

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 8 OF 2020

In the matter of Electricity Duty

BVG India Ltd. Appellant

V/s.

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

Appearances

For Appellant : 1. Santosh Apsingekar, Manager
2. Omkar Sapre, Head Administrative

For Respondent : 1. S. R. Waiphalkar, Ex. Engineer
2. S. G. Rathod, Dy. Manager, F & A.
3. A. R. Panse, Dy. Manager, F & A.

Coram: Deepak Lad

Date of Order: - 3rd March 2020

ORDER

This Representation is filed on 9th January 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 25th November 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Pune Zone (the Forum).


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2. The Forum, by its order dated 25.11.2019 has partly allowed the consumer complaint of 45 of 2019. The operative part of the order is as below: -

- “2. The accumulated bill in the month of 18.03.2019 claiming amount Rs.6,10,664/- is illegal bad in law set aside.
3. The Respondent utility entitled to claim arrears of Electricity Duty to wrong application of code difference from 16% which was required to be charged 21% for 24 months only.
4. The Respondent utility shall reassess and recalculate the bill and claim the difference without charging any interest, DPC & penalty.
5. The consumer may pay the said bill in 6 equal monthly instalments alongwith current bill.
6. The consumer is at liberty to approach to the Competent Authority to claimed exemption in Electricity Duty on valid certification if any.”

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

- (i) The Appellant is LT consumer (No.170658895152) since 24.03.2014 having Sanctioned Load of 100 KW and Contract Demand 125 KVA at 2nd floor, Aundh Chest Hospital, Aundh, Pune. The Appellant is billed under Commercial tariff category.
- (ii) The Appellant runs Medical Ambulance Services on behalf of the Government of Maharashtra (GoM) and operates its call centre.
- (iii) Suddenly in March 2019, the Appellant got an inflated bill of Rs 10,29,090/-, as against the normal bills which are in the range of Rs.3 lakh to Rs.4 lakhs. When enquired with MSEDCL about this inflated bill in April 2019, it was told that this bill includes arrears from March 2014.
- (iv) Ever since taking the connection, the Appellant has always paid the bills in time with absolutely no delay in any month.


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- (v) The report of the flying squad of the Respondent, dated 25.05.2017 stated that MSEDCL on 24.03.2014 erroneously selected Electricity Duty (ED) classification at 16% instead of 21%.
- (vi) On scrutiny of older bills, it was found that MSEDCL had surreptitiously changed the ED classification from 16% to 21% in October 2018, without any intimation to the Appellant.
- (vii) The Appellant has noticed three instances of grave dereliction of duty on the part of Respondent: -
- a. The connection was given in 2014, and the Respondent realised its mistake in 2017.
 - b. That's over three years of lapse in work, where the built-in system for periodic check has clearly failed for three years in a row.
 - c. The maker-checker system, which is a standard process in any professional organisation, is clearly lacking.
- (viii) It is a principle of natural justice that honest customers should not be penalised for shortcomings on the part of the power utility.
- (ix) The Appellant refers the Order in Case No. 24 of 2001 of the Maharashtra Electricity Regulatory Commission (the Commission) where the Commission pointed out that arrears cannot be recovered with retrospective effect where built-in system for periodic check of the meter is lacking. In a case that is similar to this, the Commission further observed that while in this case the matter was not that of metering error and consequent billing dispute but of an administrative lapse on the part of the Respondent, who is expected to function in commercially oriented manner, to detect in time whether the rate applied is correct or not. Even after delayed detection by the audit team, the respective department took two long years to take a corrective action that affects its revenue earning and consequent cash flow. Such matters cannot be so easily condoned. It will be unfair and unjust to make the hapless consumer to face the inconveniences under duress. The Commission summarily denied retrospective charging from the customers.


