

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 60 OF 2020

In the matter of retrospective recovery of Electricity Duty

Ramsukh Resorts..... Appellant

V/s.

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

Appearances: -

For Appellant : 1. Pralhad Rathi
2. Radha Rathi

For Respondent : 1. Santosh C. Bhosale, Deputy Manager (F&A), Satara
2. Nisar S. Shikalgar, Junior Law Officer
3. Madhukar T. Mane, Assistant Accountant
4. Siddharth S. Kulkarni, Lower Division Clerk


Coram: Deepak Lad

Date of hearing: 23rd September 2020

Date of Order : 22nd October 2020

ORDER

This Representation is filed on 1st July 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 28th January 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Baramati Zone (the Forum).



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2. The Forum, by its Order dated 28.01.2020 has rejected the grievance application in Case No. 21 /2019.

3. Aggrieved by the order of the Forum, the Appellant has filed this representation stating in briefly as under: -

- (i) The Appellant is a HT consumer (No.194339021070) from 11.01.2005 having sanctioned load (SL) of 184 KW and Contract Demand (CD) of 125 KVA at present. The Appellant is running a resort located at Grampanchayat Milkat No. 84, Kshetra Village, Mahabaleshwar, Dist.- Satara. The Appellant is regular in payment of bills from 2005 and never was in arrears.
- (ii) All of a sudden, the Appellant received a supplementary bill of Rs.31,93,689/- on 17.05.2019 towards rate differential of Electricity Duty (ED) between commercial and industrial category for the period from 01.11.2010 to 31.03.2019 (120 months).The Respondent directed the Appellant to pay the supplementary bill on or before 31.05.2019. The Appellant raised the said grievance with Respondent for withdrawing supplementary bill, however there was no positive output.
- (iii) The Appellant states that the Electricity Act, 2003 (EA, 2003) is a consumer-friendly statute. Electricity has been held to be 'goods' by a Constitution Bench in State of Andhra Pradesh V/s. National Thermal Power Corporation Ltd.
- (iv) The Appellant also relies upon the Limitation Act 1963 stating that recovery claim of the Respondent is time barred from bringing a claim for non-payment of goods within three years from when the right to sue accrues. In the present case, the Appellant has paid all the bills since 2005 till date. On 17.05.2019, the Respondent issued a supplementary bill towards ED difference and the said bill is raised for 120 months. The Respondent had made a mistake not charging the appropriate rate for ED from 2010 and only realized its mistake in May 2019 after 120 months.



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- (v) As per Section 17 (1) (c) of the Limitation Act, 1963, in case of a mistake, “the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it.....”
- (vi) Firstly, each bill is signed by the Chief Engineer (Commercial) of the Respondent.
- (vii) Further, the Respondent has conducted an annual inspection audit at the Appellant’s premises every year since 2010. At the annual audit, the inspectors are provided with the latest monthly bill. The Respondent had multiple opportunities to discover this mistake, had they been reasonably diligent.
- (viii) The supplementary recovery until 31.03.2017 are time barred and the Respondent cannot bring proceedings to recover payment of these bills.
- (ix) The Appellant cited the order dated 03.02.2003 of the Maharashtra Electricity Regulatory Commission (the Commission) in Case No. 24/2001. The relevant portion of the order is quoted as below: -


“No retrospective recovery of arrear can be done 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, should 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 sense of the term to be recovered retrospectively. Mentioned that MSEDCL cannot issue retrospective bill.”

- (x) A business is entitled to its profit with honour and to its fundamental right to earn reasonable profit in his normal course. As the Appellant is a resort, its room rent is always calculated based on its cost inputs and market condition. All the cost is recovered from its customers and the balance remains as the profit. Hence, now the Appellant is unable to recover the supplementary bill cost from its customers as it is retrospective in nature. This will directly affect its profits and ultimately its fundamental rights.


