

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

REPRESENTATION NO. 167 OF 2019

In the matter of retrospective recovery of Electricity Duty

Kalyani Charitable Trust ..... Appellant

V/s.

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

Appearances

For Appellant : 1) Dalvi Raju B. Admin Officer  
2) T. N. Agarwal, Representative  
3) Satish Shah, Representative

For Respondent : 1) P. V. Bankar, Executive Engineer, Nashik  
2) D. R. Mandlik, Sr. Manager  
3) Nital Varpe, Jr. Law Officer

**Coram: Deepak Lad**

Date of Order: - 15<sup>th</sup> October, 2019

**ORDER**

This Representation is filed on 11<sup>th</sup> September 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 9<sup>th</sup> August 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Nashik Zone (the Forum).

2. The Forum, in the grievance application of the Appellant has issued order in majority on 09.08.2019 and its operative part is as under: -

*"1. As other access such Electricity Inspector and Hon'ble High Court are available to the consumers and as the powers of Dist. Co. withdrawn in cases to deal with Electricity Duty also as the electricity duty being a part of revenue of GOM, this Forum has no jurisdiction hence case is rejected."*

3. Aggrieved by the order of the Forum, the Appellant states as below:-

- (i) The Appellant is having two 11 kV HT connections having Consumer No. 049069018780 and 049069021190 at village Anjaneri, Nashik.
- (ii) The Appellant is a Charitable Trust registered under the Bombay Public Trust Act, 1950 in respect of School or College imparting education, training in academic and technical subjects.
- (iii) Being registered Charitable Trust running educational institutes, GOM has exempted it from being levied ED. Accordingly, ED exemption has been granted from 27.05.2006 and 22.12.2018 to 31.12.2035. Further, refund of ED for past period was also approved by GOM vide letter No.217/Energy-1 & letter No.218/Energy-1 both dt.15.04.2017. Pursuance to this approval of Government of Maharashtra (GOM), the Respondent has refunded ED as below.

Consumer No. 049069021190): Rs.1475717.00

Consumer No. 049069018780): Rs.2579394.00

In view of this, the ED was not charged by the Respondent till August 2018.

- (iv) Under the Maharashtra Electricity Duty Act 2016 (the Act 2016), the GOM has reclassified duty structure with effect from 01.09.2016 in respect of energy consumed by certain class of premises or purposes has been mentioned and electricity duty is payable as per the schedules. Proviso to Section 4 is applicable in the instant case. The said proviso is reproduced below: -

“4. ....  
.....

*Provided that, nothing contained in this Act shall affect any order issued in this regard before the commencement of this Act, and such order shall continue to be in force till the period mentioned therein expires, and where such period is not mentioned, any further order is issued in that respect under the provisions of this Act.”.*

On the basis of this quote, order issued prior to the Act 2016 will continue without any change and therefore exemption of ED to Charitable Trust will continue till 31.12.2035 without any effect of new Government Resolution issued in year 2016.

- (v) However, the Respondent levied ED retrospectively from 01.09.2016 onwards and recovered the arrears in 4 instalments from September 2018 to December 2018. The Appellant had protested for illegal recovery vide its letter dated 24.10.2018. Since no relief was granted by the Respondent, it had filed grievance application with Internal Grievance Redressal Cell and then with the Forum. However, the Forum rejected the grievance without proper interpretation of the facts.
- (vi) The Appellant cited judgment of Bombay High Court, Mumbai dated 01.03.2019 in W.P. No. 2961 of 2018 on the same issue filed by Kelvani Mandal & Society, Narsee Monjee Institute & anr. against the Maharashtra State Industry/Energy dept., Reliance Infrastructure Ltd. & anr. The Hon’ble Court has prohibited the licensee from issuing any bills levying ED on the petitioners /their educational institutes. As this recent judgment pertains to educational institutes, the same should be made applicable in toto to the similar placed institutes.
- (vii) The Appellant pointed out that the other similar educational institutes in Nashik are enjoying this ED exemption e.g. Brahma Valley Educational Institutes, etc. Hence, there is discrimination amongst the consumers of the same category.

(viii) The Respondent forcibly recovered ED as below for the two units under the threat of disconnection.

