

## BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

### REPRESENTATION NO. 53 OF 2023

In the matter of change of tariff category and retrospective recovery

Shakti Trading Company ..... Appellant  
(Noratmal Pareek - Director)

V/s.

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

Appearances:

Appellant: 1. Kantilal Shivaji Patel, Manager  
2. Pandurang Hundekari, Representative

Respondent: 1. Narendra D. Narayane, Ex. Engineer, Kalyan (West) Dn.  
2. Sandeep Kulkarni, Flying Squad


**Coram: Vandana Krishna [IAS (Retd.)]**

Date of hearing: 11<sup>th</sup> July 2023

Date of Order : 28<sup>th</sup> July 2023

### ORDER

This Representation was filed on 18<sup>th</sup> May 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 20<sup>th</sup> April 2023 in Case No. K/E/120 of 2022-23 passed by the Consumer Grievance Redressal

  
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Forum, Kalyan (the Forum). The Forum by its order dated 20.04.2023 has rejected the grievance application.


2. The Appellant has filed this Representation against the order passed by the Forum. The e-hearing was held through video conference on 11.07.2023. Parties were heard at length. The submissions and arguments of the Appellant are as below: -

- (i) The Appellant is a LT three phase industrial Consumer (No.020100009031) from 23.05.1984 having Sanctioned Load of 26.48 KW and Contract Demand of 30 KVA at Shahad, Mohane Road, Kalyan (West). The activity of the Appellant is marble/granite block washing with water, cutting as per required shape, polishing to get a cleaner and smoother surface, molding, shaping and finishing as per buyer's requirements. The premises includes a showroom.
- (ii) Mining activity of granite cutting, polishing, moulding, shaping etc., quarrying, stone crushing units, flour mill, dal mill, rice mill, poha mill, masala mill, sawmill etc., are all billed under Industrial Activity as per various Tariff Orders of MERC issued from time to time. Normally, all these units have a small sale office on site with two / three tables as sitting arrangement, one Air Conditioner, lighting etc.
- (iii) The Appellant's connected load is 26.48 KW, having 23.98 KW (90 %) industrial load and 2.50 KW (10 %) Commercial load. The total area of the premises is 13000 sq. foot which is sub-categorised into 12375 sq. feet area ((95%) for industry and 625 sq. feet area (5%) for office. The Appellant was billed under industrial tariff category from 1995.
- (iv) The Flying Squad of the Respondent inspected the premises of the Appellant on 05.02.2022. The FS mentioned in its Spot Inspection Report that.

*"Irregularities observed & Remarks*

*Consumer found using connection for marble shop and category of connection is LT V (B). Hence, proposed to change the tariff from LT V (B) to LT-II."*

- (v) The Respondent issued a supplementary bill of Rs.81,790/- on 19.12.2022 towards tariff difference between LT- Industrial and LT-II Commercial category retrospectively for the

  
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period of 24 months from Jan.2021 to Dec. 2022, and changed the tariff category to commercial from 05.12.2022.

- (vi) The Appellant referred to the Judgement of Hon'ble Supreme Court dated 02.12.2009 in Civil Appeal Nos. 8037 to 8044 in the Case of Income Tax Officer, Udaypur V/s. Arihant Tiles & Marble (P) Ltd. The Court has clarified that the word "Production" is wider in its scope compared to the word "Manufacture". Production means manufacture plus something in addition. The Bench confirmed that conversion of marble blocks by sawing into slabs and tiles and polishing amounts to Manufacture or Production.
- (vii) The Appellant holds Udyam Registration Certificate of "Small" enterprise, with major activity as "MANUFACTURING", from 1<sup>st</sup> July 2020 in the name of Jagadamba Marble House, which is an industry on the site, though the connection stands in the name of Shakti Trading Company.
- (viii) The Appellant argued that when it had applied for change of tariff category on "Online Portal" of MSEDCL on 17.02.2023 to convert from Commercial to Industrial, it found that there are 16 tariff categories on the portal. When it selected the Activity as "INDUSTRY", the following sub-categories were found :-

Activity	Code	Group	Code	Sub-Activity
Industry	229	Other Industry	20238	Tiles and Marble Cutting
			20249	Cutting and polishing of Marbles


This clearly establishes that the Respondent intend to classify marble cutting, polishing etc. under Industrial Tariff Category. However, the field officers are not following its real meaning.