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- (xi) Therefore, recovering bills for 120 months for more than last 10 years violates all principles of natural justice. In particular, business is already affected significantly because of the ongoing Covid-19 crisis and the Appellant will be forced to make losses, cut employment (resulting in loss of many jobs for local villagers) if the crisis continues and the Appellant is required to make arbitrary payments for more than 10 years ago due to no fault of the Appellant.
- (xii) The Appellant filed a grievance in the Internal Grievance Redressal Cell (IGRC) on 01.06.2019. The IGRC, by its order dated 17.09.2019 has rejected the grievance.
- (xiii) Then the Appellant approached the Forum on 01.11.2019. The Forum, by its Order dated 28.01.2020 has also rejected the grievance. The Forum failed to understand the basic issues which is as below:
- a. The Forum, in its order dated 28.01.2020 mentioned that Section 56 (2) of the EA 2003 is not applicable to the present case and so the Respondent can recover the difference of ED from 01.11.2010 to 31.03.2019. The Appellant hereby clearly states that Section 56 (2) applies to each and every bill issued by the Respondent since there is no exclusion in law on this as per the E Act, 2003. The Appellant further states that as per the Regulation 15 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) in billing must include all charges, deposits, taxes and duties due and payable by the consumer to the Respondent for the period billed, accordance with provision of the Act and the Respondent already raised bill and same has been paid by the Appellant which includes all charges, deposits, taxes and duties due and payable by it to the Respondent for the period 01.11.2010 to 31.03.2019. In this case, the Respondent raised supplementary bill on dated 17.05.2019 for arrears for retrospective recovery bill for 120 months and demanded to pay the said bill.
- b. As per the Forum's order, the Appellant can approach the State Government on the basis of the Maharashtra Electricity Duty Act 2016 (MED Act, 2016)


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referring to Section 6 of the said Act which deals with payment and recovery of ED and also its provision to waive or write off the ED with retrospective effect and the State Government can exercise such powers. The Appellant states that the MED Act 1958 has been repealed by the MED Act, 2016. This mainly governs the relationship between the State Government and the Licensee (MSEDCL) while the E Act, 2003 governs the relations between the consumer and the licensee, as stated in its preamble, hence the MED Act, 1958 replaced by MED Act, 2016 does not relate to the Appellant and hence not applicable to it. As per the Appellant's concern, it is the EA 2003, and hence Section 56 applies to it.

- (xiv) Since MED Act 1958 is replaced by MED Act, 2016 and described relationship between the State Government and the Respondent, hence Section 6 does not apply to the Appellant. the Respondent has already raised bill and same has been paid by the Appellant which includes all charges, deposits, taxes and duties due and payable by the Appellant to Respondent for the period 01.11.2010 to 31.03.2019 hence the Appellant is not liable to pay the extra duty bill for the said period and Section 6 sub clause 2 clearly described that if the Respondent has been unable to recover its due for the energy supplied or wheeled by it, they shall not be liable to pay duty in respect of the energy so supplied. In this case, the Respondent has already collected duty from 01.11.2010 to 31.03.2019, hence it is their duty to pay the amount of ED collected by it to Government of Maharashtra (GoM) and it is illegal and unethical to recover the differential amount of ED retrospectively billed in respect of which has been paid and settled. The Respondent cannot demand additional duty bill with retrospective effect of more than 10 years as this violates all principles of natural justice.
- (xv) Further, Clause 6 sub clause 8 of MED Act 2016 describes about the waiver or write off the ED with retrospective effect or any part thereof and the State Government can do the same but the MED Act, 2016 is between the Respondent


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and State of Maharashtra. Hence it is duty of Respondent to approach to the GoM.

- (xvi) As per Section 56 (2) of the EA, 2003, the Respondent has not shown any arrears or reflect any arrears since the Appellant has paid all the raised bills duly signed by the authorized person of the Respondent before due date.
- (xvii) As per Section 56 of the EA, 2003, it is wisely drafted provision and clearly includes ED. In fact, it is made clear in the MED Act 2016 which refers to Section 56 (1). If 56 (1) is applicable, it follows that 56 (2) must also apply as Section 56 (1) given power to the licensee and to counter balance that 56 (2) protects the consumer and directs the manner in which 56 (1) powers may be used.
- (xviii) The Appellant states that the present grievance falls under the jurisdiction of the Forum as per the CGRF Regulations.
- (xix) The Appellant prays as follows: -
- (a) to withdraw the supplementary bill dated 17.05.2019 amounting to Rs.31,93,689/- towards ED with immediate effect.
- (b) any other just, equitable and consequential relief / order may kindly be passed in favour of the complainant as deemed fit and proper in the interest of justice.

