S.N.D.L. has issued bill of Rs.37370/- without clarification or details of the calculations.

(7) Non applicant's submissions are same before IGRC & Non applicant complied the order of IGRC by issuing bill of Rs.37370/- for commercial portion.

(8) The points for my consideration are as under.

(A) Whether applicant's unit can be classified as Industrial Unit ? Yes.

It is an undisputed fact that applicant was commercial consumer having con. No. 410016734431 prior to 29-3-2016 and on coming to know that he was eligible for Industrial Tariff as was registered with Govt. of India,

MSME and on application for Industrial connection detailed inspection & survey, new meter, New consumer No. 410017987902 and billing was Industrial.

IGRC admitted and ordered to reclassify under Industrial Tariff partly and partly under Commercial Tariff and As per IGRC order, non applicant issued bill of Rs.37370/- since August 2017 without details and clarity of calculations. IGRC directed that Application should be asked in writing for obtaining. Separate electric connection for commercial purpose & till then assessment bills as above shall be issued.

During hearing in Case No. 01/2018, on 4-1-2018 it was categorically directed non applicant to file the New Service Connection 'A1' alongwith copy of all documents for commercial connection prior to 'A1' form for Industrial connection alongwith documents on 29-3-2016 and all the inspection reports for New connections but non applicant neither filed during pendency of case No. 01/2018 nor during pendency of case No. 24/2018, non applicant intentionally avoided to file vital documents to throw light an entire controversy of commercial of Industrial Tariff. Which is concealment of fact and adverse inference can be drawn against non applicant.

It is not the submission of non applicant that during processing of the case for Industrial connection & sanction & connection, "the sweet shop", was not there as well as no non domestic use, but was established after the Industrial connection. Hence submission of non applicant about "Sweet shop" and commercial use of Industrial Tariff is baseless deserves to quashed.

On perusal of 'Udyog Aadhar Registration Certificate' bearing Udyog Aadhar Number – MH 20 A 001985 – date of commencement is 1-4-2015.

– Major Activity – Manufacturing

National Industry Classification Code.

Sr. No.	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit Code	Activity Type
1	10-Manufacture of food products	1050-Manufacture of dairy products	10504-Manufacture of cream, butter, cheese, curd, ghee, khoya etc.	Manufacturing
2	10-Manufacture of food products	1050-Manufacture of dairy products	10509-Manufacture of other dairy products n.e.c.	Manufacturing

It is clear that applicant is manufacturer of dairy products as mentioned above as dairy products etc. and sale of dairy products as well as sales of any sweets from residual of Milk product is incidental and as dairy products are perishable commodity which needs to be utilized within short period. It is not the submission of non applicant that in sweet shop, applicant is selling goods other than dairy products. Hence Non applicants submission is not acceptable as does not stand to Judicial as well as Administrative scrutiny and display of dairy products is obvious for sale.

Non applicant on page 2 of reply emphasized on MERC's Tariff order since 2015, under tariff category of LTV (B) LT. – industry – General.

Applicability – and admitted that the milk processing plant/dairy is included and mentioned para 2 of applicability which does not apply & required in small unit of 15 HP sanctioned load, But non applicant intentionally avoided to mention para 3 of Applicability i.e. as under.

“Provided that all such facilities are situated within the same industrial premises and supply power from the same point of supply”. Applicant's unit is in same industrial premises and point of supply is same with single

entry.

Applicant said, the IGRC totally overlooked to appreciate the directives of MERC regarding the applicability of tariff to other activities carried out within the same premises as for 1st time dealt on MERC in its tariff order in case No. 111 of 2009 dated 12-9-2010 -- Relevant para is as under. i.e. page 5 para 2.

