

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 15 OF 2020

In the matter of Electricity Duty

Sri Balaji Society. Appellant

V/s.

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

Appearances

For Appellant : R. Somasundaram, Chief Accounts Officer


For Respondent : 1. Kishor. B. Patil, Executive Engineer
2. Sujata R. Karande, Dy. Ex. Engineer
3. Ganesh M. Dangat, Dy. Manager

Coram: Deepak Lad

Date of Order: -12th March 2020

ORDER

This Representation is filed on 24th January 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity


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Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 19th December 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Pune Zone (the Forum).


2. The Forum, by its order dated 19.12.2019 has dismissed the grievance application No. 49 of 2019.

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

- (i) The Appellant has two connections having Consumer No.170149030220 from 08.12.2005 at Main campus and Consumer No.170149073820 from 17.02.2012 at Riverside campus, Tathawade, Pune.
- (ii) It is exempted by the Competent Authority from Electricity Duty (ED) in terms of Mahavitaran, Head Office, Mumbai letter No. P-Com/Accts/ED-Exmp/29902 dated 25.09.2014. However, ED has been charged in the bills from September 2018 and also the duty from November, 2016 has been recovered in the bills as arrears.
- (iii) The Respondent relied, for the levying of ED, on its letter dated 04.06.2019 by referring Section 3(2)(iii) of the ED Act 2016 and item (viii) of Part B in Schedule A of the ED Act 2016, which is not applicable in this case.
- (iv) The Appellant has relied upon Section 4 of the ED Act 2016, which is applicable in this case, which reads as follows:

“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.” (Emphasis added)


- (v) The Appellant requested for rectification of the mistake through the following letters / personal visits:
 - a. Letter No. SBS/Accounts/ MSEDCL/98/3/2018-19 dated 10.10.2018 to Divisional Accountant (HT Billing), Ganeshkhind Circle, Pune.


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- b. Letter No. SBS/Accounts/MSEDCL/106/3/2018-19 dated 08.11.2018 to Chief Engineer (Commercial), HO Prakashgad, Bandra (East), Mumbai with copies to Chief Engineer, Pune Zone. and Superintending Engineer, Ganeshkhind Circle, Pune (SE).
- c. Letter No. SBS/Acctts/MSEDCL/139/2018-19 dated 04.01.2019 to the Executive Director (IT & BR) and the Chairperson, Consumer Grievance Redressal Forum, Pune for intervention in the matter.
- d. Meeting with Mr. Ganesh Dangat, Officer at Ganeshkhind Circle Office, Pune on 11.01.2019.
- e. Meeting with Mr. Panse, Officer at Pimpri Divisional Office, Pune on 11.01.2019.
- f. Letter No. SBS/Acctts/MSEDCL/182/2018-19 on 30.03.2019 to EE, Pimpri Divisional Office and Chairperson, CGRF, Pune Zone.
- g. Letter No. Sbs/Accts/MSEDCL/ 18/3/2019-20 dated April 27, 2019 was submitted to all concerned in MSEDCL
- (vi) None of the above letters were acknowledged and no action was initiated.
- (vii) It therefore approached the Internal Grievance Redressal Cell (IGRC) on 17.06.2019.
- (viii) The point of view on both, Section 3(2) and Section 4 of the ED Act, 2016 was submitted to IGRC. Also, brought to the notice of the IGRC, the judgement of Hon'ble Bombay High Court dated 28.02.2019 in the matter of Vile Parle Kelwani Mandal & 9 others v/s. State of Maharashtra & 3 others on interpretation of provisions of Section 3(2) of ED Act, 2016.
- (ix) After hearing the submissions from both the sides, Chairman, IGRC vide his letter No. SE/GKUC/IGRC/2019/T/19/4100 dated 09.08.2019 (received by us on 19.08.2019) informed that the grievance cannot be considered with the following comments.