Consumer No. 049069018780: Amount Rs.1111336.00

Consumer No. 049069021190: Amount Rs. 971592.00

The Appellant, therefore, prays that the order of the Forum be set aside and the Respondent be directed not to levy ED in future and refund the amount already recovered with interest as per Section 62(6) of the Electricity Act, 2003. Further, the Appellant be suitably compensated for undue harassment.

4. The Respondent, by its letter dated 05.10.2019 has filed a reply stating as under:-
- (i) The Appellant is having two 11 kV HT connections having Consumer No. 049069018780 and 049069021190 at village Anjaneri, Nashik.
  - (ii) It is a charitable trust registered under the Bombay Public Trust Act, 1950 in respect of School or College imparting education, training in academic and technical subjects.
  - (iii) As per provision of Section 5A of the Maharashtra Electricity Duty Act 1958, the GOM is empowered to grant exemption in ED to the consumers.
  - (iv) In absence of the ED exemption certificate from the Appellant, the Respondent levied ED. Subsequently, the Appellant filed online applications to the Respondent for ED exemption in respect of its two electricity connections i.e. Consumer No. 049069018780 and Consumer No. 049069021190 for the period from 27.05.2006 to 01.12.2035 and 27.12.2008 to 31.12.2035 respectively which is approved by the GOM vide its letters dated 15.04.2017.
  - (v) In pursuance of the said approval, the Respondent refunded the amount towards ED as below:-
    - (a) Consumer No.049069018780 - Rs.3903893.81 period June 2006 to May 2015
    - (b) Consumer No.049069021190 - Rs.2118760.90 period Jan 2009 to May 2015.
  - (vi) Further, for ED exemption then onwards, suitable code was fed to the computer system.

- (vii) The Act 2016 came in force from 08.08.2016. Pursuant to the provisions of the Act, the GOM issued direction vide its letter dated 04.06.2018 to the Respondent to start levying ED with effect from 01.09.2016 to charitable educational institutions registered under Public Trust Act, 1950 which were exempted by the GOM under the provisions of the earlier Act.
- (viii) Accordingly, the Commercial Section of the Respondent issued Circular dated 10.10.2018 for retrospective recovery of ED from 01.09.2016 till the actual date of levying of ED, in six monthly equal instalments starting from October 2018. Accordingly, the ED exemption code which was fed into the system was changed. The recovery was debited in the Appellant's bill from October 2018 to March 2019.
- (ix) Distribution Licensee is duty bound to recover ED from eligible consumers on behalf of GOM.
- (x) The GOM has prescribed certain process which needs to be adopted in order to resolve the issues with respect to application / exemption of ED. If the Appellant is having certain issues with respect to exemption of ED in respect of its two consumers, then it needs to follow the process prescribed by the Government.
- (xi) The Electricity Duty Inspector in its inspection of the records of the Respondent carried on 15.03.2018 has pointed out that ED in respect of the Appellant needs to be retrospectively recovered from 01.09.2016.
- (xii) The Appellant referred the order passed by the Electricity Ombudsman, Mumbai in Representation No.110 of 2017 in case of M/s Sharada Construction & Investment Co. V/s MSEDCL which states that the grievance relating to ED does not constitute a grievance as per Regulation 2.1 (c) of the CGRF Regulations. Hence, the grievance of the Appellant is not maintainable under CGRF Regulations and is liable to be dismissed.

### **Analysis and Ruling**

5. The case was heard on 11.10.2019. Both the parties argued in line with their written submissions. After perusing the documents on record, it is observed that the Government has created Special Authority to deal with such cases of Electricity Duty and related issues. In


this background, the undersigned cannot entertain the issues related to Electricity Duty. Thus, it is beyond the scope of the undersigned and the representation therefore, is not maintainable before the undersigned. The same view was also taken in the earlier orders of the undersigned.

6. I am, therefore, of the opinion that since the representation is not maintainable, the Appellant may approach the appropriate Authority in this regard to resolve this issue. The representation is therefore disposed of accordingly.

7. The secretariat of this office is directed to refund amount of Rs. 25000/- deposited by the Appellant immediately.

8. No order as to cost.

Sd/  
(Deepak Lad)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