“Further, it is clarified that the consumer categorization should reflect the main purpose of the consumer premises. For instance, within a Factory, there could be canteens, recreation rooms for staff, gymnasium, time office, crèche for employees’ children, dormitory of workers, guest houses for visiting officers, etc., which are related to and incidental to the main purpose of the factory premises, and are intended for use by the staff/workers employed within the factory premises, and are not offered on commercial payment basis to people not employed within the factory premises. The factory cannot function in the absence of such ancillary activities. In such cases, the categorization of such consumers should be ‘Industrial’ and the distribution licensee should not install sub-meters or separate meters for such ancillary and incidental activities, and charge them at commercial or any other rate, as has been done in some cases. On the other hand, if there are full-fledged employee quarters spread across one or more buildings, wherein the employees employed in the factory are given accommodation, then the supply to such premises should be metered separately through a sub-meter, and such premises should be charged at appropriate HT residential or LT residential tariffs, depending on the level of metering. It should be

noted that all previous clarifications given by the Commission through its various Orders continue to be applicable, unless they are specifically contrary to anything that has been stated in this Order, wherein the clarifications given in this Order shall prevail".

In view of the above observations, it is proved that applicant is covered under Industrial category for manufacture of dairy products etc. and incidental sale of its residual of biproducts. Hence non applicants inference as well as IGRC is without appreciation of true facts and needs to be discarded and partial classification to commercial Tariff is also baseless as during arguments, on query that why Industrial connection was sanctioned when applicant was using for commercial or non domestic, officers failed to reply which proves concealment of facts and intention to support their false act.

(B) Whether the action of non applicant to take action under section 126 of the Electricity Act, 2003 against applicant is correct and billing of Rs.37370/- as per IGRC order is correct? No

Non applicants team conducted a spot inspection, on 12-6-2017 and gave provisional assessment bill on pretext of non domestic use and applicant vide letters dated 15-6-2017, 16-6-2017, 22-6-2017 informed that no unauthorized use is done by Applicant. Non applicant did not reply, on the contrary vide letter dated 23-12-2017 through Advocate, threatening of disconnection of supply, but non applicant failed to pass final order of assessment within 30 days and deprived applicant of opportunity of the provision of section 127. During hearing in case No. 01/2018 – Non applicant confirmed that final order had not been served on consumer by SNDL, even that it was mentioned in the Legal Notice of Advocate dated

23-12-2017. The final assessment was given on 15-1-2018 and confirmed during hearing on 16-1-2018 and SNDL withdraw the legal notice dated 23-12-2017. Hence entire action of non applicant is infructuous as failed to act in time bound. Later on non applicant himself stated, the partial use is for non domestic and as per order of IGRC order, bill was issued for partial non domestic use for Rs.37370/- without providing details etc. Applicant stated that on false prêtext of unauthorise use of electricity, non applicant charged the commercial Tariff by changing from Industrial to Commercial for period May 2016 to May 2017 which is against the order of MERC in case No. 24 of 2001 order dated 11-2-2003 and relevant para No. 23 is as under and recovery of Rs.166090/- vide letter dated 12-6-2017 stands illegal as it was retrospective recovery.

“In light of the above observations the Commission directs the following.

No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. 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 compentent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the Commission will have to be sought as any reclassification of consumers directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the

utility or through a petition filed by the affected consumer. In all these 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.”

Hence entire action of non applicant u/s 126 of the Electricity Act. 2003 is void and deserves to be discarded as well as billing amount Rs.37370/- for so called commercial use or non domestic is also deserves to be void without application of facts & direction of MERC.

(C) Whether applicant is entitle to get refund of amount recovered from Nov. 2017 by applying Commercial Tariff ? Yes.

In the above para's it is clarified and proved that applicant is industrial consumer since 29-3-2016 and he is noway concerned with Commercial Tariff or partial Commercial Tariff for So called Non domestic use but it is incidental to the purpose of Industrial Unit/tariff because predominant use of power supply is for dairy products recognized in the industrial Tariff. Therefore any recovery from Nov.2017 etc. by applying commercial Tariff is illegal and applicant is entitle for refund of excess amount recovered from Nov.2017 with interest as per section 62(6) of The Elect. Act. 2003 from the date of respective payments.

