

**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No. 16/2019

Date of Grievance: 02.04.2019

Hearing Date : 10.05.2019

22.05.2019

07.06.2019

Date of Order : 05.07.2019

In the matter of refund of electricity consumption tax on sale.

M/s. Patodia Forgings & Gears Ltd., ---- APPELLANT

Gat No.150/2, Mahalunge Ingle,

Chakan, Talegaon Road,

Opp. Rinder India Co.,

Tal. Khed, Dist. Pune - 410501.

(Consumer No. 176029035720)

VS

The Superintending Engineer, ---- RESPONDENT

M.S.E.D.C.Ltd.,

Pune Rural Circle,

Pune - 411011.

Present during the hearing:-

A] - On behalf of CGRF, Pune Zone, Pune.

- 1) Shri. A.P. Bhavathankar, Chairman, CGRF,PZ, Pune
- 2) Mrs. B.S. Savant, Member Secretary, CGRF, PZ, Pune
- 3) Mr. Anil Joshi, Member, CGRF, PZ. Pune.

B] - On behalf of Appellant

- 1) Mr.Suresh Sancheti, Representative

C] - On behalf of Respondent

- 1) Mr.K.S.Sarode, Ex.Engr., Admin.
- 2) Mr.Soham Dhamne,Sr.Manager (F&A) PRC

Tariff Category HT- I A, OA Type: Partial open Access. The above named consumer filed complaint initially before IGRC on dtd.29.11.2018 for refund of Tax on Sale of electricity as consumer itself has his captive power generation at Solapur and consume the power at Pune. The consumer is partial open access i.e. partially using the power from MSEDCL and partial captive power user and hence the energy bill is divided in two parts namely as bill for MSEDCL consumption and bill for open access consumption and this issue is regarding bill for open access and on this part the issue raised as the "Tax on Sale" recovered since Jan.2017. According to consumer, the Respondent Utility issued the bill to the consumer and charged under the bill head Caption "Tax on Sale " towards partial open access. The Units sale definition under the said Act does not mentioned and no any clarity regarding this matter and the sale unit shown against partial open access consumption as captive generation itself through his plant and therefore the Respondent Utility wrongly claimed the tax on sale and issued in the bill under the head bill for open access as consumer itself has his own generation and used the consumption through this generator and hence there is no any sale of electricity and hence it is to be required to refund which was collected since Jan.-2017.

After filing the said complaint at IGRC and IGRC gave the opportunity to the Respondent Utility and issued the notice. Accordingly the, Respondent Utility appeared and filed reply stating that the tax on the sale levied to the consumer by MSEDCL under the guidelines issued by MSEDCL Head Office Commercial Section circular No. P-Com/Acctts/ Levy Tose/OA/66 dtd.25.01.2017 is correct. As the said Consumer falls in the category of partial Open Access and Tax on Sale levied properly as per circular. M/s. Patodia Forgings & Gears Ltd. is partial OA - HT consumer, Pune Rural Circle HT Consumer No. 176029035720. The Tax on Sale was levied to all open access consumer from Jan.2017 as per Commercial Circular and

the Maharashtra Tax on sale of electricity Act 1963 is silent for levy of Tax on Sale of Electricity applicable to open access consumer. Also it is noted that the bills are generated through the computerized programme from corporate office, Mumbai.

The IGRC gave opportunity to the consumer and their representative of Utility and passed order on dated 23.01.2019 stating that the Tax on Sale levied as per Head Office guidelines Commercial Circular dated 25.01.2017. However Sr. Manager F &A Pune Rural Circle is directed to forward the said proposal to Head Office. Mumbai within 7 days from the date of said letter to obtain guidelines of applicability of Commercial Section notification for captive power generator/consumer and after receiving the said guidelines from Head Office the action will be taken with suitable in favour of consumer if guided accordingly.

Being dissatisfied with the order of IGRC, the present consumer filed the complaint in form No. A to this office which is registered Complaint No. 16 of 2019 on dated 02.04.2019. Consumer attached copy of the bill, copy of IGRC order, copy of Commercial Circular and all other relevant documents. After receiving the said complaint, the notice issued to the Respondent Utility on 02.04.2019, directing the Utility to submit their reply on or before 18.04.2019.

The Respondent Utility appeared and filed the reply on 16.04.2019. The Respondent Utility submitted the same reply about applicability of tax on sale levied to open access consumer as per Commercial Circular dated 25.01.2017 and notification as per Maharashtra Tax on Sale of Electricity Act. 1963 as per Clause No.4. All open access consumers levied Tax on Sale as per Government of Maharashtra notification and Circular dated 25.01.2017. The bills generated as per computerized programme from MSEDCL H.O. Mumbai and as such the proposal is still pending for guidelines. According to Respondent Utility, the amount received against TOSE is transferred to MEDA for improvement and development of power

supply in the State, executing scheme for non-conventional sources of energy. There by no amount received by MSEDCL against TOSE is retained or used or deposited by MSEDCL like. Therefore question of refunding this amount with interest by MSEDCL does not arise.