4. The Respondent MSEDCL filed its reply dated 17.08.2020 stating as below:


- a) The Appellant is HT Consumer (No. 194339021070) having contract demand 125 KVA and sanctioned load 184 KW from 11.01.2005 for Commercial purpose for its resort business.
- b) The Additional Executive Engineer (AEE) Flying Squad, Satara (FS) of the Respondent inspected premises of the Appellant on 18.04.2019 in presence of the Appellant. During inspection it was observed that the Appellant is billed under HT-II Commercial tariff category, however, the ED was levied as per tariff category of Industrial instead of Commercial. The rate of ED is less in industrial as compared to commercial tariff category. Hence, the AEE, (FS) served a letter on the same day to the Appellant mentioning to submit latest certification / documents from


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competent authority of GoM for change of rate of ED from Commercial to Industrial within 7 days for verification.

- c) After that AEE, FS vide Letter No. 777 dated 22.4.2019 informed the EE to forward documents for confirmation of rate of ED, the said facts were informed to the Appellant vide Letter No. 358 dated 09.05.2019.
- d) The Appellant has submitted eligibility certificate issued by Maharashtra Tourism Development Corporation (MTDC) and Chief Engineer (Electrical) PWD, Mumbai, Government of Maharashtra (GOM) of a special concession of applicability rate of ED of industrial category instead of commercial tariff category for the period from 01.11.2005 to 31.10.2010. It is noted here that after 31.10.2010 GoM has not granted any further concession in rate of ED to the Appellant. It is also noted here that the said facts were never disclosed by the Appellant till date of spot inspection being Opportunist.
- e) Due to non-submission of certificate issued by competent authority for concession in rate of ED, the Respondent issued supplementary bill of Rs.31,93,689/- towards differential of rate of ED from industrial to commercial activity for the period 01.11.2010 to 31.03.2019.
- f) After receipt of supplementary bill, the Appellant using tactic to getting information from Respondent by using weapon of Right to Information (RTI) under RTI Act. The Respondent has appropriately replied the queries raised by it.
- g) The Distribution Licensee is duty bound to recover ED from eligible consumer on behalf of GoM. The GoM has prescribed certain process which needs to be adopted in order to resolve the issue with respect to its application / exemption of ED. If the Appellant is having certain issues with respect to exemption of ED in respect of its connection, then it needs to follow the process prescribed by the Government.
- h) The issue raised by the Appellant is relating for withdrawal of supplementary bill towards differential of ED which does not fall under the category of 'billing


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dispute'. It does not constitute a grievance as defined under CGRF Regulations 2006. The said Regulation 2.1(c) defines the 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.”

The grievance of the Appellant is not maintainable under CGRF Regulations.

- i) The Respondent referred the orders passed by Hon'ble Electricity Ombudsman (Mumbai) in Representation No. 8 of 2020 & 110 of 2017 in support of its say.
- j) The GoM has created special authority to deal with cases of ED and other related issues. Issues of ED is now covered under the MED Act, 2016. Hence, said forum is not having jurisdiction to entertain said appeal.
- k) The Forum rightly held in Para No. 17 of its order that provisions under Section 56(2) of Electricity Act, 2003 is not applicable in the present case and provisions of MED Act, 2016 would be applicable.
- l) The Appellant has elaborated Section 17 (1) (c) of the Limitation Act, 1963. Therefore, ongoing through the pleading of the Appellant, it admitted claim raised by Respondent. The Respondent has discovered the facts on 18.4.2019 and raised bill of Rs.31,93,689/- for the period 01.11.2010 to 31.03.2019. However, provisions of the Limitation Act, 1963 is not applicable to this case.
- m) The Respondent submits that ED is liability of Appellant, therefore, is bound to pay said charges as per provisions of law.



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n) The Respondent prays that the Representation of the Appellant be dismissed with cost.

