

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 3 OF 2021

In the matter of tariff categorization and refund thereof

Nikeda Art Printers Pvt. Ltd. Appellant

V/s

Maharashtra State Electricity Distribution Co. Ltd. Bhandup (MSEDCL)..... Respondent

Appearances: -

For Appellant : Devendra Ambekar

For Respondent : 1) Suresh Sawairam, Executive Engineer
2) Nitin Sarode, Addl. Ex. Engineer, Ishwar Nagar S/Dn.

Coram: Deepak Lad


Date of Hearing: 26th February 2021

Date of Order : 10th March 2021

ORDER

This Representation is filed on 22nd January 2021 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 19th November 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).


2. The Forum, by its Order dated 19.11.2020 has dismissed the grievance application in Case No.01/2020 being time barred.


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3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -

- (i) The Appellant is an Industrial consumer (No. 022929053750) having connected load of 200 KW and Contract Demand (CD) of 150 KVA for printing press at Plot No. 47, Unit No. H & I, Kanjur Industrial Estate, Quarry Road, Bhandup.
- (ii) The Respondent had initially carried out inspection of the premises and subsequently sanctioned the load for the purpose of printing press. The tariff category applicable was not mentioned in the sanctioned order. The connection was released on 11.01.2008. The Appellant received first bill in the month of February 2008 as per LT-II category (Tariff Code 52) Electricity Duty Code 06 (Part B).
- (iii) Bill for the month of June 2008 was issued with Tariff Code 71 LT-II C which was continued till December 2009. The Respondent levied correct tariff category as Industrial from January 2010. However, the Respondent did not refund the excess billed amount collected towards tariff difference from Commercial to Industrial tariff category during the period from June 2008 to December 2009.
- (iv) This mistake of the Respondent was brought to the notice of the then Executive Director (Commercial) at Prakashgad Bandra vide letter dated 07.12.2009 and requested to rectify the correction in tariff. He directed the Superintending Engineer, Thane Urban Circle (SE) to resolve this grievance.
- (v) However, the Respondent had partially rectified their mistake by changing the tariff category to Industrial in the month of January 2010 onwards.
- (vi) The Dy. Executive Engineer, Ishwar Nagar S/Dn vide its letter dated 24.12.2012 stated that *"the proposal for refund of claim is submitted to higher authority for approval, and after receipt of approval from the higher authority the same will be effected in your bill."* This means that the Respondent has agreed to its claim of tariff difference.
- (vii) The Appellant has filed its grievance with the Respondent within the period of two years which is continuously followed. The grievance was partly resolved by the Respondent in January 2010 by changing the tariff category to Industrial, so it is


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incorrect to apply provision of Regulation 6.6 of CGRF Regulations 2006 for its claim of refund of tariff difference. The Appellant is in continuous follow up in this matter of refund of tariff difference with the Respondent, but no refund has been given. The documents, puts on record, clearly indicate the working lacuna of the Respondent.

- (viii) Thereafter, the Appellant filed its grievance at Internal Grievance Redressal Cell (IGRC) on 31.10.2019. The IGRC, by its order dated 23.12.2019 has rejected the grievance being time barred.
- (ix) Not satisfied with the order of the IGRC, the Appellant approached the Forum, however, the Forum, by its Order dated 19.11.2020 has dismissed the grievance mentioning the reason as time barred.
- (x) In view of above, the Appellant prays that the Respondent be directed to refund the tariff difference from Commercial to Industrial tariff category for the period from June 2008 to December 2009 with accrued interest and due compensation as per Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2005 and 2014 (SOP Regulations).