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- (x) In another similar case of retrospective charging due to errors by the power utility, in Grievance No.K/E/1145/1366 of 2016-17, the Forum denied retrospective recovery in case of billing errors from MSEDCL, however in this case the Forum decided to penalise the consumer for no reason.
- (xi) The Appellant further points out that it has already filed tax returns, as well as billed its customer, which is the GoM. Such retrospective charge will neither be agreed by its customer nor will be allowed by it as expenses. Hence, the Appellant is at complete loss if it is compelled to pay this amount under duress, completely arising out of a grave dereliction of duty by MSEDCL.
- (xii) The Appellant filed the grievance with the Internal Grievance Redressal Cell (IGRC) on 03.05.2019. The IGRC by its order dated 17.06.2019 has rejected the grievance. The Appellant approached the Forum on 19.08.2019. During hearing at the Forum, the Hon'ble Chairman of the Forum raised query as to how was the Respondent charging ED on the Appellant's connection as its activities are healthcare services for Government of Maharashtra. The Appellant informed that it had raised this same query with MSEDCL when it had applied for the connection and told the MSEDCL officials to give a duty-free connection as this was for the toll-free No. 108 of Maharashtra Emergency Ambulance Services.
- (xiii) The Appellant had presented its case in front of the Forum evidencing the following points.
- MEMS 108 is a public service of the Government of Maharashtra and is run in public-private partnership between the Appellant and Government of Maharashtra.
 - The call centre of MEMS 108 operates from the premises owned by the GoM and all the assets used by it like computers, servers, light fittings, fans, chairs, etc. are the property of the GoM.
 - Being partners in the project, the Government does not levy property tax for the use of its property.


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- d. Being a public service, its activity was exempted from Service Tax earlier (vide Notification No. 25/2012 dated 20.06.2012 at S. No 2 and 25 (a), and is now exempted from GST vide Circular No. 51/25/2018-GST.
- (xiv) The Appellant draws attention to the words in the said circular.
- a. Functions of 'Health and sanitation' is entrusted to Panchayats under Article 243G of the Constitution of India read with Eleventh Schedule. Function of 'Public health' is entrusted to Municipalities under Article 243 W of the Constitution read with Twelfth schedule to the Constitution. Thus, ambulance services are an activity in relation to the functions entrusted to Panchayats and Municipalities under Articles 243G and 243 W of the Constitution.
- b. The ambulance services being provided by the Government and Private Service Provider (PSP) to the patients, neither the State government nor the PSP charges any fee from the patients who avail of these ambulance services.
- (xv) Even recently in the case of Writ Petition 2961 of 2018, the Hon'ble High Court of Bombay reiterated the stand that education, and healthcare services should not be charged ED.
- (xvi) The Forum directs the Appellant to pay retrospective charges, resulting out of billing error arising from grave dereliction of duty on part of the Respondent MSEDCL. This is against the principle of natural justice. It is also contrary to the Commission's orders given earlier in various instances of billing error as a result of negligence in duty on the part of MSEDCL. The Appellant had presented these details to the Respondent however, the officials ignored it and levied the ED.
- (xvii) The Appellant prays that the Respondent be directed:-
- (i) to set aside the charging of ED on its connection, and
- (ii) to refund the entire amount of over Rs.26 lakhs charged by MSEDCL towards ED from March 2014 till date.

4. The Respondent by its letter dated 24.01.2020 has filed its submission stating in brief as below:-


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- (i) The Appellant is a LT-II Commercial consumer (No.170658895152) having Sanctioned Load of 100 KW and Contract Demand of 125 KVA from 24.03.2014 situated at 2nd floor, Aundh Chest Hospital Pune.
- (ii) The Appellant is carrying activity of call centre for toll free No. 108 for providing ambulance services. The Appellant is engaged in the commercial business of providing ambulance in emergency cases, in line with the contract of the State Government. There was a separate office premise for the Appellant.
- (iii) The Respondent inspected the premises of the Appellant on 07.10.2019. During inspection, it was observed that the premises is a call centre and back office work for ambulance services. It was also observed that the ED was wrongly levied to the Appellant as 16% instead of 21% of Commercial tariff category for the period from March 2014 to September 2018.
- (iv) Hence, the ED differential amount of Rs.6,10,662/- was debited in the bill of March 2019.
- (v) The Appellant being a private entity has taken separate electricity connection by erecting separate transformer DP structure, instead of taking load from the existing Government HT connection by enhancing the contract demand of the said Government HT connection. The details of the already released Government HT connection is as below.
- Name- The Superintendent Chest Hospital, Aundh Pune,
Cons No - 170019001248, Date of Connection – 04.12.1970
Contract Demand- 100 KVA.
- (vi) Thus, the Appellant is neither Government subsidiary nor any Government undertaking company but is totally a private company doing the business of providing ambulance services. Therefore, the ED is legally applied it.
- (vii) The Respondent referred Section 4 of the Maharashtra Electricity Duty Act, 2016 (The ED Act) which is reproduced as below:-

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

In the present case, the Appellant has not submitted any order of exemption of ED from the State Government as per above Section 4. The Appellant may approach the Competent Authority for exemption of ED as prescribed under the ED Act.