'It is ordered that, as per directives received from commercial section (HO) vide letter P-Comm/Accts/ED-Education/891 dated 03.07.2018, Electricity Duty have been charged to consumer and also recovery of ED charges of Educational institutions registered under Charitable Trust Act 1950 has been done from Sept-2016. Consumer's grievance cannot be considered. For clarification of section 4 of Maharashtra Electricity Duty Act, 2016 which reads as 'Provided that nothing contained in this Act shall affect any order issued in this


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regard before the commencement of this Act’, consumer can approach the office of the competent authority’

The order was bad in law and not maintainable for various reasons:

- (x) Then the Appellant made an application with all relevant documents to the Forum on 21.09.2019.
- (xi) In addition to the points already brought before the IGRC, it was brought to the notice of the Forum, the judgement of Hon’ble Bombay High Court dated 28.02.2019 in the matter of Vile Parle Kelwani Mandal & 9 others vs State of Maharashtra & 3 others on interpretation of provisions of Section 3(2) of the ED Act, 2016. The Hon’ble Court has held that


We clarify that what cannot be recovered under the bills is the component of electricity duty and there will be a relief in terms of prayer clause (c) as well prohibiting levy and recovery of such duty from the petitioners.....”

- (xii) The order of the Forum dated 19.12.2019 was received on 30.12.2019.
- (xiii) The Appellant is horrified with the manner in which the case has been dismissed stating that it does not have any jurisdiction to deal in this matter.
- (xiv) The Forum just washes away its responsibility by merely quoting the definition of the term “Grievance” as provided under sub-section 1(c) of clause 2 of the CGRF Regulations.
- (xv) It also suffers from severe deficiencies, both logical and legal and it is an incomplete order that has failed to discuss and give any direction on the primary dispute.

a. *Core issue: **Stop charging ‘Electricity Duty’** in our bills based on the correct legal interpretation of section 3(2) and section 4 of the Maharashtra Electricity Duty Act, 2016 and also the judgement pronounced by the Hon’ble High Court. The forum conveniently does not make even a whisper about our first request in the order:*

b. *Instead, the forum has cunningly transformed our application to be a ‘refund claim’ of duty charged with retrospective effect. Though this also is our demand, it can be decided only when our first request is addressed and decided.*


c. *Even while wrongly considering our application to be a ‘refund claim’, the suggestion that ‘the consumer is, therefore, required to approach the Electrical Inspector....’ speaks volumes of the ignorance of the authorities.*


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d. *The order rightly states, special procedure is provided for refund of electricity duty, however, grossly blunders in saying the powers lie with another authority.*


- (xvi) The order does not discuss anywhere on the applicability of “Electricity Duty” in its bills. No discussion either on Section 3(2) or 4 of the Maharashtra Electricity Act, 2016.
- (xvii) Here lies the double standard that is hard to understand. *The Appellant is exempted by the Competent Authority from payment of duty in terms of MSEDCL Head Office letter No. P-Com/Accts/ED-Exmp/29902 dated 25.09.2014. It confirms that the exemption is still valid since no validity date has been mentioned and/or no further order has been issued in that respect.* The IGRC outrightly rejects the same saying it is only an internal correspondence and not an order by the Competent Authority. The Forum indirectly at least admits that it was indeed an order valid till 31.08.2016 by stating the ‘consumer has not produced any documents that such exemption was continued even after 1.9.2016’. However, the order does not give reasons why it could not consider the same as per the provisions of Section 4 of the Maharashtra Electricity Act, 2016. Section 4 is very categorical, needing no interpretation as enumerated in para 4 above.
- (xviii) The Forum, however, validates the MSEDCL action in charging Electricity Duty (ED) on the basis of an internal correspondence dated 03.07.2018 from the same HO-Commercial Section to be instructions from Competent Authority. While doing so, *forum commits a grave blunder in disregarding the well settled position in Law that Executive circulars and correspondence cannot override the provisions of the statute viz. the ED Act 2016, on which the consumer relies on. The order is therefore ‘Bad in Law’.*
- (xix) The Appellant still hold that Section 4 of the ED Act 2016 is applicable to it since it is exempted by the Competent Authority of the Respondent from payment of duty in terms of letter dated 25.09.2014. The Appellant confirm that the exemption is still valid since no validity date has been mentioned and/or no further order has been issued in that respect. In addition, the Hon’ble High Court, Mumbai has pronounced that even


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Section 3 (2) (iii) of the ED Act 2016 is not applicable in the case. The crucial and direct case law submitted with the application and deliberated in detail during the hearing proceedings but mischievously omitted in the Order of the Forum.