- (ix) Previously, there were two meters on the site for industrial use and office lighting. The single-phase meter of the office was disconnected and clubbed with the industrial meter by the Respondent, as the major activity of the Appellant is industrial.

  
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- (x) The Respondent did not hand over the Spot Inspection Report mentioned in para 2(v). The Appellant has paid supplementary bill and all bills till date under protest.
- (xi) In view of the above, the Appellant prays that the Respondent be directed
- to withdraw and refund the supplementary bill of Rs.81,790/- of tariff difference of industrial to commercial for the period of Jan. 2021 to Dec. 2022.
  - to change the tariff category from Commercial to Industrial.
  - to compensate Rs. 5 lakhs towards mental agony and harassment.
3. The Respondent filed its reply on 04.07.2023. Its submissions and arguments are as below:-
- The Appellant is a LT Commercial Consumer having III phase connection, bearing Consumer No. 020100009031 since 23.05.1984, at Shahad, Mohane Road, Kalyan West, with Contract Demand of 26.84 KVA.
  - The Flying Squad of the Respondent inspected the premises of the Appellant on 05.12.2022, when it was observed that the Appellant is has an Air-Conditioned showroom named M/s. Shakti Trading Company, where the Appellant is carrying on the business of selling of Marble & Granite Tiles. At the back side of the showroom, the Appellant has a small workshop, where he cuts and polishes the edges of slabs of Marble and Granite as per the required dimensions of the customer. The copy of the Spot Inspection Report is kept on record.
  - The Flying Squad, vide its letter dated 09.12.2022, recommended to the Addl. Executive Engineer, Kalyan West Sub-Division-I, to change the Tariff Category of the Appellant from LT V B (Industrial) to LT II (Commercial), and proposed to raise the tariff difference bill for two years retrospectively. Accordingly, the Respondent issued a supplementary bill of Rs. 81,790/- towards tariff difference between LT V B to LT II tariff category for the period of January 2021 to December 2022.
  - Being aggrieved by this, the Appellant approached the Forum on 18.01.2023. The Forum by its order dated 20.04.2023 rejected the grievance application by holding that industrial tariff is applicable only for manufacturing and processing. There is just cutting of big sized marble slabs into small sized slabs as per the demand of the


  
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client. There is no change in the product per se. **Therefore, the activity of marble cutting and polishing does not fall under the Industrial Tariff Category.**

- (v) There are various stages/ activities in the process, from excavation of the Marble or Granite from the mines to the cutting, polishing and selling of the Marble or Granite Tiles in the Showroom. The Appellant does not have the business of excavation of Marble or Granite from the Mines, or making large slabs of raw marble extracted from Mines. He is only involved in the business of the last step of cutting and polishing of large slabs of marble and granite into the required dimension or tiles as per the demand of the customer, and selling the same in his Showroom. **The activity of cutting, polishing or moulding of marble or granite tiles, does not constitute manufacturing or production.**
- (vi) The Commission has specifically categorized Sawmills, Poha Mills, Masala Mills and Rice Mills under Industrial Tariff Category in its Tariff Order. Such is not the case of the activity of the present Appellant. The Commission has not applied Industrial Tariff to cutting, polishing or moulding activity at any Showroom.
- (vii) The Commission while discussing its Tariff Philosophy, has clarified in Case No.111 of 2009 dated 12.09.2010, that classification under industry for tax purposes and other purposes by the Central or State Government shall have no bearing on tariffs determined by Commission under the Electricity Act, 2003 (the Act). The relevant portion of the Tariff Order is reproduced here for kind perusal:

*“In this context, quite a few consumers have been representing before the Commission during the Public Hearings, stating that they are not undertaking any ‘commercial’ activity or activities for making ‘profit’ within their premises, and hence, they should not be classified under the ‘commercial’ category. It is clarified that the ‘commercial’ category actually refers to all ‘non-residential, non-industrial’ purpose, or which has not been classified under any other specific category. For instance, all office establishments (whether Government or private), hospitals, educational institutions, airports, bus-stands, multiplexes, shopping malls, small and big stores, automobile showrooms, etc., are all covered under this categorisation, since they cannot be termed as residential or industrial.*

  
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*In order to bring clarity in this regard, the Commission had renamed this category as 'non-residential or commercial' in the previous APR Order."*

*"A similar impression is conveyed as regards the 'Industry' categorisation, with the Commission receiving several representations during and after the Public Hearings, from the hotel industry, leisure and travel industry, etc., stating that they have also been classified as 'industry' for the purpose of taxation and/or other benefits being extended by the Central Government or State Government, and hence, they should also be classified as 'industry' for the purpose of tariff determination. In this regard, it is clarified that classification under Industry for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003, and the import of the categorisation under Industry under other specific laws cannot be applied to seek relief under other statutes. Broadly, the categorisation of 'Industry' is applicable to such activities, which entail 'manufacture'.*


- (viii) The Hon'ble Supreme Court in its judgment dated 16.10.1979 in the case of PC Cherian V. Barfi Devi made it clear that, the broad test for determining whether a process is manufacturing is, whether it brings out a complete transformation of the old components so as to produce a commercially different article or commodity.

The relevant portion of the Judgment is reproduced here:-

*".... Manufacture implies a change but every change is not manufacture. Something more is necessary. There must be transformation, a new and different article must emerge having a distinctive name, character or use. The rest for determining whether a process is manufacturing, is whether it brings out a complete transformation for the old components...."*

**Cutting and polishing the edges of marble slabs, and selling them is a part and parcel of construction activity, hence the activity is commercial. Marble is used in construction. Construction activity is defined broadly under Commercial tariff category. MERC in case no.116 of 2008 stated that all construction activity on infrastructure projects, buildings, etc. will be classified under commercial category.**

Cutting and polishing of marble slabs into tiles does not transform the old product into a new or different component. Hence the activity of

  
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cutting and polishing of marble and granite slabs does not come under the Industrial activity. The Commission has also not specifically categorized this activity in Industrial Tariff Category.

- (ix) Therefore it is requested that the Representation of the Appellant may be rejected as it is devoid of merits.

4. During the hearing, both the parties were directed to submit the load details and photographs of the premises. The Respondent vide its email dated 18.07.2023 sent various photographs of the premises, load details and a list of consumers having the same activity where such tariff has been changed from industrial to commercial. The Appellant by its email dated 17.07.2023 also sent the required photographs of the Premises. Details of the load are captured in Table 2 of Para 5.

### Analysis and Ruling

5. Heard the parties and perused the documents on record. The Appellant is admittedly in the business of cutting, polishing and selling marble and granite tiles. Larger slabs of marble and granite are cut into smaller sizes, moulded and polished and sold to the customer as per their requirement through a showroom which is a part of the premises. Its details are captured below:

Table 1:

Appellant	Consumer No.	Address	Sanctioned load (KW)	Contract Demand (KVA)	Date of Supply	Activity
Shakti Trading Co. (Jagadamba Marble House)	20100009031	Shahad, Mohane Road, Kalyan (West)	26.84	30	23.05.1984	Granite and marble cutting, slabbing, polishing etc. & sale office

We have studied the site map and the break-up of the connected load of the Appellant, submitted with the meter inspection report dated 18.07.2023. The details are tabulated as below:


