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REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/ 296/ 0087 Date: 21.05.2019

**Hearing Date: 30.04.2019**

**CASE NO. 296/2018**

**In the matter of retrospective recovery in IT/ITES**

M/s Om Ganesh Investment  
Plot No 7 Gala No 11,13 to 15  
Block Sector 19,APMC Market, Vashi  
Navi Mumbai-400705 ..... **(Hereinafter referred as Applicant)**

Versus

Maharashtra state Electricity Distribution Company Ltd  
Through it's Nodal Officer,  
Vashi Circle,Vashi

..... **(Herein after referred as Respondent)**

For Consumer – Shri. Vijay Kamanna Consumer representative  
Shri .Mukund Mahale

For Respondent:- Shri. R.S Rathod Additional Executive Engineer Vashi  
Sub- Division Subdivision M.S.E.D.C.L

[Coram- Dr. Satishkumar Jaiswal - Chairperson, Shri. R.S.Avhad -Member Secretary and Sharmila Ranade - Member (CPO)].

1. Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum

& Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with subsection 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. Maharashtra Electricity Regulatory Commission. [Electricity Supply Code and other conditions of supply Regulations 2005] Here in after referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience.

2. Being aggrieved with order of IGRC ,Thane the applicant filed his grievance in schedule 'A' to this Forum .The applicant herein is M/s Stratagic Infrastructure solutions Ltd (Power supply stands in name M/s Om Ganesh Investment ) bearing consumer no 000489034150 . The applicant submits that they are running business under category –IT/ITES declared by Govt. of Maharashtra as well as central Government
3. The applicant further submits they are running the business by taking premises no 1.e Gala No 11,12 on plot no 07 at block S,Sector-19,APMC market ,Vashi with effect from 1st April 2016 from Om Ganesh Investments, Vashi on the leave and license basis from 01/06/2016. The Competent authority i.e Ministry of Micro, small and Medium Enterprises, Govt of India issued a certificate no MHD00010415 on date 31.05.2016 and declared premises being utilised for the purpose of information service activities.
4. Further submits, they had submitted application to MSEDCL authorities with all relevant documents such as MSME certificate, electricity bill,

commercial circular no 212 dated 1.10.2013, central Board of excise and Custom certificate, Rent agreement ,Pan Card, Addhar card etc to the additional Executive Engineer , Vashi subdivision on dated 14.10.2016 for withdrawal of commercial tariff and application of Industrial Tariff. The respondent additional Executive Engineer vashi sub division visited premises and carried out inspection confirm the usage of electricity is for information services; accordingly they had withdraw commercial tariff and applied industrial tariff from December 2016.

5. The applicant further submits, that on date 13.12.2017 the Additional Executive Engineer Flying Squad ,Vashi visited the above said premises and carried out inspection. They had shown their activity as software Development and certificate received from MSME but the Flying Squad vashi mentioned in their report that they found /detected the use of electricity is for commercial purpose because they don't have permanent registration certificate .The applicant submit that flying squad claim that they don't have permanent certificate is not true because they have the permanent registration certificate of MSME activity shown Data processing, hosting and related activities. On the basis of flying squad report additional Executive engineer changed tariff from industrial to commercial and issue supplementary bill of tariff difference industrial to commercial from May 2016 up to date of inspection of Rs 18,47,600/- . The applicant referred commercial circular no 212 dated 01.10.2013 issued vide letter no PR-3 /Tariff/27481 para no 4.

The respondent relied on following decision

- a. Hon'ble MERC orders in case no 24 of 2001 dated 11th February 2003.
- b. Hon'ble APTEL Judgement Appeal No 131/2013 dated 7th August 2014.

- c. Hon'ble Electricity Ombudsman (Mumbai) orders in representation no124, 125 and 126 of 2014 that the recovery on account of reclassification can be prospective only.

The applicant prayed to immediately withdrawal the assessment bill of retrospective recovery and change of tariff commercial to industrial as per order issued by the General Manager, DIC, Thane.