5. Due to Covid-19 epidemic, the hearing was initially scheduled on 04.09.2020 on e-platform. However, the representative of the Appellant being Covid-19 positive and unable to attend his office requested to postpone the hearing for 3 weeks. The hearing was finally held on 23.09.2020 on e-platform through Video Conferencing after the consent from both the parties.

6. During the hearing, the Appellant argued in line with the written submission. The Appellant availed the concession in ED available to its projects as per policy of GoM. The Appellant received supplementary bill of Rs. 31,93,689/- on 17.05.2019. The Appellant requested some important papers under RTI Act however the Respondent has not given it. Natural justice needs to be done. The Appellant reiterated that the differential amount towards ED rate is for the period from 01.11.2010 to 31.03.2019 i.e. for 120 months. The Respondent has discovered the mistake after 10 years and hence charged the supplementary bill. The Respondent must issue the bill every month since the billing cycle is every month. The billing period is incorrect in the supplementary bill. Several things are missing in the supplementary bill. The bill does not follow the guidelines as described by the Commission. It is requested to issue fresh bills to be issued for the past months showing all the payments made to them up till now. Definition of supplementary bill is *bill filed in aid of an original bill to supply some defects in the latter, or to set forth new facts which cannot be done by amendment*. The Respondent has to go as per the guidelines approved by the Commission. The supplementary bill is not accepted. There was no need for the supplementary bill to have been served to the Appellant. The Appellant has the letter from the Tourism Department of the GoM towards grant of incentive in ED for a period of five years. As per this approval, ED to be levied on the consumption shall be as applicable to industry instead of commercial establishment. This period is from 01.11.2005 to 31.10. 2010. After laps of concession, the Respondent supposed to revise the rate of ED from 2010 instead of 2019 and issued the bills every month. The Appellant also states the Electrical Inspector visits the sites yearly hence the Respondent had



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the opportunity to correct year in its custom audit, internal audit, etc., which was not done. The electricity bill is an important financial instrument. Bill is a promise, it is an assurance. On the basis of the electricity bill, the rates /tariffs of the rooms in the resort are determined. The Appellant sees the totality of the bill and pays the bill. Distribution licensee is duty bound to collect the correct ED. The Appellant argued that the bill amount is disputed means it is a grievance under the CGRF Regulations. The supplementary bill of differential amount squarely falls under the Section 56 (2) of the EA, 2003. Even Section 17 of the Limitation Act, 1963 is also attracted in this case. The Appellant prays that the Respondent be directed to withdraw the supplementary bill dated 17.05.2019 amounting to Rs.31,93,689/- towards ED with immediate effect.

7. The Respondent argued that power connection to the Appellant is given for commercial purpose on 11.01.2005. The Respondent has rightly applied commercial rate of ED from date of connection. The concessional ED is applied only after the Appellant submitted the approval of such concession by GoM. Accordingly, rate of ED Code was changed from commercial to industrial by the Respondent in its billing system. The Respondent clarified that the annual inspection of the premises is carried out by the Electricity Duty Inspector of GoM and not by the Respondent as alleged by the Appellant. On 18.04.2019, the FS noticed that the ED rate applied was for industrial establishment. Finally, a letter was given to the Appellant to produce the documents if he has obtained extension for concessional rate in ED after the expiry of the initial period. However, the Appellant did not produce any documents. It only produced documents of concessional rate of ED of industrial from 01.11.2005 to 31.10.2010.

8. Since this concession was only for one consumer i.e. the Appellant, it was a mistake on the part of the Respondent for not rectifying the same to commercial rate in 2010. This was not pointed out by the Appellant as well as the Electricity Duty Inspector of GoM. As per MED Act, 1958 and the MED Act, 2016, the Appellant is supposed to pay ED applicable to commercial category after 2010. This is the public money of GoM and the Respondent is duty bound to issue supplementary bill after noticing the mistake in May 2019. From April 2019, commercial rate is applied, and supplementary bill was issued on 17.05.2019. The Appellant



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is at liberty to approach the appropriate Government Authority under the ED Act for getting concession in retrospective case. Further, it being a matter of ED, the Hon'ble Electricity Ombudsman does not have any jurisdiction to adjudicate on this issue. The concession/ withdrawal of ED, waiver of interest etc. comes under the jurisdiction of State Government. The case is related to public money belonging State Government is not covered the Statute of the EA, 2003 and Limitation Act, 1963 and only decided by State Government. The Respondent argued that the ED is liability of Appellant, therefore, is bound to pay said charges as per provisions of law. The Respondent prays that the Representation of the Appellant be dismissed with cost.