- (xx) Sri Balaji Society is a Charitable Trust registered under the Bombay Public Trust Act, 1950 at Sr. No. F – 14683/Pune. The 12AA registration was granted vide letter No.Pn.T/II/ Regn/6576/98-99 dated 23.12.98 under Income Tax Act, 196. It is solely engaged in imparting management education.
- (xxi) The case law relates to the Judgment given by the Hon’ble High Court, Bombay in Writ Petition No. 2961 of 2018 - M/s. Vile Parle Kelvani Mandal + 9 other educational institutions v/s. State of Maharashtra, Industries, Energy and Labour Ministry, Mumbai + 3 others dated 28.02.2019.
- (xxii) The petitioner in the case is a Public Charitable Trust registered under Maharashtra (Bombay) Public Trust Act, 1950 managing 10 educational institutions. The petitioners were levied ED from 01.09.2016 in terms of Section 3(2) of the ED Act, 2016 pursuant to a Notification from the Industries, Energy and Labour Department, Government of Maharashtra (GOM) dated 04.06.2018. ***The similarities to this case are clearly noticeable.***
- (xxiii) The petitioners had approached the Hon’ble High Court, Bombay with the writ petition seeking among other reliefs:
- “c) That the Hon’ble Court may be pleased to issue writ of prohibition or any other writ, order or direction under Article 226 of the Constitution of India *prohibiting the Respondents from levying or issuing any bills levying electricity duty on the Petitioners and their Educational Institutions*”
- (xxiv) The Hon’ble Court has elaborately discussed the *legislative intent and legal impact of Section 3(2)(iii) of the ED Act, 2016* comparing it also with section 3(2) of the repealed Act of 1958. The Hon’ble Court is categorical in interpreting the provision as under:
- “46. From the language of the provision {Section 3(2)(iii)}it is apparent that the legislature has employed the words ‘in respect of ‘and ‘for the purpose of. These words are not surplusage. They are employed with definite intent”


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- (xxv) The Hon'ble Court comes to its *conclusion on their observation after referring to a number of judgements given by the Hon'ble Supreme Court and various other High Courts.*
- (xxvi) The Hon'ble Court, eventually, after detailed deliberations cited above pronounced the order on 28.02.2019 as follows:
- “54. As a result of the above discussions, the writ petition succeeds and the Rule is made absolute in terms of prayer clauses (a) and (b). However, the bills raised on the petitioners for consumption or supply of energy would stand and to that extent, the amount would have to be paid. ***We clarify that what cannot be recovered under the bills is the component of electricity duty and there will be a relief in terms of prayer clause (c) as well prohibiting levy and recovery of such duty from the petitioners.....***”
- (xxvii) In the light of the above judgement, the charging of ED in the Appellant's bills by the utility is illegal. The Appellant prays to direct the utility to stop charging ED immediately and arrange for refund of the duty recovered so far from it.
- (xxviii) As regards refund, the Forum is absolutely wrong when the order states the same cannot be done by the utility because the amount so recovered has been already deposited with the Government. It shows the utter ignorance of the Forum in the procedure to be followed for refund of ED. The guidelines are detailed in Commercial Circular No. 204 dated 08.08.2013 of the Respondent. The distribution company itself has followed the guidelines and adjusted an amount of Rs.1,24,12,362/- in the bills for about a year being refund of ED charged when the Appellant approached them with the above mentioned exemption from the Competent Authority dated 25.09.2014. So, there is a laid down procedure and a precedent.