4. The Respondent filed its reply by letter dated 18.02.2021 stating in brief as under: -


- (i) The Appellant is an Industrial consumer (No. 022929053750) from 11.01.2008 having connected load of 200 KW and CD of 150 KVA for printing press at Plot No. 47, Unit No. H & I, Kanjur Industrial Estate, Quarry Road, Bhandup.
- (ii) The Appellant applied for Industrial Connection and same was sanctioned by Executive Engineer, Bhandup Division vide Ref No. EE/BND/TECH/LS/55/6218 dated 19.12.2007 after observing statutory formalities.
- (iii) The Respondent investigated the complete case and found from the record that the Appellant was billed on Commercial tariff category under the Tariff Code 52 initially for the period from February 2008 (date of connection being 11.01. 2008) to May 2008 and not Industrial category as alleged by the Appellant. The Appellant


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was further billed under Tariff Code 71 LT-II C from June 2008 onwards till December 2009.

- (iv) The Appellant for the first time applied for change in tariff category from Commercial to Industrial on 13.11.2009. After receipt of above application, the Section Officer inspected the premises of the Appellant. During inspection, it was observed that the Appellant's activity was Industrial. Accordingly, the tariff category of the Appellant was changed from Commercial to Industrial in the month of January 2010 with prospective effect.
- (v) The Appellant submitted an application on 12.01.2011 for refund of tariff difference from Commercial to Industrial tariff category for the period from June 2008 to December 2009. Pursuant to this application, Subdivision office made correspondence with the Appellant and Bill revision proposal of Rs.1485464.44 was prepared and sent to Circle / Division Office vide Ref No. DYEE/S/DN-I/Billing/336 dated 08.02.2011. The same is forwarded by Division Office to Circle Office on 25.02.2011. As per further direction from Circle Office, the Division Office then revised the proposal for Rs.1528901.40 with correction in demand charges and then forwarded to Circle Office in April 2011. This was as per Circular No. 131 dated 13.01.2011 regarding revision in bills leading to B-80 adjustment and delegation of power.
- (vi) Further as per direction of Circle Office, the Executive Engineer, Division Office issued confidential letter No. 125 dated 02.05.2012 to Dy EE Ishwar Nagar S/Dn asking which authority changed the tariff from Industrial to Commercial for the period from June 2008 to December 2009. The reply submitted by Sub-division to Division Office mentions that "*No record is available in this matter at sub-division and also with Appellant*". The same is forwarded to Circle Office by Division Office. After that, no action has been found taken place in the matter. Meantime, various correspondence has happened between the Appellant and the Respondent.
- (vii) Finally, the proposal(revised) forwarded to Regional Director office by Circle Office has been rejected as the case is time barred.



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- (viii) Hence, at this stage, the Respondent cannot determine the tariff of Appellant for past period from June 2008 to December 2009. The Respondent is not having any records / evidence whether the Appellant was using supply for Industrial or Commercial purpose.
- (ix) The Appellant filed its grievance with the IGRC on 31.10.2019 and by its order dated 23.12.2019 has rejected the grievance as per Regulation 6.6 of the CGRF Regulations 2006 being time barred.
- (x) The Appellant approached the Forum and the Forum, by its Order dated 19.11.2020 has dismissed the grievance application being time barred.
- (xi) Hence, it is requested to dismiss the application as the grievance is not filed within the stipulated time as per Regulations.

5. The hearing was held on 26.02.2021 on e-platform through Video conferencing due to Covid-19 epidemic. During hearing, the Appellant reiterated its written submission stating that it is in business of printing activity which comes under Industrial tariff category from the date of release of its electric connection. The sequence of various important correspondence between the Appellant and the Respondent are as follows: -

- 19.12.2007: Approval of connection for Industrial purpose for 150 KVA for printing press.
- 11.01.2008: Release of connection.
- Feb-2008 to May- 2008: Industrial Tariff levied.
- Jun-2008 to Dec-2009: Commercial Tariff levied.
- 13.11.2009: Appellant made complaint for wrong tariff category and requested to change the tariff category from Commercial to Industrial and refund wrongly charged tariff from June 2008.
- 07.12.2009: Letter given to the Respondent's Head Office, Prakashgad
- Jan-2010: Respondent changed tariff category to Industrial after inspection of factory premises.
- 10.05.2010: Reminder given to the Respondent's Head Office, Prakashgad.