9. After hearing both the parties and before concluding the hearing, both the parties were requested to file any additional submission, if they so desire within ten days. The Respondent submitted a letter by email on 30.09.2020 stating that all issues raised by the Appellant during hearing are already covered in its written statement. Therefore, the Respondent does not have anything to file in addition. However, on 03.10.2020, the Appellant filed its additional exhaustive submission by email. Major part of this additional submission is captured above, however, some important issues are as below: -

- (i) This case is about retrospective recovery of bills and not about the application or exemption of ED. Therefore, the Ombudsman has sole jurisdiction over the case; and there is no redressal from the State Government under the MED Act, 2016 which is irrelevant for this case.
- (ii) Section 56 (2) is not applicable in this case, however, it is submitted without prejudice to the above that even if it is applied, the recovery under the bill is time barred under Section 56(2) of the EA, 2003 as ED is part of the bill. The same is also time barred under Section 17(1) (c) of the Limitation Act, 1963.
- (iii) The Respondent conducted an audit every year at the resort premises. The audit inspector had access to a number of documents, including the latest monthly bill and other documents. The audit lasts a few hours and the Appellant is cooperative


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and transparent in each audit conducted by the Respondent. Therefore, the inspector should have realised the mistake in billing in the 2010 audit itself.

(iv) Regulation 15.1, 15.2, 15.24 of the Supply Code Regulations are not followed by the Respondent. The supplementary bill does not contain any of these details. In the entire code and the entire Act, there is no provision of issue of supplementary bill. There is no provision of issue of retrospective bill. There is also no provision to reissue a bill when the original bill is already issued and is paid in full. The Respondent has not taken approval of the Commission for issue of the supplementary bill.

(v) Even if the bill were valid, the Appellant submit that it cannot be recovered, due to the reasons below:


The MED Act, 2016 / Application of Section 56(2) of Electricity Act, 2003

- a. The MED Act, 2016 governs relationship between the State Govt and the Distribution Licensee. This Act has nothing to do with how a Distribution Licensee recovers charges, including duty, from the consumer. Consumer – Distribution Licensee relationship is governed by the Electricity Act. The preamble of the Electricity Act 2003 specifically says one of its purposes is “protecting interest of consumers”.
- b. The Respondent says that the GoM has prescribed certain process which needs to be adopted to resolve the issue of application / exemption of duty – for example, whether an educational institute should be currently or retrospectively exempt from ED. This is not such a dispute about the application or exemption of duty: this is a case about recovery of retrospective bills.
- c. The MED Act 1958 and the MED Act 2016 cast obligation on the distribution licensee to exercise due diligence in application of proper ED.
- d. The Appellant has no reason to go to the State Government for redressal. It is the licensee which should approach the GoM.


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- (vi) As ED is a part of the electricity bill, Electricity Ombudsman has jurisdiction to adjudicate the case as the issue squarely fits into the definition of grievance.
- (vii) 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 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.”*
- (viii) The Distribution Licensee’s power or duty to collect the electricity duty is not unfettered. Otherwise, consumers will have no protection. From a consumers’ point of view, the entire bill is a cost. If the consumers had protection of Electricity Act 2003 for certain aspects of a bill, for example if the wrong tariff were applied retrospectively in which case Section 56 would apply, but this would not be applicable if the Distribution Licensee made a mistake in application of appropriate duty. For example, there are a number of cases of the Ombudsman which have set aside retrospective recovery of bills under Section 56(2): for example: 23 July 2020 Order between Mercantile Plastics Pvt Ltd vs MSEDCL.
- (ix) Alternatively, in any event, Limitation Act 1963 applies:
- (i) As per the Limitation Act 1963, the relevant period of limitation applicable after which the Respondent is time-barred from bringing a


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claim for non-payment of goods within three years from when the right to sue accrues.