4. The Respondent, by its letter dated 12.02.2020 has filed its written submission stating in brief as under: -


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- (i) The Appellant has two connections having Consumer No.170149030220 from 08.12.2005 at Main campus and Consumer No.170149073820 from 17.02.2012 at Riverside campus, Kala Khadak, Tathawade, Tal. Mulshi, Pune.
- (ii) The Appellant has been exempted from payment of ED vide head office letter no. P-Com/Accts/ED-Exemp/29902 dated 25.09.2014. However, as per approved office note from MSEDCL Commercial Section dated 03.07.2018 and corresponding amendment in MSEDCL billing system, difference of ED charges for the period of September 2016 to September 2018 for educational HT consumers are charged in Sept-2018 bill amounting Rs.52,05,974/- in six instalments. Afterwards ED charges are charged in monthly bills.
- (iii) The Appellant filed complaint before the IGRC and the same has been decided on 09.08.2019. Being aggrieved by the IGRC order, the Appellant filed grievance before the Forum vide case No. 491/2019 wherein consumer has applied for relief for exemption from ED. The same has been decided by the Forum on 19.12.2019. Further MSEDCL humbly submits that, being aggrieved by the order of the Forum, the Appellant filed present Representation before this Hon'ble Electricity Ombudsman, Mumbai.
- (iv) Appellant is relying on provision provided under Section 4 of the ED Act 2016 and stated that the letter issued from the Chief Engineer. Commercial MSEDCL itself is an order. However, the MSEDCL kindly submits that, the said letter is not an order but the same is nothing but the timely MSEDCL guidelines for necessary action.
- (v) The Respondent MSEDCL humbly submits that, the meaning of term 'Order' can be drawn from the section 4 itself and section 5 of the ED Act, 2016 that, if the Forum has considered the starting of Section 4 of the Act, 2016 which states that, "subject to the conditions as it may impose, the State Government may, if considers it necessary in the public interest so to do' by notification in the official Gazette,


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exempt, prospectively or retrospectively' the ED on the consumption of energy" which denote very clearly that only the State Government issue the 'Order' to exempt the ED'

- (vi) Further, only the GoM can give an order regarding exemption of ED. Thus, the submission made by the Appellant that letter issued by the Chief engineer, itself, is an order is totally wrong.
- (vii) The Respondent kindly submits that the explanatory paragraph of section 4 of the Act which reads as "Provided that nothing contained in this Act shall affect any order issued in this regard before the commencement of this ED Act 2016, cannot be applicable in case of the Appellant. As the letter issued by CE (Commercial) vide Ref No. P-Comm/Accts/ED-Exemp/29902 dated 25.09.2014 is not an order but these are MSEDCL timely guidelines for necessary action.
- (viii) Thus, as per directives received from Commercial section (HO) vide letter No. P-Comm/Accts/ED-Educational/891 dated 03.07.2018, ED has been rightly charged to the Appellant.
- (ix) As per letter No.4711 dated 26.07.2018 from Electrical Inspector, recovery of ED charges is applied from September 2016 to the Educational Institutions registered under Charitable Trust Act 1950.
- (x) Further, it is humbly submitted that, the Appellant has cited the Judgment dated 28.02.2019 of the Bombay High Court in W.P. No. 2961/2018. However, being aggrieved, the State Government has preferred Special Leave Petition (Civil) No. 13510/2019 before the Hon'ble Supreme Court. Further on 23.08.2019, the Hon'ble Supreme Court was pleased to pass an order that, in the meantime, there shall be stay of operation and implementation of the impugned judgment. Therefore, effect of the Judgement dated 28.02.2019 passed by the Bombay High Court in W. P. No. 2961/2018 has been stayed by the Hon'ble Supreme Court. This has been informed by the GoM vide its letter No. 156/energy-1 dated 28.08.2018 to the MSEDCL and


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other licensees. Hence, applicability of ED to the Appellant is correct, just and proper in the interest of justice.

