

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

Case No. 45/2019

Date of Grievance : 19.08.19

Hearing Date : 16.09.19

Date of Order : 25.11.19

In the matter of claiming of arrears of electricity duty in the energy bill.

M/s.BVG India Ltd., ---- APPELLANT

2nd floor, Aundh Chest Hospital,

Pune - 411027.

(Consumer No. 170658895152)

VS

The Executive Engineer, ---- RESPONDENT

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

Pimpri Division,

Pune.

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

B] - On behalf of Appellant

- 1) Mr.Omkar Sapre, Head Corporate Administration
- 2) Mr.Santosh Apsingekar, Electrical Manager (Proj)

C] - On behalf of Respondent

- 1) Mr. D.R. Balgude, AEE, Sangvi, Pune

Date of connection 24.3.2014, Connecting load - 100 KW/125 KVA.

The above named consumer has filed this complaint against the Respondent Utility alleging that he received the bill in the month of March-2019 for total amounting to Rs.10,29,090/- including debit bill adjustment amounting to Rs.6,10,662/- in the month of March-2019. The complainant was made to Executive Engineer, Pimpri Dn., AEE, Sangvi Sub/dn. stating

that, the consumer was using the said premises in Aundh Chest Hospital, first floor & they are carrying activity of telephone exchange Call Centre for Toll Free No. 108 for Ambulance Services. In the month of March-2019, the consumer was received the bill for amounting to Rs. 10,29,090/- The consumer was objected the exorbitant and excess bill stating that the amount of Rs.6,10,662/- bill excess claimed by the Utility & it is not agreed as the mistake of calculation is made by the Respondent Utility- MSEDCL Office. The consumer was requested to accept current bill of Rs.4,18,427/- & it was payable by the consumer. The consumer was attached the copy of deposit receipt of cheque dated 23.4.2019 for amounting Rs.4,18,427/- and filed his grievance initial in form No.-X before IGRC.

The consumer was attached copy of the said bill deposit receipt complaint made to the Ex. Engineer, Pimpri Dn. and Flying Squad report dated 25.05.2017. After filing the said grievance on dated 03.05.19, IGRC has registered the case vide T-11/2019. The IGRC gave opportunity of hearing on 24.5.2019 to both the parties by issuing notice and the matter was heard at Ganeshkhind office on 24.5.2019. The Respondent Utility submitted that the reply as informing consumer no. 170658895152 & date of connection 24.3.2014. According to the Utility, the wrong code for applying duty was applied to the consumer 71-02 instead of 71-06. Hence electricity duty which was applied to the consumer as 16% instead of 21%. Hence the consumer was paying bill regularly but it was less of calculation of electricity duty charges. The Respondent Utility submitted that the Flying Squad has visited the premises on 25.7.2017 and inspection work was carried out & it was customer care Centre and back office. The report said that, the wrong Electricity Duty applied as 16% to the Commercial category whereas correct electricity duty as 21% and it was informed to the Sub/dn. office. But by mistake it was not applied proper code for change of electricity duty. The consumer was issued bill of less electricity duty due to wrong application of Tariff Duty Code. Since Oct.2018, the consumer was charged with 21% of Electricity Duty which was applicable. The Respondent Utility was submitted that the, Electricity Duty which was applicable to the consumer as

21% instead of 16% & hence electricity duty was charged since March-2014 to Sept.2018 through consumers bill. Hence the bill differential prepared in the month of March-2019 and charged amounting to Rs.6,10,662/-. The bill issued to the consumer according to tariff Electricity Duty is applicable at relevant time properly. The Respondent Utility pray for rejection of complaint with the cost.

On dated 17.06.2019, the IGRC has passed the order against the consumer stating that as per order of Hon. High Court in W.P. No.10764 of 2011. The period of 2 years bill is to be assessed and revised for the period of 24 months from the date of spot verification report of Flying Squad on dated 25.05.2017. The IGRC directed the consumer to pay the said bill without charging any interest, DPC & penalty.

