

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 39 of 2023

In the matter of retrospective recovery of electricity duty and refund of tariff difference

Precimac SolutionsAppellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Parvati Dn. Respondent
(MSEDCL)

Appearances:

Appellant	: 1. Deenanath Mali 2. Nitin Dharmadhikari, Representative
Respondent	: 1. Manish Suryavanshi, Executive Engineer, Parvati Dn. 2. Dy. Executive Engineer, Vadgaon Sub-Dn. 3. Shweta Gonjare, Asst. Accountant, Vadgaon, Sub-Dn. 4. Sachin Tare, UDC, Parvati Dn.

Coram: Vandana Krishna [I.A.S. (Retd.)]

Date of hearing : 20th June 2023

Date of Order : 6th July 2023

ORDER

This Representation was filed on 17th March 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the ex parte decision given by the Consumer Grievance Redressal Forum, MSEDCL, Pune Zone (the Forum) dated 10th March 2023. The Forum rejected the grievance application. It observed that the Respondent issued a supplementary bill of Rs. 4,39,160/- to the Consumer on 29.11.2019 towards electricity duty difference between industrial and commercial category for the period



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of August 2012 to September 2019. The Complainant did not approach the Forum within the prescribed period of two years from the date of cause of action, as per Regulation 7.9 of CGRF & EO Regulations 2020, hence rejected. It is observed that the Forum did not give any opportunity of hearing to the Appellant as per the proviso in Regulation 7.9 of CGRF & EO Regulations 2020 which is reproduced below:


“7.9 The Forum shall reject the Grievance at any stage under the following circumstances:

*.....
Provided that no Grievance shall be rejected unless the Complainant has been given an opportunity of being heard.”*

2. Aggrieved by the order of the Forum, the Appellant filed this representation. The e-hearing was held through video conference on 20.06.2023. Parties were heard at length. The submissions and arguments of the Appellant are as below:-

- (i) The Appellant is a LT consumer(No.170498754981) initially under industrial category from 15.04.2007, having initial sanctioned load of 35 HP at Survey No. 57/2/1, village Narhe, Pune. The Appellant applied for additional load of 30 HP in industrial tariff category, which was sanctioned and released on 19.12.2009 by Executive Engineer (EE) Parvati Division. (However, its effects were first observed in the electricity bill of Aug. 2012. Hence, a span of 2 years and 9 months was taken for its implementation in the bill.)
- (ii) The Respondent wrongly changed the tariff category from industrial to commercial while feeding data of this additional load in the computerized system. This was a serious mistake and negligence of the Respondent. The additional load was for industrial purpose only, as per agreement executed with MSEDCL while releasing the new connection on 15.04.2007 and releasing of additional load on 19.12.2009. This change of category to commercial made in 2012 is nothing but breach of agreement without any inspection, verification of purpose of tariff category. No opportunity was given to the consumer to hear Appellant's side for the said tariff change in 2012, which is totally unjustified and illegal.

During the hearing it was clarified that the Appellant continued to pay tariff at the commercial rate right from 2012 onwards without raising any dispute. The


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Appellant claimed that he realized that he had been wrongly paying the commercial tariff only in 2019.

- (iii) The Flying Squad, Pune of the Respondent inspected the premises of the Appellant on 23.10.2019. During inspection, it was observed that though the Appellant was billed with Commercial tariff category, **the Electricity Duty (ED) was levied under Industrial tariff category. The fact of tariff change from industrial to commercial from 2012 came to the notice of the Appellant for the first time when the Flying Squad, Pune visited the factory premises on 23.10.2019.** They took energy meter details and reading. They did not inspect/ check the actual industrial load existing at site, and took the signature of the watchman on their report.
- (iv) **The Respondent calculated ED difference recovery of Rs.4,39,160/- from industrial to commercial tariff category for the period from Aug. 2012 to Sep. 2019 which was added in bill of Oct. 2019.**
- (v) Thereafter, the Appellant submitted several applications to SDO/ EE/SE/CE and Regional Director of MSEDCL for withdrawal of ED difference as the same was totally unjustified and illegal. However, no cognizance was taken by the Respondent for withdrawal of ED arrears.
- (vi) The Superintending Engineer (SE) Rastapeth visited the premises on 28.10.2020. However, his inspection report is not on record. He ordered to restore the industrial category. The cause of action occurred only after this conversion of tariff back from commercial to industrial as per SE Rastapeth's orders in Nov. 2020. Thereafter many applications / personal visits were made for withdrawal of ED arrears and for refund of tariff difference. However, no action was taken by the Respondent.
- (vii) The Appellant approached the Forum on 13.02.2023. There was Covid-19 pandemic from March 2020, and July 2021 which created hurdles in approaching the Forum earlier.
- (viii) The MSEDCL H.O. also issued a special circular for such refund policy vide reference No. CE/COMM/Refund policy/18076 dated 28th Jan. 2019, but no authority has taken cognizance of the same to resolve their refund claim.
- (ix) How was the automatic change in tariff from industrial to commercial carried out without any application from the consumer or any inspection by MSEDCL?