- (xi) Not only this, the GoM, as per letter No. ELD- 2016/No. 239/Enetgy-1 dated 04.06.2018, has directed the licensees to take appropriate steps in view of the above development. Therefore, the bill raised to the Appellant for Electricity Duty is legally recoverably in the eyes of law.
- (xii) Therefore, the Respondent prays that the Representation of the Appellant be rejected and also prayed to give direction to the Appellant to pay the amount of ED raised in the bill.

5. The hearing was held at Pune on 28.02.2020. The Appellant and the Respondent argued at length in line with their written submissions. The Appellant argued that it is an educational institution which is registered as a Charitable Trust under the Bombay Public Trust Act, 1950. The ED of the Appellant is waived by the competent authority as per the provisions of the ED Act 1958. The ED Act 2016 came into force with effect from 01.09.2016. As per Section 4 of the ED Act 2016, the Appellant is eligible for exemption of ED and hence, Section 4 is squarely applicable in this case. Therefore, the Respondent should not have at all charged ED. The Corporate office of the Respondent is the Competent Authority and hence, it is not necessary to refer the case of waiver of ED with the GoM. Therefore, the order of the Forum be set aside in toto and the Respondent be directed to withdraw the retrospective recovery of ED and further levying of ED be stopped.

6. On the other hand, the Respondent argued that it is not disputed that the Appellant is a charitable institute and was availing ED exemption as per the repealed ED Act 1958 till August 2016. However, the new ED Act 2016 came into force from 01.09.2016. The statutory provision under Section 3 (2) (a) (iiia) of the repealed ED Act, 1958 is not there in the newly legislated ED Act 2016. The charitable institutions, whether registered before or after coming into force of the new ED Act 2016 are not entitled for availing the benefit of exemption of payment of ED charges under the new ED Act 2016. The Electrical Inspector, Inspection Division Pune vide its letter


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No.4711 dated 26.07.2018 has intimated that the educational institutions which were not levied ED pursuant to the provisions under the repealed Act shall be recovered from the month of September 2016 as per the provisions of the newly legislated Act. If the Appellant is not satisfied with this explanation, it is free to approach the Electricity Inspector, Inspection Division Pune or its higher authority. Therefore, it is duty bound to recover the ED from September 2016 on behalf of GoM. The representation, therefore, is liable to be rejected.

7. As directed by the Hon'ble Ombudsman during the hearing, the Appellant has filed its rejoinder by email dated 09.03.2020 stating in brief as below: -

- (i) The reply of the Respondent was provided to the Appellant only during the hearing on 28.02.2020. Hence, the Electricity Ombudsman condoned the lapse by the Respondent and allowed the Appellant to submit rejoinder by 09.03.2020.
- (ii) At this point, it is realized that 'none' of the annexures mentioned in the letter has been provided to the Appellant. The Respondent has acted deceitfully with an intention to weaken the Appellant's just pleadings.
- (iii) The Appellant's submissions are in two sections, Section A and Section B. Former is the rejoinder directly with reference to the statement of defense given by the Respondent and the latter is the clarifications / arguments arising out of the statement of defense given but not provided to the Appellant well in advance.

Section A: -

- (a) As referred in Point No.2, copy of Annexure II is not provided by MSEDCL. Other contents are on records.
- (b) The submission of the Respondent is not acceptable as they are intentionally misinterpreting the contents in para 5 of the letter dated 25.09.2014 of Chief Engineer (Commercial) addressed to SE and copy to Appellant that reads as follows



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“The matter of exemption & refund of electricity duty in respect (of) charitable trust as per circular No. 204 dt. 08.08.2013 was submitted before the competent authority and the competent authority has approved the same.”

It is crystal clear that the approval of the Competent Authority twofold. One as the highlighted part says ‘approval’ in the ‘matter of exemption’ and in two, procedure to be followed for refund in terms of Circular No. 204 dated 08.08.2013. And, the Chief Engineer (Commercial) from Head Office has conveyed the ‘approval’ of the competent authority in the matter of duty exemption to the SE. The instructions from the CE draws strength from the order aka approval of the competent authority. As far as the second part of the approval, it is to be noted that the ‘Procedure for refund of ED Exempted Consumers’ has been laid down in the said circular No. 204 and action in respect of refund lies with the SE of the concerned circle office alone.