6. The Notice issued to the Respondent to submit para wise reply and to appear before Forum. In result, the Respondent submits reply dated 15 April 2019 states that the applicant has raised grievance in r/o M/s Om Ganesh investment , Plot No 7,Gala No 11,13 to 15 Block sector APMC Market, Vashi having consumer no 000489034130. The respondent further submits that said consumer is billed in LT-II tariff and power supply date is 07/03/2008. The consumer claims to be running software development, back office operation etc and falls under IT/ITES category. The flying squad ,vashi visited premises and observed that the consumer is not in possession of valid certificate so tariff was reverted back to commercial which was earlier changed to industrial vide consumer application dated 14.10.2016. and supplementary bill of 18, 47,600/- for 307080 units for recovery of tariff difference for the period May 2016 to November 2016. The respondent further submits that consumer was not having valid IT certificate and documents submitted by the consumer was not proper, as certificate stands in the name of M/s Strategic Infrastructure solution Limited who is not the consumer of MSEDCL, Vashi Sub division.

After perusing the rival contention of applicant and respondent following points arose for our consideration to which I have recorded my finding to the point further the reason given below.

- i. Whether applicant is entitle for industrial tariff from May 2016?

- ii. Whether supplementary bill claiming amount Rs 18, 47,600/- charging commercial tariff since May 2016 to Jan 2018 is legal, Valid and proper?
- iii. Whether respondent utility entitled to recover the bill prior to the date of inspection 11/01/2018?
- iv. What order?

7. I have given opportunity to the consumer and his representative who appeared before forum for hearing. I also gave opportunity to the additional Executive Engineer Vashi sub division to submit parawise reply and applicant dispute has considered in light of all concern document placed before Forum. It is observed by me leave and licenses agreement executed between M/s Om Ganesh Investment and M/s Strategic infrastructure solutions 1st April 2016. According to applicant that Data processing, hosting and related activities was initiated in the premises. The respondent utility relied on the inspection report of Flying squad Vashi dated 11/01/2018 mentioning that LT V B power supply used by the unit do not have permanent registration certificate. On this inspection report the respondent raised the supplementary bill with retrospective effect.

8. It is also observed that the applicant produced the MSME i.e Ministry of Micro, small and Medium Enterprises, Govt of India issued a certificate no MHD00010415 on date 31.05.2016 shows purpose of information services at sr. No 63 at their column no NIC digit and in second column no NIC 4 digit the activity Shown as Sr.No 6311- Data processing, Hosting and related activities. On the application of applicant dated 14.10.2016 with MSME certificate additional executive Engineer visited the premises and confirmed the activities comes under IT/ITES and accordingly changed the tariff from commercial to Industrial. The applicant also placed certificate issued by the General Manager, Dist. Industries Centre ,Thane dated 28

March 2018 which confirmed Udyog Adhar Memorandum No MH33D0010415 dated 10.10.2016 is granted Registration as IT services unit for the following product IT/ITES- Software Development, Back Office Operations with date of commencement of activity is 31.05.2016. It is observed by the me the certificate from General Manager, Dist. Industries Centre, Thane DIC and the Additional Executive Engineer, Vashi inspection report the applicant running same activities from date of inspection of premise by the respondent till the inspection carried out by Flying Squad. There is no change in the activities of the applicant as per MSME and DIC certificate. Therefore, the supplementary bill which was prepared and issued claiming amount Rs 18,47,600/- which is absolutely wrong, illegal and erroneous so the said supplementary bill is quashed and set aside. The period which was claim in the said bill from May 2016 to date of inspection i.e 11/01/2018( December 2017) which is incorrect and improper in the light of guidelines and various Judgements relied by the consumer no retrospective recovery can be made. In this matter, the main issue is about retrospective recovery of prior to the date of inspection. There is several order of APTEL, Ombudsman on this issue. In the order dated 11Th February, 2003 in case no.24 of 2001, The Maharashtra Electricity Regulatory commission (the commission) has held as under:

*"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 competent people. The same cannot be categorized as an escaped billing in the strict senses of the term to be recovered retrospectively."*