Respondent Utility also relied on copy of circular and copy of notification dated 08.08.2016 attached for their support.

On dated 7.06.2019 I have given opportunity to consumer and the representative and also give opportunity to the representative of Utility hearing on dated 7.6.2019 was heard.

After perusing the rival contention of consumer complaint and reply of Respondent Utility following points arose for my consideration to which I have recorded my finding to the points for the reason given below:-

1. Whether the consumer is liable to be levied the Tax on Sale on partial open Access consumer i.e. partially using power from MSEDCL and partial captive power user as itself has the Solar generator and charged under the bill properly.
2. Whether consumer is entitled for refund of arrears since Jan.2017 against the caption head bill for open access - Tax on Sale of the said amount of 12 % interest from MSEDCL.
3. What order?

Reasoning :-

I have given an opportunity to the consumer and the representative and the Respondent Utility and the matter is heard. It appears that the dispute regarding M/s. Patodia Forgings & Gears Ltd. is partial open access consumer and having its captive power generation at Solapur at PVSP-18 Mandrup Solapur i.e. consumer and generator names are same but located at different locations at Chakan & Solapur.

The contention of the consumer that the consumption of units charged under the billing head against open access is correct but Tax

on Sale against this consumption units shown in the open access billing is wrongly mentioned. As consumer itself has consume the electricity through his own generating plant through open access and all relevant charges are paid to the respective authorities and hence there is no any sale of electricity under the billing head of open access and hence it is not necessary to levy the Tax on Sale on this part.

The claim of the consumer is that the captive power generation solar power from PVSP-18 Mandrup Solapur is having its own generation power plant in the area of Mandrup Solapur and their power consumptions location at Chakan area through the generator through open access. Therefore as per the definition of sale of units charged against the energy bill is not account to sale of electricity and therefore the tax on the sale charged since Jan.2017 is not proper. I have gone through the definition of sale defined under the sales of goods Act as per open access control agreement executed at the level of M/s. Patodia Forgings & Gears Ltd., at Solapur Division. The copy of the said agreement in spite of giving instructions to the Utility are not filed by the MSEDCL nor the consumer. The method of calculation of billing of open access (partial open access) bill is generated from the H.O. The Respondent Utility relied and submitted the copy of the circular published by Commercial Section and instructions is given as per the schedule official Gazette dtd.8.8.2016. The copy of the said Gazette is filed by the Utility is perused by me. The energy open access definition given under the gazette is verified which reads as under :

(o) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations made by the Commission "

As per Section 6 the Licensee shall collect and pay to the state Govt. at the time and in the manner prescribed , the proper electricity duty payable under this act. The Section 6 defines procedure of collecting tax and duty payment recovery from the consumer and accordingly on the basis of the said provision of Section 6 and Commercial Circular published and it is relied by the Utility. Hence, it appears that the said dispute is not fall under the definition of wrong billing dispute. The contention of consumer might have been wrongly interpreted as if any case for refund of the said tax is applicable, the proper Forum provided under the said provision Section 10 Appellate authority is appointed as per the said gazette notification. Therefore the said dispute cannot try and entertain by this Forum according to me. The case of refund shall be considered in appropriate Forum under the statute provision and powers and affirmation is declared authority that, the State Government as per this Circular and notification.

In this circumstance the decision given by MERC in given case also indicates that it is the policy matter and effect of passing any of such order by this Forum will not be proper and appropriate in existence of above said provisions. Therefore I am not inclined to grant any such relief against the policy of Respondent Utility decided by Competent Authority of MERC. If any case of refund arises consumer entitled to claim refund before appropriate authority as per Rules and Regulations.

The time limit of 60 days prescribed for disposal of the grievance could not be adhered due to hearing was taken thrice times and also additional submission submitted by both the parties.

In this circumstance I am not inclined to grant any relief & I proceed to pass the following order:

ORDER

1. Consumer Complaint of Case No.16 of 2019 stands dismissed.
2. No order as to the cost.
3. The Licensee is directed to report the compliance within one month from the date of this order.

The order is issued under the seal of Consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Pune Urban Zone, Pune on 5th July - 2019.

Note:-

- 1) If Consumer is not satisfied with the decision, he may file representative within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman
The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E), Mumbai - 400 051.

- 2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I agree / Disagree

I agree / Disagree

Sd/-

sd/-

sd/-

ANIL JOSHI
MEMBER
CGRF:PZ:PUNE

A.P.BHAVTHANKAR
CHAIRPERSON
CGRF: PZ:PUNE

BEENA SAVANT
MEMBER- SECRETARY
CGRF:PZ:PUNE