- (c) It is more interesting and important to note that, the SE accepted the communication to be an order and refunded the entire amount of ED paid by the Appellant earlier to the extent of Rs.1,24,12,362/- through adjustment in the bills. The Online form on the site of the Respondent clearly mentions the period of ED Exemption to be from 01.10.2014 to 31.12.2035. The SE completed the procedure and refunded the ED paid as mentioned above.
- (d) The Appellant strongly relies on the provision under Section 4 of the ED Act 2016 and reiterate that Section 3(2) is not applicable to it.
- (e) The Respondent has grossly erred in taking protection under the said stay awarded by the Hon’ble Supreme Court to the order of Hon’ble Bombay High Court. Had they studied the text of the discussions and order of the Hon’ble High Court; they would have realized that it was on Section 3(2) of ED Act 2016. The point to be noted is that its disagreement with the Respondent is not only on Section 3(2) but essentially on the


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provisions contained in Section 4 of ED Act 2016. So, the stay does not affect its position in any way.


Section B: -

(a) Section 3(2) of the ED Act 2016

The Bombay High Court order dated 28.02.2019 has been stayed by the Hon'ble Supreme Court on 23.08.2019. The decision of the Bombay High Court was based essentially on interpretation and discussions on Section 3(2) of the ED Act 2016. However, it is to be noted again that the court confined interpret on what was placed before them by the petitioners. The Appellant will not challenge those points as the decision is stayed by the Apex Court. The Appellant's plea is entirely different grounds.

(b) The Respondent has repeatedly stated that they have collected the ED in the bills as per the provisions of Section 3(2)(iii) of the ED Act 2016. Assuming but not accepting MSEDCL to be correct in their interpretation, the Appellant categorically state that they are totally improper in charging the ED in the bills at the rate 21%. They have not provided the basis for charging the ED at this rate. It is assumed that the ED is being charged on the basis of Notification No. ELD.2016/CR.252/Energy1 dated 21.10.2016 issued by Industries, Energy & Labour Department, GOM. In that situation, they have acted mechanically without reading and understanding the instructions. They are absolutely wrong in charging ED at the rate 21% in the Appellant's bills.


(c) It can be seen that no rates have been prescribed in the said notification for other tariff categories like HT IV: HT - Public Water Works, (PWW) and Sewage Treatment Plants and HT IX –HT Public Services - (A) & (B) specified by the Commission. This clearly indicates the intention of the legislation to keep certain


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categories providing services for the public at large out of the ED levy. The Appellant is being billed under the category of HT IX – B- Public Services (Others).

- (d) It should be now clear that MSEDCL is illegally charging ED in its bills when no such provision exists in the statute. They have not applied their mind while following the instructions contained in the Notification No. ELD.2016/CR.252/Energy 1 dated 21.10.2016 issued by Industries, Energy & Labour Department, GOM.
- (e) The Respondent has confirmed through their letter No. SE/GKUC/HTB/30220/No. 02733 dated 04 June 2019 that they are charging ED as per the instructions of GoM & the Respondent's Corporate Office. Further, their contention is that in the new act, there is no provision similar to Section 3(2) of the repealed Act where educational institutions registered under Bombay Public Trust Act, 1950 were eligible for exemption. They further go on to say that under the current act, only Government Educational institutions & Government schools are exempted from payment of duty. It is absolutely an erroneous interpretation
- (f) The differentiation is given in Goods & Services Act (GST). GST is chargeable at the rate 18% on all services provided including 'education'. However, GST provides for total exemption to educational institutions that are considered 'non-commercial' if they fulfil certain conditions. Thus, services provided by an educational institution to students, faculty and staff are exempt.
- (g) The Appellant is exempt from GST because the Appellant fulfill the condition by obtaining the approval of All India Council for Technical Education, Ministry of Human Resources, New Delhi. The Appellant is 'non-commercial' educational institution in the eyes of taxing arm of the Government. It should also be noted that the Appellant is exempt from payment of Income Tax under Section 12AA registration that is given to only 'non-commercial' Charitable Organizations. And, as explained above, the Respondent itself has categorized it under 'Public Services' as explained above and therefore what is mentioned in Part B- Commercial of ED Circular is not applicable to it.