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- 05.06.2010: Letter from Chief Engineer (Commercial) to SE to verify facts and take necessary action.
- 18.10.2010: Reminder from Chief Engineer (Commercial) to SE.
- 01.03.2011 & 15.04.2011: Letter from subdivision Bhandup to submit NOC for verification.
- 14.12.2011: Submission of original documents for verification by the Appellant.
- 24.02.2012: Letter from Respondent saying the proposal of refund of claim is submitted to higher authority for approval.
- 30.01.2015: Reminder to HO.
- 18.03.2016: Reminder to S/Dn & Division office
- 30.03.2019: Reminder to S /Dn & Division office
- 17.06.2019: Reminder to SE
- 31.12.2019 –Filed grievance with IGRC.

The cause of action is continuous in nature. The Respondent did not take corrective action on grievance of refund of tariff difference. The Appellant prays that the Respondent be directed to refund the tariff difference from Commercial to Industrial tariff category for the period from June 2008 to December 2009 with accrued interest.

6. On the contrary, the Respondent argued that the case squarely falls under Regulation 6.6 of the CGRF Regulations 2006. The Appellant filed the case with the Forum on 01.04.2019 as mentioned in the Forum's order dated 19.11.2020. The Appellant has requested for refund with respect to improper bills on account of application of wrong tariff category for the period from June 2008 to December 2009. However, the Appellant filed the grievance with the Forum on 01.04.2019 for the said period. Therefore, the Appellant's case is time barred in view of Regulation 6.6 of the CGRF Regulations 2006. Hence, the claim of the Appellant is not tenable. The Respondent argued that the Respondent has changed tariff category prospectively from Jan-2010 after receipt of the application from the Appellant for change of tariff category.


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The Respondent's Regional Office has rejected the proposal for refund of tariff difference retrospectively as there is no registration certificate for printing activity for retrospective period. The Respondent prayed that the representation of the Appellant be rejected as being time barred.

Analysis and Ruling

7. Heard the parties and perused the documents on record. I have noted following points in this case: -

- (a) The Appellant was never billed under Industrial tariff category from day one till December 2009 based on the documents submitted by the Appellant. Even the Appellant has agreed that it was billed under Tariff Code 52 which is assigned by the Licensee for LT-II non-Domestic tariff category.
- (b) Various tariff orders applicable to the Appellant for the respective period are as below: -


Commission Tariff Order in Case No.	Date of Issue	Effective from	Period of operation
65 of 2006	18.05.2007	01.05.2007	01.05.2007 to 31.05.2008
72 of 2007	20.06.2008	01.06.2008	01.06.2008 to 31.07.2009
116 of 2008	17.08.2009	01.08.2009	01.08.2009 to 31.07.2012

Commission Tariff Order in Case No.65 of 2006: LT II Non – Domestic

- Three Phase: Rs. 150 per service connection,
Additional Fixed Charge of Rs. 150 per 10 kW load or part thereof above 10 kW load shall be payable.
- Optional LTMD based Tariff (LT V tariff) will be available for all consumers at their option.
- Energy charges (paise/KWH)

0-100	Units	- 320/-
101-200	Units	- 400/-
Above 200	Units	- 560/-

 (Only balanced Units)


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Commission Tariff Order in Case No.72 of 2007: LT II Non – Domestic

Rate Schedule		
Consumption Slab (kWh)	Fixed/ Demand Charge	Energy Charge (Rs./kWh)
(A) 0-20 kW		
0 to 200 units per month	Rs. 150 per month	4.20
Above 200 units per month (only balance consumption)	Rs. 150 per month	5.90
(B) > 20 kW and ≤ 50 kW	Rs. 150 per kVA per month	6.20
(C) > 50 kW		8.10
TOD Tariffs (in addition to above base tariffs)		
0600 to 0900 hours		0.00
0900 to 1200 hours		0.80
1200 to 1800 hours		0.00
1800 to 2200 hours		1.10
2200 to 0600 hours		-0.85
Note: The TOD tariff is applicable for LT II (B) and © category, and optionally available to LT II (A) having ToD meter installed.		