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Similarly, the tariff was changed back from commercial to industrial after SE/ Rastapeth inspection without any online or physical application. This shows the irregular and unlawful working of MSEDCL.

- (x) The Asst. Engineer, Narhe Section carried out factory inspection on 09.12.2019 and submitted his inspection report on 09.12.2019 to SDO/ Wadgaon (Dhayri) stating that there is an industry running at the said premises. But no cognizance was taken. Then due to continuous follow-up and request to Higher Authority, the SE Rasta Peth visited the premises on 28.10.2020 and gave a finding that there is an industry existing/ running at the said premises. Accordingly, the tariff was changed back to industrial from Nov. 2020 onwards.
- (xi) But the recovery bill of ED difference of Rs.4,39,160/- was added in the monthly energy bill with interest and delayed payment charges. The Appellant pays monthly current bills regularly; however, the Appellant has to visit the Respondent's office every time in order to pay only the current bills without the previous arrears included in the bills.
- (xii) Going against the provision of Section 56 (2) of the Electricity Act, 2003(the Act), the Respondent has added ED charges difference for the period of August 2012 to September 2019, that is for more than two years. Hence, the Appellant is entitled to get the refund of the basic tariff difference paid for the period of August 2012 to Nov 2020. The consumer has submitted several applications for the said refund of tariff difference without claiming any interest for amicable settlement. But now the Appellant claims interest for the said difference amount paid, at the rate of 10%.
- (xiii) There was a letter from Dy Director (V&S) Pune No. 351 dated 05.08.2022 recommending the withdrawal of ED difference bill. But SDO / Wadgaon (Dhayari Sub-Dn. and EE Parvati Division, have not taken any cognizance. At least they should have forwarded the application with their comments to SE or CE for a final decision. But they kept it pending at their end and hence should be personally held responsible for this misconduct and unlawful act, for which they should pay extra compensation of Rs.2,00,000/- (Rupees Two lakhs) with disciplinary action.
- (xiv) It is prayed that the Respondent be directed : -
 - a) to refund the basic tariff difference between commercial and industrial for the period of August 2012 to Nov. 2020, which was paid by the Appellant.


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- b) to withdraw electricity duty difference charges of Rs.4,39,160/- for the period of Aug 2012 to September 2019 with interest immediately.
- c) to withdraw interest and delayed payment charges(DPC) levied till date.
- d) It also prays:
 - (i) to hold responsible the SDO / Wadgaon (Dhayari) & EE/ Parvati for not taking any action on several consumer applications.
 - (ii) to saddle the cost of this appeal on to SDO/Wadgaon (Dhayari) individually.

3. The Respondent MSEDCL filed its reply on 24.04.2023. Its submission and arguments are stated in brief as below:

- (i) The Appellant is LT Consumer (No.170498754981) having contract demand of 44 KVA and sanctioned load 49 KW at present. The Appellant was initially billed under industrial tariff category having sanctioned load of 35 HP from 15.05.2007 (date of connection). The Appellant applied for additional load of 30 HP in 2009. The Respondent enhanced the sanctioned load from 35 HP to 65 HP (49 KW) on 19.12.2009 after statutory formalities of payment, etc.
- (ii) The Appellant was billed with commercial tariff category instead of industrial from Aug. 2012 onwards as the majority or dominant load was used for office / commercial purpose. The details of the load were discussed during the hearing. The installed machines were found to be not working / switched off, while the major load was used by Air Conditioners, lights, fans, computers, etc. The major part of the premises were used as office, reception, conference room, pantry, etc. Only a small part was kept as a machine room.
- (iii) The Additional Executive Engineer (AEE) Flying Squad, Pune of the Respondent inspected the premises of the Appellant on 23.10.2019 in the presence of the Appellant. During inspection, it was observed that the Appellant was billed under LT-II (B) Commercial tariff category, however, the ED was mistakenly levied as per industrial tariff category. The rate of ED was less in industrial (10%) as compared to commercial (21%) tariff category. Hence, the AEE, (FS) by its letter dated 29.11.2019, informed to AEE, Wadgaon Sub-Dn., to issue a supplementary bill of ED difference from Aug. 2012 to Sept. 2019.