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- (h) The foregoing deliberations clearly establish the fact that Section 3(2)(iii) of the ED Act 2016 or the Notification No. ELD.2016/CR.252/Energy 1 dated 21.10.2016 issued by Industries, Energy & Labour Department, GOM do not apply to it and the ED charged in its bills are inappropriate and unconstitutional.
- (i) The Appellant is established above that Section 3(2) of the ED Act 2016 is not applicable in their case. The Appellant humbly submit and reiterate that section 4 of the ED Act 2016 is applicable to it.
- (j) The Forum mentions in the order that this Forum is of the considered view that the issues relating to recovery of ED do not fall under the category of 'billing dispute'. The Appellant beg to differ on this comment. The dispute essentially and principally remains a 'billing dispute' as MSEDCL has illegally charged ED in its bills, when No Duty is applicable to it under any of the provisions of the ED Act 2016. It remains and is a 'billing dispute' arising out of the fault, imperfection and shortcoming on the part of the Respondent. And therefore, the dispute falls well within the jurisdiction of concerned redressal forums. It is well established in law that the person who collects excess duty (tax) through oversight or otherwise from the consumer is responsible for refunding the amount so collected in excess of the applicable rates. In the said case, there is no duty payable and even in the worst case, no rate has been prescribed by the GOM for tariff category IX – B – Public Services. Under the circumstances, it is overbearing that Respondent stops levying ED in its bills and refunds the entire ED charged in the bills from September 2016 till date immediately.
- (k) The Appellant requests that the Representation of the Appellant be allowed in toto.

Analysis and Ruling

8. The matter was heard on 28.02.2020 at Pune. I perused the documents on record. It was confirmed that the Respondent sent reply by email along with all annexures around 12.00 hours


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on 09.03.2020 to the Appellant. The Appellant submitted rejoinder on 09.03.2020 by email which is taken on record.

9. It is a very simple matter as it appears to be a case of misunderstanding and interpretation of the provisions of this statute. The Appellant was eligible for ED exemption under the earlier ED Act 1958 and it did enjoy the same. However, this old Act was repealed, and the new one known as the ED Act 2016 came into force from 01.09.2016.

The Appellant was enjoying the benefit of ED exemption under Section 3 (2) (iiia) of the repealed ED Act 1958. However, the ED Act 2016 does not have a similar provision. Inter alia, it means that the earlier provision no more continued in the new Act. The relevant provision of the ED Act 1958 and 2016 is reproduced below: -

Section 3 (2) (iiia) of the ED Act 1958: -

3. Duty on units of energy consumed. –

(1)
(2) [(a)] *Electricity duty shall not be leviable on the [consumption charges or the] units of energy consumed-*

(i)

(ia)

(ib)


(ii)

[(iii) by or in respect of any statutory University and institution run by the statutory University for the purpose of or in respect of education, research and training (save in respect of premises used for residential purposes);

(iiia) by or in respect of charitable institution registered under the Bombay Public Trusts Act, 1950, for the purpose of, or in respect of, a school or college imparting education or training in academic or technical subjects (save in respect of premises used for residential purposes)];

(iv) to (vii)

Section 3 of the ED Act 2016: -


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- (2) *Electricity duty shall not be levied on the consumption charges or energy consumed,—*
- (i) *by the State Government excluding the public undertakings ;*
 - (ii) *by the Central Government excluding the public undertakings ;*
 - (iii) ***for the purposes of, or in respect of a school or college or institution imparting education or training, students' hostels, hospitals, nursing homes, dispensaries, clinics, public streets lighting, public water works, sewerage systems, public gardens including zoos, public museums, administrative offices forming whole or, as the case may be, a part of system run by any local bodies constituted under any law for the time being in force in the State of Maharashtra ;***
 - (iv) *by the Government hostels;*
 - (v)
 - (vi)
 - (vii)
 - (viii)