(D) Whether applicant is entitle to refund the electricity duty ? Yes.

On perusal of “Udyog Adhar Registration Certificate” Number MH 20A0001985 issued by Govt. of India, Ministry of Micro Small & Medium Enterprises”, Applicant's predominant & major activity is recognized as “Manufacturing” and Govt. of Maharashtra vide various orders provided the Electricity duty exemption to the Industries in Vidarbha & Marathawada since 2004 and this forum as well as E.O. Nagpur has decided many

representations and ordered refund of the electricity duty to the Industries but non applicant to mislead the forum stated that supply is used for Mix Load (Ind. & Commercial) and failed to mention date of mix load. Applicants Industrial connection is from 29-3-2016 and their was no grudge of non applicant regarding unauthorized use or mix load and SNDL why failed to provide electricity duty exemption from 29-3-2016.

In view of the above observations, applicant is entiled for refund of electricity duty exemption i.e. from 1st payment after connection on 29-3-2016 with interest as per section 62(6) of the Electricity Act.2003 from the dates of respective payments till its refund.

(E) Whether the applicant is harassed by non applicant & applicant is entitle for compensation of Rs.10000/- for harassmt since 12-6-2017 ?

Yes.

It is established fact that applicant is harassed from 12-6-2017 alleging unauthorized use of power & then by issuing legal notice date 21-12-2017 through Advocate Mr. Pravin S. Khare, threatening disconnection of supply, without providing final assessment mentioned final assessment given to Applicant and all subsequent events of 1st case & IGRC & 2nd case etc. In this case non applicant to issue legal notice though Advocate Khare, to creat pressure & threaten of disconnection which is against directives or orders of Chief Engineer(Commercial) as under & hence legal notice is illegal which was withdrawn by non applicant on 16-1-2018.

Mahavitaran Circular No. Ref. No. P-Com/Accts/19021 dated 06-01-2013 by Chief Engineer (Commercial) Para 12 statest that **“The work of issuing legal notices should not be assigned to private advocates, if it is noticed, action will be taken against concerned”** hence entire

action of non applicant is illegal.

I am of the firm view to grant Rs.10000/- for harassment to the applicant as per Reg. 8.2(C&e) of MERC (CGRF & EO) Regulations 2006 in the interest of Justice to compensate the applicant. I am further of view that forum is not interested to penalize the Distribution Lincensee towards the cost of compensation for negligent act & fault of the employees of non applicant, D.L. shall conduct the enquiry against the erring staff and recover the amount of Rs.10000/- from their salary as per the ratio laid down by the Supreme Court of India, in petition “ Lucknow Development Authority v/s M.K.Gupta Reported in AIR 1994 Supreme Court 787.

Hence the application deserves to be allowed.

ORDER

1. Non applicant is directed to pay Rs.10000/- to the applicant for harassment caused to the applicant.
2. Non applicant is directed to refund the electricity duty to the applicant from 29-3-2016 with interest at the bank rate from the date of receipt till payment to the applicant.
3. Non applicant is directed to classify applicant in Industrial Tariff for the entire unit as prior to 12-6-2017.
4. Non applicant is further directed not to take illegal action under, under the Electricity Act 2003, half heartedly without cogent evidence as well as arbitrarily against applicant and action under section 126 is void.
5. Non applicant is directed to refund from Nov 2017 i.e. difference of Commercial and Industrial Tariff from date of receipts, till its payment with interest as per section 62(6) of the Electricity Act. 2003.
6. IGRC order partly classifying the commercial tariff is viod and deserves to setaside as concept of Mix load is not recognized by MERC.

Compliance of this order shall be done within 30 days from the date of order.