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- (iv) The Respondent issued a supplementary bill of Rs.4,39,160/- on 29.11.2019 towards retrospective recovery of differential amount of ED from industrial to commercial activity for the period from Aug. 2012 to Sept. 2019.
- (v) After receipt of this supplementary bill, the Appellant took objection by its letter dated 03.09.2020. The Respondent replied appropriately to the queries raised by it, as well as through personal discussions with Appellant.
- (vi) The SDO, Wadgaon Sub-Dn., referred this issue again to the Flying Squad (FS) Team by its letter dated 28.01.2020, 09.03.2020, 20.03.2020 and requested to recheck the electric installation. The FS, Pune, by its letter dated 17.03.2020 confirmed that the power supply was mainly used for office purpose and not for industrial purpose.
- (vii) The Executive Director, Pune Region by its letter dated 11.09.2020 directed the Dy. Director (S & E) Pune for rechecking the electric installation. The AEE, FS, Pune, again inspected the premises on 20.03.2020. The premises was found to be mainly used for office purpose. There were five machines in the workshop; however, three machines were found idle and not connected to the power supply.
- (viii) The Executive Director, Pune Region held a meeting on 11.09.2020 regarding the grievance of the Appellant. During the meeting, it was directed to inspect the premises once again and to resolve the grievance of the Appellant on top priority.
- (ix) The O & M team again inspected the premises in the presence of the Appellant (Anirudhha Ketkar, Director). The highlight of the Joint Inspection Report was as below:
- The building consists of G+1. The first floor and half mezzanine area is used for office purpose.
 - Ground Floor has a conference hall, Store and workshop.
 - Connected load was found CFL: 71, Fans: 16, ACs : 4, Central AC: 2, Projector : 1, Tube lights: 4, Machines 5 (3 not connected), Lathe Machine: 1 (not connected), Bulbs: 3, Laptops : 12, Fridge : 1, TV : 1.
 - Documents submitted by the Appellant to show industrial use were as below:-



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Sr. No.	Document Details	Period		Remarks on certificate
		from	to	
1	Government Purchase Enlistment Certificate by National Small Industries Corporation Ltd. (NSIC)	22-01-2016	21-01-2018	"Your name has been registered as a SSI Unit eligible for participation in the Central Government Store Purchase Programme as per the Single Point Registration Scheme for the following Item (s)/Store (s)/Service (s) "
2	Government Purchase Enlistment Certificate by NSIC	22-01-2018	21-01-2020	"Your name has been registered as a MSE Unit eligible for participation in the Central Government Store Purchase Programme as per the Single Point Registration Scheme for the following Item (s)/Store (s)/Service (s) "
3	Store Details Certificate by NSIC	22-01-2020	21-01-2022	Store details Certificate
4	Amendment Part - II by District Industries Center, Pune	nil	nil	Entrepreneur Memorandum No. 270251100886 Dated - 14/02/2007 issued on Dt. 10/07/2015

Thus, it is seen that nowhere is the word ‘industrial’ use mentioned in these documents. They simply mention the use as “items / stores / services”.

➤ The Activities were found to be:-

- I. Siemens: Distributorship for PLC and drive. (For the store purpose)
- II. Siemens/Technical Partner/ System House: Engineering support, designing and testing/ small items trial at inhouse and big items trials on site.
- III. CNC machines, turning, milling, drilling (present at site but not working at the time of inspection)

➤ The entrance lobby shows the following certificate:

- a) Authorized Distributor from Jager dated 22.07.2011.
- b) Authorized Channel Partner from Siemens from 2014 to 30.09.2019.
- c) Certificate from International Certification service Pvt. Ltd. dated 03.04.2017.

- (x) From the above joint inspection, it was clearly established that there was a mixed load of commercial and industrial activity. However, the major load was commercial, and hence the Appellant was correctly billed under commercial tariff category. There was nothing stopping the Appellant from demarcating the premises clearly into Commercial (Office) and Industrial (machine use). He could then have applied for a separate commercial / industrial connection. But he did not do so. It



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is apparent that he wanted to use the industrial connection also for commercial use, which was the dominant use.