(Emphasis added)

Section 4 of the ED Act 2016

4. Subject to the conditions as it may impose, the State Government may, if considers it necessary in the public interest so to do, by notification in the Official Gazette, exempt, prospectively or retrospectively, the electricity duty on the consumption of energy, in the whole or any part of the State, in respect of any class of premises or purposes, in such areas and for such period as may be specified therein, or in respect of energy consumed up to a specified limit, from the payment of the whole or any part of the electricity duty payable as per the Schedules, having regard to—

(i) the availability and price of energy prevailing therein and to the state of industrial or agricultural development, educational, medical aid, facilities, social conditions; and (ii) the various policies and need, and conditions of overall development in the areas declared by general or special order, specified in this behalf :

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


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mentioned therein expires, and where such period is not mentioned, any further order is issued in that respect under the provisions of this Act. (Emphasis added)

On bare perusal of above quoted Section 3(2) and Section 4, it is clear that the Legislative intent is to exempt school or college or institution imparting education or training which is a part of system run by **local bodies constituted under any law** for the time being in force in the State of Maharashtra, from payment of ED. Moreover, Section 4 has a proviso which draws an exception to the extent that nothing contained in the ED Act 2016 shall affect any order in this regard before commencement of this Act, and such order shall continue to be in force till the period mentioned therein expires.

It inter alia means that if the Appellant is enjoying the benefit under the repealed Act, it will continue to enjoy the same till the expiry of the date mentioned therein. However, the ED Act 1958 ceases to exist from and after 01.09.2016. Therefore, the Appellant will enjoy the benefit of ED exemption till 31.08.2016. In the repealed Act, this exemption was available across the board to all educational charitable institutions registered under the Bombay Public Trusts Act, 1950. Precisely, this is omitted in the ED Act 2016.

On the top of it all, the Respondent received letter dated 26.07.2018 from Electrical Inspector, Inspection Division Pune, a Government department, intimating that the provision of the ED exemption to the educational institutes such as the Appellant's one under the repealed Act no more exist in the new ED Act 2016 and further directed to recover ED from such institutes with effect from 01.09.2016, the date of enforcement of the new ED Act.

The Appellant cited the judgment dated 28.02.2019 of the Hon'ble Bombay High Court in Writ Petition No. 2961 of 2018 - M/s. Vile Parle Kelvani Mandal + 9 other educational institutions v/s. State of Maharashtra, Industries, Energy and Labour Ministry, Mumbai + 3 others. However,


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the Respondent in its submission has said that the judgment has been stayed on 23.09.2019 by the Hon'ble Supreme Court. This Special Leave Appeal was filed by the GoM.

The Appellant further argued that the Respondent's competent authority has approved the exemption of ED in terms of Mahavitaran, Head Office, Mumbai letter No. P-Com/Accts/ED-Exmp/29902 dated 25.09.2014 is factually incorrect in the sense that the sole authority for grant of exemption of ED prospectively or retrospectively lies with the State Government only in this case, the GoM and nobody else. This is very clear from Section 4 of the ED Act 2016. The Appellant did not show any order of the GoM which has granted it exemption from ED. As a matter of fact, there cannot be any such order because the repealed Act had a sweeping provision of exemption from ED to educational institutes registered under the Bombay Public Trusts Act, 1950. Therefore, the contention of the Appellant that the Respondent has approved exemption in ED is highly misplaced and misconceived.

10. In view of the above discussion, the representation is liable to be rejected. However, for further better clarity, the Appellant is at liberty to approach the Electrical Inspector, Inspection Division Pune or its higher authorities as may deem appropriate by it. There is specific provision in this regard under Section 6 (8) and Section 10 of the ED Act 2016.

11. In view of the above discussions, the representation is rejected.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