Naresh Bansod
Member (CPO)

21. We have perused the note, we disagree with the Ld. Member (CPO) for the reasons discussed the following paras.

22. We have perused the record. We have heard the arguments of both the parties. On perusal and consideration of both the oral and written submissions made by both the parties, It is seen that on 12.06.2017 Non-applicant's vigilance team visited his premise and issued assessment bill of Rs.1,66,090/-for the period of 12 months under Section 126 of the Electricity Act 2003. Applicant received disconnection notice if he did not pay the assessment amount. Moreover his tariff was changed to commercial from Industrial. He therefore rely on MERC's tariff order dt.26.06.2015 in case no.121of 2014 as well as order dt.03.11.2016 in case no.48 of 2016 and 111 of 2009 wherein it is mentioned that consumer categorization should reflect the main purpose of load which in his case is Industrial with his registration with MSME.

23. It is clear that applicant is manufacturer of dairy products and there is a separate shop/store for sale of dairy products as well as sales of sweets from Milk product. Hence it is crystal clear that applicant is carrying out commercial activity such as selling goods through the shop /store situated in the same premises where he is carrying out industrial/manufacturing activity. Hence the action of change of tariff from industrial to commercial from Aug-2017 is not justified as the total load is not used for commercial purpose. Till then the separate assessment bill should have been given for commercial load considering the difference in tariff rate.

24. We have carefully perused MERC's tariff order dated 16-08-2012 in case No.19/2012. On that basis MSEDCL had issued Commercial Circular No.175 dated 5th September-2012 para 10 (e) of Commercial Circular No.175 dated 5th September-2012 reads as under:

10 (e) Tariff to Ancillary Services within various Establishment:

“An ancillary services like canteens, recreation rooms for staff, gymnasium, swimming pool, time office, crèche for employees’ children, dormitory for workers, guest houses for visiting officers, etc. within industrial/hospital/ education institutes/residential colonies, which are exclusively meant for the employees/patients/students/residents of these establishments respectively shall be billed under the consumer category of the respective categories.”

25. It is noteworthy that “**shop or store**” is nowhere mentioned in para 10 (e) of said Circular therefore it is not an ancillary services.

26. Para 12 of Commercial Circular No.175 dated 5th September-2012 reads as under:

12 Tariff to Commercial Load of Industrial Consumers or Educational Institute:

“For commercial load (other than ancillary and incidental activities mentioned in Sr.No.10(e) above) of industrial consumers or educational institutions taking supply at HT voltage with separate sub-meter, the HT II Commercial category Tariff will be applicable, irrespective of whether metering is at HT side or LT side of the transformer. The HT VI Commercial category Tariff will not be applicable in such cases, since the same was intended to be only an Page 2 of 3 Case No.221/2015 interim solution, since all such commercial category consumers taking supply at single point have to be converted either to franchisee or individual connections, in accordance with the detailed rationale given by the Commission in previous Tariff Orders. This provision needs to be implemented scrupulously.”

27. From the argument, it is learnt that the instant industrial consumer runs a separate Shop in the same premises for selling sweet produced in his manufacturing unit. Therefore so far as “Shop or Store” is concept and any general public at large has approach and access to this shop. Any outsider from the society can purchase

sweet from the said Shop. It is not restricted for staff, employees, within the four walls of the Industrial premises. Therefore so far as shop is concern it is commercial activity and therefore needs a separate meter for the said shop. Therefore applicant shall get separate commercial meter for his Sweet shop/store.

28. The demand of waiving of electricity duty cannot be considered as the supply is not exclusively used for industrial purpose. On the contrary, the supply is used for mixed load i.e. industrial & commercial which is not authorized by MERC's tariff order.

17. Hence Forum proceeds to pass the following order, by meajority.

ORDER

- 1) Grievance application is dismissed.
- 2) Order passed by the IGRC in case no. 51/2018 on 22-02-2018 is hereby confirmed.

Sd/-
(N.V.Bansod)
MEMBER

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

Sd/-
(Vishnu S. Bute,)
Chairman