(viii) It is kindly submitted that, as per Section 6.8 of the ED Act,

*“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”.** (Emphasis added.)*


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(ix) As per Section 11 of the ED Act, provision for applicability of interest in case of delayed payment of ED has been given.

(x) It is humble request to the Hon'ble Electricity Ombudsman that, the nature of dispute may be considered. The issue raised by the consumer is relating to Exemption of Electricity duty and refund of the ED already charged do not fall under the category of 'billing dispute'. It has also been observed by the Commission in various orders that, the electricity duty charged to the consumers by the Utility is not part of tariff. Under Regulation No. 2.1 (c) of the CGRF Regulations, definition of dispute is referred. The Term 'Grievance' has been defined under Sub-section 1(c) of Clause 2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 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 nature of the said dispute seeking exemption and refund of ED, therefore, does not fall under the definition of grievance as defined under 2.1 (c) of the CGRF Regulations.

(xi) It is kindly submitted that, the ED which is recovered from the consumer has already been deposited with the Government at periodical intervals. Therefore, the issue of giving directions to the Utility for refund of the ED already recovered by it from the consumer and/or giving directions not to recover ED from the consumer hereafter is not within its powers and authority. The said issue is totally under the ambit of the State Government.


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- (xii) The disputes of like nature, as provided, with reference to Exemption or refund of ED, special procedure is provided. The consumer is, therefore, required to approach the Electrical Inspector and make proper representation after seeking appropriate certificate of exemption from the competent authority, the order of Electrical Inspector may be challenged before appropriate Government authority taking into consideration of special provisions.
- (xiii) It is kindly submitted that as per the statute, this court is not provided with any jurisdiction to interfere / intervene in the matter which does not fall under the definition of "Grievance". Hence, the nature of dispute of exemption or refund of electricity duty charged wrongly as alleged by the consumer is required to be addressed before the proper Authority. Therefore, dispute does not fall within the ambit of Section 2.1 (c) of definition of 'Grievance' defined under the CGRF Regulations. Hence such disputes are out of the jurisdiction, cannot be entertained and liable to be rejected in toto.
- (xiv) Therefore, as per prevailing rules and regulation, ED has been applied to the consumer. Applicability of ED to the Appellant, M/s. BVG India Ltd @ 21% is just and proper and legally recoverable. Thus, instead of 16% E.D., 21% ED applicable to commercial connection in respect of M/s BVG India Ltd from date of connection i.e. March 2014 to September 2018 is correct.
- (xv) Thus, as per the order of the Forum, period of said bill i.e. March 2014 to September 2018 has been curtailed up to 24 months by considering the order passed by the Larger Bench of Hon'ble High Court in WP No. 10764/2011. However, it is humbly submitted that, the unpaid amount of ED is not amount payable to the MSEDCL, but the said amount of ED is statutory amount payable to the Government. As the ED is payable to the Government, therefore till the order of exemption of ED received from the Competent Authority, consumer is required to pay the same to avoid loss to the Government. Therefore, it is kindly submitted that MSEDCL is


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challenging the order of the Forum for amount of ED more than 24 months and the same is under process to challenge.

(xvi) Therefore, MSEDCL humbly submits that the Representation of the Appellant is liable to be rejected and kindly give direction to the Appellant to pay the entire amount of ED or the period of March 2014 to Sep. 2018.

5. During the hearing at Pune held on 28.02.2020, heard both the parties. The Appellant and the Respondent argued at length. The Appellant argued that it is a public private partnership model of its working with the Government and therefore, the Respondent should not have at all charged ED. 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 the Appellant has taken a separate electricity connection despite being housed in the Government building. It is a totally different entity vis-à-vis the Government. The Appellant is bound to be charged with ED as per the tariff category under which it is being billed. The Appellant is at liberty to approach the appropriate Government authority under the ED Act for getting exemption. Further, it being a matter of ED, the Hon'ble Electricity Ombudsman does not have any jurisdiction to adjudicate on this issue.

Analysis and Ruling

7. The matter was heard on 28.02.2020 at Pune. Both the parties argued in line with their written submissions. On bare perusal of Section 6.8 of the ED Act quoted above at Sr. 4(viii), pg.7-8, 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 ED Act. With this background, the undersigned cannot entertain the issues related to Electricity Duty. Thus, it is beyond the scope of the


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undersigned and therefore the representation is not maintainable before it. This view has also been taken in the earlier orders of the undersigned.

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

9. No order as to cost.

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


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