- (xi) As per the request of the Appellant dated 01.10.2020, the SE Rastapeth visited the premises on 28.10.2020. As per his directions and considering the instant load at that time, the tariff category of the Appellant was changed from industrial to commercial from Nov. 2020 onwards. However, there was no inspection report available from Aug. 2012 to Sept. 2019.
- (xii) The commercial load was mostly static or consistent in nature, however, the industrial load was dynamic and variable in nature, and most of the time the commercial load was dominating.
- (xiii) As regards the claim of Appellant for change of tariff category from commercial to industrial and refund thereof for the period August 2012 to November 2020, it is not valid. The Appellant approached the Forum on 13.02.2023, so any applicable retrospective period of two years would be from 13.02.2021 as per Section 56(2) of the Act. Hence, it is not applicable in the present case. **We do not agree with the Appellant's contention that the cause of action for this claim arose only in 2019. The Appellant, being a vigilant and technically qualified consumer, would be fully aware that commercial tariff was being applied right from 2012. However even assuming (but not admitting) that the cause of action arose on 23.10.2019 when the Flying Squad visited the premises, still the Appellant should have approached the Forum within 2 years, i.e., latest by 23.10.2021. However, he approached the Forum only on 13.02.2023 which is again barred by limitation.**
- (xiv) The Distribution Licensee is duty bound to recover ED on behalf of Government of Maharashtra (GoM). The GoM has prescribed a certain process which needs to be adopted in order to resolve disputes with respect to its application of ED.
- (xv) The issue raised by the Appellant relating to withdrawal of supplementary bill of Rs.4.39 lakhs towards differential of ED does not fall under the category of 'billing dispute'. It does not constitute a grievance as defined under CGRF Regulations 2006. This grievance of the Appellant is not maintainable under CGRF Regulations. The GoM has created a special authority to deal with cases of ED and other related issues. Issues of ED are now covered under the Maharashtra Electricity



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Duty (MED) Act, 2016. Hence, this Forum does not have jurisdiction to entertain this prayer relating to cancellation of the ED claim.

- (xvi) ED is the liability of the Appellant; therefore, he is bound to pay the said charges as per provisions of law.
- (xvii) The Respondent prays that the Representation of the Appellant be dismissed with cost, and direct the Appellant to pay the differential arrears of ED immediately to avoid further complications of possible disconnection.

Analysis and Ruling

4. Heard the parties and perused the documents on record. The basic facts as mentioned in para 3 (i) are admitted. We have studied the site map on record showing the Ground floor, Mezzanine floor. The Ground floor consists of conference hall, two stores and one machine room which occupies a minor part of the ground floor. The first floor consists of regular first floor and ½ mezzanine floor consisting of one lobby, cabin, conference room and office staff seating. From these details, it is seen that a major part of the premises is covered by office / commercial use. The Appellant was regularly billed with commercial tariff category from Aug. 2012 to Oct. 2020 which was not disputed by the Appellant at that time. The Appellant's first letter of grievance was on 19.12.2019. The Additional Executive Engineer FS, Pune of the Respondent inspected the premises of the Appellant on 23.10.2019 in the presence of the Appellant. During inspection, it was observed that the Appellant was billed under LT-II (B) Commercial tariff category, however, the Electricity Duty was mistakenly levied as per 'Industrial' instead of Commercial tariff category. If the basic tariff is levied at commercial rates, the ED automatically stands levied at commercial rates too. Accordingly, the Respondent issued a supplementary bill of Rs.4,39,160/- on 29.11.2019 towards retrospective recovery of differential amount of ED (difference between industrial and commercial rates) for the period from Aug. 2012 to Sept. 2019.

5. The Appellant contended during the hearing that his major consumption is Industrial. On the contrary, the Respondent reiterated that it is Commercial as per the inspection done by the Flying Squad on 27.07.2022. Various inspection reports are on record, and all of them indicate that three machines found in its premises were not in use and were shut down. The major use was for office. The sole inspection based on which the tariff was reverted to industrial was the



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visit of the Superintending Engineer on 28.10.2020; however, his site inspection report is not on record.

Part A : Change of tariff from Commercial to Industrial retrospectively.

6. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:

“(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 became 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.”

This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Hon’ble Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. In accordance with this Judgment, the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges. This is the main grievance of the Appellant.

7. However, the Appellant filed the grievance before the Forum only on 13.02.2023. The Forum can entertain a grievance if it is filed within two years from the date of cause of action. Hence, the cause of action or grievance should have arisen on or after 13.02.2021. However, the Appellant is agitating the grievance of tariff difference from commercial to industrial for the period Aug. 2012 to Oct. 2020 which is time barred as per Regulation 6.6/7.8 of CGRF & EO Regulations 2006/2020. Even if it is admitted that the cause of action arose in October 2019, when the Appellant claims that it first came to his notice that commercial tariff was being wrong applied from 2012 to 2019, still he should have approached the Forum within 2 years, i.e., latest by October 2021. However, he actually approached the Forum only on 13.02.2023 which is time barred.