- (ii) Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, “*the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it...*”
- (iii) It is clear from the above arguments in section 3 that the Respondent could have realised its mistake in 2010 had it been reasonably diligent. Therefore, without prejudice to the above arguments in relation to invalidity of the bill and Section 56 of the Electricity Act 2003, the bill is also time barred until the Limitation Act 1963.

Analysis and Ruling

10. Heard the parties and perused the documents on record. I hereby condone the delay in filing the representation due to the Covid-19 epidemic. The matter was heard on 23.09.2020 on e-platform. Both the parties argued in line with their written submissions.

11. It is an admitted position that the Appellant was enjoying concession in the Electricity Duty as approved by the Government of Maharashtra. This concession was available to it for a period of five years from 01.11.2005 to 31.10.2010. To be precise, ED at the Industrial rate was approved as concession instead of Commercial rate despite the consumer is a Commercial consumer. This concessional Duty was levied by the Respondent till 31.10.2010 but unfortunately, it continued to be applied even after 31.10.2010. This was continued till March 2019.

12. The Appellant argued that the retrospective recovery from November 2010 till March 2019 is incorrect in view of the provision under Section 56 (2) of the Act. Further, the



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Respondent, Distribution Licensee was / is entrusted with this job under the Maharashtra Electricity Duty Act, 2016 to recover appropriate ED from the consumer and to pay it to the GoM. The Respondent failed to apply appropriate duty after 31.10.2010. It will be incorrect to expect the Appellant to point it out to the Respondent. The Respondent failed in its statutory duties and after realising the same, it has proposed retrospective recovery towards the difference in Electricity Duty from November 2010 to March 2019 (101 months). This is highly unfair. Therefore, the Respondent be given benefit under Section 56 (2) of the Act.

13. The Respondent, however, argued that the issue of the Appellant does not fit into the definition of Grievance as it is concerning ED. It was also incumbent upon the Appellant to have pointed it out to the Respondent about the concession in ED that was available to it till 31.10.2010 in its electricity bill.

14. The Appellant was very much aware that the concession in ED is available to it only till 31.10.2010 as it itself got approved this concession from the Government by filing a suitable application but it never pointed out that the ED to be charged after 31.10. 2010 should be at Commercial rate instead of Industrial rate. It is hard to believe that this anomaly went unnoticed by the Appellant. The Appellant was duty bound to have informed this to the Respondent as a law-abiding entity. Availing a Government concession which is no more available to it, by itself is bad in law. It is a different matter that the Respondent was obligated under the provisions of the Duty Act to have applied ED at the Commercial rate after 31.10.2010. Here the Respondent has committed a genuine mistake. Nothing bad in motive can be attributed to the Respondent in non-application of proper duty to the Appellant. It is important to note the submission of the Appellant that the Electricity Duty Inspector had visited the Appellant's premises for annual inspection from 2009 to 2019-20. However, the Appellant has record available with it for six such inspections. The Appellant did not submit any information about the inspection reports of the Electricity Duty Inspector. It appears that Electricity Duty Inspector probably did not point this error during his inspection, otherwise the Respondent would have corrected the same in its record and further levy.


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15. This MED Act, 2016 has a special provision under Section 6 (8) which is quoted below:

“Section 6


(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.”

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 part of the arrears are prior to the notification of MED Act 2016.

On 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, 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 of the MED Act, 2016.

16. Therefore, in view of the 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. The other arguments of the Appellant are therefore not considered by the undersigned.

17. As it fell from the instant representation, there is likelihood that in future, the Government of Maharashtra may allow concessional ED to be charged to certain class of


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consumers for a certain period. Therefore, to avoid repetition of such cases, the Respondent may develop suitable interlocks in its software so that appropriate Duty under the Act is made automatically applicable after expiry of the concessional period. The Respondent may take up this issue with the Competent Authority for suitable changes in the IT System.

18. The representation is therefore disposed of accordingly. No order as to cost.

19. The secretariat of this office is directed to refund the amount of Rs.25000/- to the Respondent to adjust against the ensuing bill of the Appellant.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