Being aggrieved by the said judgment and the order of IGRC, the consumer has approached to this Forum and filed his dispute in Form No.- A on 19.8.2019. The consumer prays that the consumer is running the activity of emergency ambulance service license under Govt. Of Maharashtra in the premises of Aundh Chest Hospital & his date of connection 24.3.2014. The consumer has raised grievance similarly objecting inflated bill for amounting Rs.10,29,090/- which was shown arrears for the month of March-2019 which is incorrect according to the consumer. The retrospective recovery since claimed reclassification error from 2014 to 2017 was noticed during the visit of Flying Squad as per Flying Squad report in the year of 2017. At that time MSEDCL corrected the said bill but claim of calculation of less electricity duty effect was not charged to this consumer by the Utility. The consumer objected being claim of retrospective recovery which is bar as per Order of Hon.ble MERC in Case no.24 of 2001 dtd.11.02.2013. The consumer was also relied on various judgment of Hon.ble Ombudsman for claiming retrospective recovery arrears and objected the said bill.

After filing the said complaint, this office has registered the case vide No.45 of 2019 on dtd.19.8.2019. The office has issued the notice to the Respondent Utility on dated 19.8.2019 directing to the Utility to filed reply on or before 3.9.2019. Thereafter the Utility appeared & filed the reply on

03.09.2019 alongwith relevant documents. The consumer has also filed the relevant documents such as circular issued by the Govt. of India dt.31.7.2018, Notification of service tax 30.05.2018, copy of the bill consumer produced old bill charged to the consumer, letter issued by Superintending Aundh Chest Hospital dated 13.5.2013. The letter to Ex. Engineer, PWD issued by Superintend Aundh Chest Hospital 25.4.2013, allotment of Toll Free No. 108 dated 22.4.2013 letter dated 4.5.2013 issued by Director, National Relief Health Scheme and copy of letter dated 29.3.2013 Joint Director health service Mumbai, etc. I have perused all the contention raised by the consumer and the Respondent Utility after perusing rival contention of consumer and Respondent Utility following points arose for my consideration to which I have recorded my findings to the points for the reason given below :

- 1) Whether Respondent Utility entitled to claimed electricity duty difference since date of connection, 24.03.2014 to Sept. - 2018 for amounting to Rs.6,10,662/-?
- 2) Whether difference bill with retrospective period from March-2014 to Sept.2018 claiming amounting to Rs.6,10,662/- is legal valid and proper?
- 3) Whether consumer is entitled for exemption in Electricity Duty calculation?
- 4) What order ?

Reasoning :-

I have minutely gone through the dispute raised by consumer when addition amount of Electricity Duty claimed by the Utility in the month of March-2019 due to wrong application of for charging of Electricity Duty 71-02 instead of 71-06. The effect of calculation of electricity duty was applied as 16% instead of 21% since from the date of connection as the period of using the said supply by the consumer. The consumer received the bill in the month of March - 2019 for additional amount Rs.6,10,662/- payable in the next month. The event occurred as per the contention of Respondent Utility that premises was inspected and verified by the Flying Squad,GKUC on 25.5.2017. The report is filed in this case reflected the date 25.5.2017. To my

view when the fault was noticed by Flying Squad to the Respondent Utility authority, no action was taken from promptly within stipulated period of claiming wrong application of code. The Utility demanded the said bill in the month of March-2019, therefore the cause of dispute arose to the consumer challenged in delayed action by the Utility in claiming wrong code application. The Electricity Duty less calculated and the period specifically. It is submitted by the consumer, the amount became due when it is claimed in the bill i.e. the first demand the reliance is placed on various decision which was earlier in favour of consumer no retrospective recovery can be claimed by MSEDCL prior to date of detection of error according to consumer the detection of error is on 25.5.2017 and therefore earlier retrospective recovery is valid in law. The Respondent Utility calculated the arrears as per the judgment referred by Bombay High Court which was also referred in the order of IGRC in W.P.No.10764/2011. According to the Utility the arrears of 24 months can be claimed if error in calculating of bill due to mistake and the IGRC order fix the period 2 years from the date of inspection 25.5.2017. The question arose before me that the Respondent Utility failed to comply the action of Flying Squad and therefore actual period of calculation 24 months is valid. The arrears of recovery bill restricted to 24 months required to be calculated properly.