8. In exercise of the powers conferred on it by sub-sections (r) and (s) of Section 181 read with sub-sections (5) to (7) of Section 42 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, the Commission notified the CGRF & EO Regulations 2003/2006/2020. The Regulation 6.6/7.8 of CGRF & EO Regulations 2006/2020 states that,

“The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.” .



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If the Respondent failed to take cognizance of a consumer's complaints / grievances, the consumer had the opportunity to approach the Grievance Redressal Mechanism framed under the Act, and the Regulations made thereunder. At that time, the Appellant had an opportunity to approach the grievance mechanism. However, it did not do so. Hence, the Appellant's first prayer of tariff difference as mentioned in para 2 (xiv) (a) is rejected.

Part B: Electricity Duty Recovery:


9. The second issue raised by the Appellant is for withdrawal of the supplementary bill of Rs.4.39 lakhs towards differential of ED, which does not fall under the category of 'billing dispute'. It does not constitute a grievance as defined under CGRF Regulations 2006. The said Regulation 2.1(c) defines a grievance as under –

“ Grievance means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a license, contract, agreement or under the Electricity Supply code or in relation to standards of performance of Distribution Licensees as specified by the Commission and includes inter alia (a) safety of distribution system having potential of endangering of life or property, and (b) grievance in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be.”

10. The grievance of the Appellant relating to Electricity Duty difference recovery of Rs.4,39,160/- is not maintainable under CGRF & EO Regulations 2006/2020. The GoM has created a special authority to deal with cases of ED, which are now covered under the Maharashtra Electricity Duty Act, 2016. Hence, the Forum does not have jurisdiction to entertain this prayer.

Section 6(6) of the MED Act 2016 says:

“Where any person fails or neglects to pay, at the time and in the manner prescribed, the amount of electricity duty due from him, the licensee, or as the case may be, the person supplying energy, may, without prejudice to the right


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of the State Government to recover the amount under section 11, deduct such amount of electricity duty from the amount, if any, on account of deposit or refund due, with the licensee or the person supplying energy, after giving not less than seven clear days' notice in writing to such consumer or person to whom energy is supplied, cut off the supply of energy to such consumer or person, if the dues are not recoverable from the deposit or refund available with him; and he may, for that purpose, exercise the powers conferred on a licensee by sub-section (1) of section 56 of the Electricity Act, for the recovery of any charge or sum due in respect of consumption charges on the energy consumed."

The Appellant did not challenge the levy of the basic tariff at commercial rates in time, as discussed above in para 7. If the basic tariff is levied at Commercial rates, it stands that the Electricity Duty would also be automatically calculated at commercial rates. If the Appellant disputes this, he would be free to approach the appropriate authority for this under the MED Act 2016.

11. This MED Act, 2016 has a special provision under Section 6 (8) which is quoted below:
- "(8) Notwithstanding anything contained in the foregoing sub-sections, where the State Government is satisfied that there is a bona fide mistake, on the part of any licensee or a person supplying energy to the consumers or consuming energy for his own use, in paying the proper electricity duty, on account of wrong meter reading or misclassification of consumption falling under any particular Part or clause in the Schedule, the State Government may, at any time, by an order, waive or write-off, with retrospective effect, the recovery of the amount of the electricity duty or any part thereof due at the proper rate and the amount of interest thereof, if any, payable for delayed payment under section 11." (Emphasis added)*

A similar provision was there in the repealed MED Act, 1958 under Section 4 (6). This repealed Act is also applicable to the instant representation, as a part of the arrears relate to the period prior to the notification of MED Act 2016.



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12. On a bare perusal of Section 6(8) of the MED Act, 2016 quoted above, it is seen that the **State Government** is the only Authority which may, waive or write-off, with retrospective effect, the recovery of electricity duty due at the proper rate.

In view of the above statutory provision under Section 6(8) of the MED Act, 2016, the Government of Maharashtra is the sole authority to decide the matter and as such, it cannot be entertained by the undersigned. Hence the second grievance of the Appellant as regards waiver of Electricity Duty is not maintainable.

13. Other prayers for disciplinary action are rejected as there is no merit.

14. In view of the above, the representation of the Appellant is rejected and disposed of accordingly.

Sd/-
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



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