  
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Table 2

Area of the premises	Dimension	Area (sq. feet)	Equipment/s	Load	Total Load (KW)
Area A	15ft X 2 ft.	30	Marble Cutting M/c	1 No. x 10 HP	7.460
			Water Pump	1 No. x 1 HP	0.746
Area B	10 ft. X 8 ft.	80	Cutting M/c with motor	1 No. x 5 HP	3.730
	7 ft. x 3 ft.	21	Grinding & polishing M/c	9 Nos. x 1 HP	6.714
Area C	lighting with Common area	12173	Lighting	17 Nos. X 20 watt	0.340
Total Area of Workshop		12304	Total Load of workshop area	<b>70.07%</b>	18.990
Area D (Sales Office cum Show Room)	10 ft. X 8 ft.	80	Office Load (Lighting load of office, 2 Air Conditionings, Computer System, CC TV System).	<b>29.93%</b>	8.110
Total Area	72 ft. X 172 ft.	12384	Gross Total Load	<b>100%</b>	27.100

6. Considering the above facts and circumstances, the following issues are framed: -


Issue A: Whether the activities of marble/granite cutting, polishing, moulding, shaping etc. fall under industrial tariff category?

The Answer is in the AFFIRMATIVE.

Issue B: Whether the predominant load in the Appellant's premises relates to Industrial or commercial category?

The Answer is : Industrial.

The activities of cutting large slabs of marble/granite, cutting, polishing, moulding, shaping etc. are carried out at the workshop of Marble/granite seller. These processes are carried out on original or large marble/granite slabs. The Commission has not defined this specific value-added process in its Tariff Order in force.

  
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The Commission in its Tariff Order dated 30.03.2020 in Case 322 of 2019 has categorised LT Industry Tariff. The same is reproduced below:-

**“LT V: LT- Industry:**

**Applicability:**

*This tariff category is applicable for electricity*

*. for Industrial use, at Low/Medium Voltage, for **purposes of manufacturing and processing**, including electricity used within such premises for general lighting, heating/cooling, etc.*

*It is also applicable for use of electricity / power supply for Administrative Offices / Canteens, Recreation Hall / Sports Club or facilities / Health Club or facilities/ Gymnasium / Swimming Pool exclusively meant for employees of the industry; lifts, water pumps, fire-fighting pumps and equipment, street and common area lighting; Research and Development units, dhobi/laundry etc.:-*

*Provided that all such facilities are situated within the same industrial premises and supplied power from the same point of supply;*


*This tariff category shall also be applicable for use of electricity / power supply by an Information Technology (IT) or IT-enabled Services (ITeS) Unit as defined in the applicable IT/ITeS Policy of Government of Maharashtra.*

*It shall also be applicable for use of electricity / power supply for (but not limited to) the following purposes:*

- a. Flour Mill, Dal Mill, Rice Mill, Poha Mill, Masala Mill, Saw Mill;
- b. ....
- c. ....
- d. Mining, Quarrying and **Stone Crushing units**;
- e. .... “

The Commission has broadly classified the industrial tariff category as above. The Appellant’s activities are similar to stone crushing units and can be categorised as a processing unit, which is to be billed under industrial tariff category. The Respondent itself billed the Appellant under Industrial Tariff category for the last more than 15 years. Further, there is no specific direction of the Commission to consider this process industry under commercial tariff category.

7. Regarding the issue B, from the joint inspection report on record, it was clearly established that there was a mixed load of industrial and commercial activity. However, the major load is that


  
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of industrial activity. Table 2 indicates that the showroom or commercial use takes up space of only 80 sq. ft. out of total area of 12,384 sq. ft. Also the commercial load is only about 30%, while the load of the workshop is about 70%. Hence the Appellant is to be billed correctly under industrial tariff category which is the predominant load.

8. The Forum's order deviates from merit, and hence the said order is set aside.
9. The representation of the Appellant is allowed, and the Respondent is directed as under: -
  - a) to withdraw the supplementary bill of Rs.81,790/- towards tariff difference of Industrial to Commercial tariff category retrospectively for the period Jan.2021 to Dec. 2022 by waiving of interest and DPC levied, if any.
  - b) to change the tariff category to industrial from Jan. 2023 onwards.
  - c) Compliance to be submitted within two months from the date of issue of this order.
  - d) Other prayers of the Appellant are rejected.
10. The representation of the Appellant is disposed of accordingly.

Sd/-  
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Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
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