In this case the consumer try to take benefit of earlier Ombudsman judgment which compared to recent judgment as reported in W.P.No.10764/2011 case whereas the Respondent Utility permitted for past recovery of 24 months only. In such circumstances the date of detection of error as obviously reported Flying Squad inspection 25.5.2017. Whereas the Respondent Utility earlier calculated bill claiming less Electricity Duty claimed 16% only instead of 21% whereas the consumer objected the said bill right from the beginning reliance of Appeal No.131 in Vinay Enterprises is by Aptel Authority with due respect the judgment of Aptel Authority is not applicable in this case. As it is not the case of reclassification of tariff category but claiming of less recovery calculated due to mistake of wrong code. In this circumstance, the Judgment of Bombay High Court in 10674 of

2011 is binding and applicable. Therefore the period of which 24 months is calculated should be earlier from the date of inspection 25.5.2017 & which was already calculated. The difference of period for actual demand with delayed period till March-2019 is rectified and therefore not taking wrong action resulted in loss of revenue.

To my view the said period of 24 months shall be calculated from the date of demand 18.3.2019, 24 months earlier. Hence the consumer is entitled for paying addition Electricity Duty for 24 months only. Therefore contention of the consumer waving all the duties cannot be allowed instead of that the documents produced by consumer would be entitled to claim exemption of Electricity Duty if any by verification of activity and certification with lawful authority is required. The consumer is at liberty to ask for refund to appropriate authority as per provisions of payment of Electricity Duty exemption if any till then the Respondent Utility can recover difference of Electricity Duty earlier to 24 months from 18.3.2019 which is demand and payable to due to delay and I am inclined to allow the prayer of consumer partly.

The time limit of 60 days prescribed for disposal of the grievance could not be adhered due to submission of documents by MSEDCL & consumer the instructions given at the time of hearing by the Forum.

Member Secretary, (B.S. Savant)

I have gone through the above reasoning and my opinion in this matter is differing as below:

The Distribution Licensee is duty bound to recover E.D. from eligible consumers on behalf of GOM. The GOM has prescribed procedure which needs to be adopted to resolve the related issue regarding E.D. The GOM has created a special authority & hence this Forum cannot entertain the issues related to Electricity Duty. Thus the consumer shall be approach to the appropriate authority in this regard to resolve the issue as the grievance relating to E.D. does not constitute a grievance as per Regulation No.2.1 (c) of the CGRF Regulations.

Even previously this Forum has not entertained such type of grievance in the CGRF Pune vide Case No.16 of 2019. The matter is slightly different i.e. the issue under the head of "tax on sale" i.e. related with electricity duty & its tax. In this order it is clearly mentioned that " This Forum has no authority to pass the order".

The grievance is same in this case & in Case No.16 of 2019 but the decision is totally different taken by the undersigned & hence the grievance of the appellant is not maintainable under CGRF Regulations " 2.1 (c) & it is liable to be dismissed.

Sd/-

B.S.Savant
Member/Secretary
CGRF:PZ: PUNE

Hence the order, the Utility was applied for wrong code 71-02 instead of 71-06 and issued the value bill claiming as 16% E.D. instead of 21% and the recovery bill send to the consumer. It has noticed that, the IGRC had also entertained the dispute. It comes under the billing claim & partly falls within the jurisdiction of this Forum & hence to allow the consumer disputes.

Considering this facts, the dispute was entertained by this Forum & not only E.D. claim issue. Hence the objection is not tenable & this order is confirmed as below:

ORDER

1. The Consumer complaint of 45 of 2019 is partly allowed.
2. The accumulated bill in the month of 18.03.2019 claiming amount Rs. 6,10,664/- is illegal bad in law set aside.
3. The Respondent Utility entitled to claim arrears of Electricity Duty to wrong application of code difference from 16% which was required to be charged 21% for 24 months only.
4. The Respondent Utility shall reassess and recalculate the bill and claim the difference without charging any interest, DPC & penalty.

5. The consumer may pay the said bill in 6 equal monthly installments alongwith current bill.
6. The consumer is at liberty to approach to the Competent Authority to claimed exemption in Electricity Duty on valid certification if any.
7. No order as to the cost.
8. 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 25th Nov. - 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

Sd/-
A.P.BHAVTHANKAR
CHAIRPERSON
CGRF: PZ:PUNE

Sd/-
BEENA SAVANT
MEMBER- SECRETARY
CGRF:PZ:PUNE