Commission Tariff Order in Case No.116 of 2008: LT II Non – Residential / Commercial

Rate Schedule		
Consumer Category	Fixed/ Demand Charge	Energy Charge (Paise/kWh)
(A) 0-20 kW		
0 to 200 units per month	Rs. 150 per month	340
Above 200 units per month (only balance consumption)	Rs. 150 per month	525
(B) > 20 kW and ≤ 50 kW	Rs. 150 per kVA per month	550
(C) > 50 kW	Rs. 150 per kVA per month	750
TOD Tariffs (in addition to above base tariffs)		
0600 to 0900 hours		0
0900 to 1200 hours		80
1200 to 1800 hours		0
1800 to 2200 hours		110
2200 to 0600 hours		-85
Note: The TOD tariff is available to LT II Non-Domestic above 20 kW, and optionally available to LT II (Non-Domestic upto 20 kW having ToD meter installed.		

The


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Appellant was billed from the month of February 2008 till May 2008 under LT-II tariff category which is further divided into three sub-parts namely

(A) 0-20 kW (B) > 20 kW and ≤ 50 kW & (C) > 50 kW


The Appellant is covered under **(C) > 50 kW**.

8. I perused the tariff orders of the Commission as mentioned above and more particularly, its tariff schedule. From the tariff schedule, I observed that the description of the establishments under the applicability clause of LT – Non – Domestic and LT – Industrial was very brief and not exhaustive. The Respondent sanctioned the case of the Appellant without specifically mentioning LT – Non – Domestic or LT-Industrial. On the contrary, the sanctioned letter simply mentions the ‘Printing Press’. Therefore, I am of the opinion that this could be one of the reasons for applicability of LT-Non-Domestic tariff category by the Respondent. It goes without saying that the Respondent ought to have done due diligence and greater care while categorizing the Appellant.

9. When the Appellant applied for change of tariff on 13.11.2009, the Respondent changed it from January 2010 prospectively. The Appellant for the best reason known to it, engaged itself in unending correspondence to redress its grievance instead of approaching the grievance redressal mechanism available under the Act and the Regulation made thereunder.

10. I noted that the Appellant approached the Forum on 01.04.2019 for the billing dispute due to wrong tariff for the period from June 2008 to December 2009. It should have filed its grievance with the grievance redressal mechanism available under the Act, and the Regulations made thereunder within two years respectively from June 2008 to December 2009. It inter alia means that it should have filed latest by December 2011 for December 2009 and likewise for earlier period up to June 2008. Therefore, the Appellant failed to approach the Forum in accordance with Regulation 6.6 and thus, it does not fit into the regulatory framework. The Appellant, therefore, does not have any case as such. The Regulation 6.6 of CGRF Regulations is quoted below: -

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


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11. It is expected that the Appellant should approach the IGRC in a reasonable period though there is no such limit provided under the Regulations. This needs to be harmoniously read with Regulation 6.6 of CGRF Regulations which ultimately puts two years limitation period for the Forum to admit the case. This principle and logic are upheld in W.P. No. 6859, 6860, 6861 and 6862 of 2017 decided on 21.08.2018 by the Hon'ble Bombay High Court, Bench at Aurangabad which is very much relevant to the instant Representation. The relevant portion of the Judgment is quoted below: -

“37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.

38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.

39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.

42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his



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representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.

44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.


45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period.”

12. In view of the above discussions, I am of the considered view that the representation does not warrant any interference in the order passed by the Forum. Hence, the Representation is rejected.

13. No order as to cost.

Sd/-
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