The Appellate Tribunal for Electricity (APTEL) in appeal no 131 of 2013 in the matter of M/s Vinney Enterprises Verus Kerala State Electricity Regulatory commission has also rejected retrospective recovery of the Distribution Company(KSEB). In the said case APTEL has held that the arrears for the difference could be recovered from the date of detection of the error. In view of the above APTEL and several electricity Ombudsman Mumbai Judgements in case no 124,125,126 & 94 of 2014 no retrospective recovery in such case not allowed. Since the activity under taken by the unit working under leave and license cannot be said illegal and improper as the applicant using supply for IT/ITES and which is confirmed by the respondent in inspection report on consumer application dated 14.10.2016 Therefore retrospective recovery for disputed period absolutely illegal and not maintainable and therefore I found there is substance in the contention of consumer. The supplementary bill issued for the period May 2016 to December 2017 is not legal, proper and valid. The applicant produced the valid permanent certificate from DIC in March 2018 therefore, the Respondent was within right to charge consumer under commercial tariff from date of inspection till the consumer produce valid permanent registration certificate from competent authority. Hence, I proceed to pass following order.

### **ORDER**

1. The Applicant application in case 296 of 2018 is hereby partly allowed.
2. The Supplementary bills for retrospective recovery for period May 2016 to December 2017 is hereby quashed and set aside.
3. The Respondent shall charge commercial tariff prospectively from date of inspection i.e 11/01/2018 till the submission of Permanent

Registration certificate by applicant for IT/ITES activity from competent authority

4. No order as to the cost.

**I Agree/Disagree**

**MRS. SHARMILA RANADE,  
MEMBER  
CGRF, BHANDUP**

**Dr. SANTOSHKUMAR JAISWAL  
CHAIRPERSON  
CGRF, BHANDUP**

I Ravindra S. Avhad, Member secretary as member of Forum disagree with opinion of other members point wise clarification for that as given below

M/s. Om Ganesh investment (present occupier Strategic Infrastructure Solutions); Consumer No. 000489034150 is a Low Tension consumer under Vashi sub division. The consumer/applicant is situated at Plot no 07, Gala No 11,13 to block S , Sector 19 APMC Market Vashi Navi Mumbai under MSEDCL Vashi sub-Division and vashi O & M). The applicant was earlier changed to commercial initial but vide consumer application dated 14.10.2016 after inspection the additional executive engineer changed it industrial on the basis of MSME and other documents submitted by the applicant. As per the Flying Squad vashi report DVS No 01181 they carried out inspection of the premises found that the power supply used by the unit which donot have permanent certificate as per circular .

In my opinion as per MSEDCL commercial circular No. 243 Subject: Revision in Electricity Tariff - Implementation thereof. Reference: MERE Tariff Order dt. 26/06/2015 in the case No. 121 of 2014 issued



vide letter No. PR-3/Tariff/27641 Date: 03 JULY 2015 which mention the Applicability of Tariff for IT/ITES Units: HT Industrial tariff category shall also be applicable for use of electricity / power supply to IT/ITES units covered under IT Industry and IT enabled Services (as defined in the Policy of Government of Maharashtra as may be prevailing from time to time). Till the establishment doesn't receive permanent registration certificate as may be applicable; Tariff shall be as per HT-II Category and after receipt of permanent registration certificate HT I category shall be applicable till the validity of the Certificate.

*Also, as per provision of section 56(2) of the Electricity Act 2003, which reproduce as below 56(2) "Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity"*

In above circumstances and provision , the supplementary bill issued for retrospective recovery for period May 2016 to December 2017 is proper, legal and valid.

**RAVINDRA S. AVHAD  
MEMBER SECRETARY  
CGRF, BHANDUP**

The order is issued under the seal of Consumer Grievance Redresses Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, and Bhandup.

**Note:**

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of

this order at the following address. " Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606, Keshav Building,Bandra - Kurla Complex, Bandra (E),Mumbai - 400 051"

- b) consumer, as per section 142 of the Electricity Act, 2003, can approach Hon'ble Maharashtra electricity Regulatory Commission for non- compliance, part compliance or
- c) Delay in compliance of this decision issued under" Maharashtra Electricity Regulatory Commission ( consumer Redressed Forum and Ombudsman) Regulation 2003" at the following address:-

"Maharashtra Electricity Regulatory Commission, 13<sup>th</sup> floor,world Trade Center, Cuffe Parade, Colaba, Mumbai 05"

- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.