

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 32 of 2023

Case of Maharashtra Border Check Post Network Limited seeking applicability of appropriate tariff to Border Check Post and refund of differential tariff recovered by MSEDCL by arbitrarily changing tariff category from ‘Public Service – Others’ to ‘Commercial’.

Coram

Sanjay Kumar, Chairperson
Anand M. Limaye, Member
Surendra J. Biyani, Member

Maharashtra Border Check Post Network LimitedPetitioner

Maharashtra State Electricity Distribution Co. Ltd ...Respondent

Appearance

For Petitioner : Adv. Malcolm Desai
For Respondent : Adv. Kiran Gandhi

ORDER

Date: 22 April 2024

1. Maharashtra Border Check Post Network Limited (**MBCPNL**) has filed the present Petition under Section 86(1)(k) read with Sections 61 & 62 of the Electricity Act (EA), 2003 seeking applicability of appropriate tariff to the Border Check Post and refund of differential tariff recovered by MSEDCL by arbitrarily changing tariff category from ‘Public Service – Others’ to ‘Commercial’.

2. **MBCPNL’s prayers are as follows:**

- a) *Hold and declare that all the BCP’s operated and maintained by MBCPNL in the State of Maharashtra fall under ‘Public Service – Others’ tariff category.*
- b) *Hold and declare that MSEDCL’s action of arbitrarily and retrospectively changing MBCPNL’s tariff category from ‘Public Service – Others’ to ‘Commercial’ is illegal and contrary to the Tariff Orders passed by this Hon’ble Commission;*
- c) *Hold and direct MSEDCL to levy tariff under ‘Public Service – Others’ category for all BCP’s operated and maintained by MBCPNL in the State of Maharashtra;*
- d) *Direct MSEDCL to refund the tariff difference between ‘Commercial’ and ‘Public Service – Others’ tariff categories recovered from MBCPNL, along with interest;*

3. **MBCPNL’s in its Case has stated as follows:**

- 3.1. The Government of Maharashtra (**GoM**) aimed to implement a project involving the construction, operation, and maintenance of Integrated Border Check Posts (**BCPs**) with private sector participation on a Build, Operate and Transfer (**BOT**) basis. Accordingly, MBCPNL was appointed to implement the "Modernization and Computerization of Integrated Border Check Posts" project in Maharashtra.
- 3.2. On 30 March 2009, the GoM (Transport Department) executed a Concession Agreement with MBCPNL for a period of 24 Years and 6 Months, whereunder MBCPNL was required to construct, operate and maintain the BCP’s for and on behalf of the Transport Department.
- 3.3. Earlier, the Commission in order dated 16 August 2012 in Case No. 19 of 2012 for determination of MSEDCL’s tariff for FY 2012-13, created a new category called “Public Services” based on the “purpose of use” of electricity under the provisions of the Section 62 of the Electricity Act. ‘Public Services’ category was applicable to entities essentially providing public services and tariff for this category was designed in a manner so that the average billing rate for this category was higher than the average cost of supply, but below that of the ‘Commercial’ category tariff.
- 3.4. It was created in view of Hon’ble Appellate Tribunal for Electricity Judgment dated 20 October 2011 passed in Appeal No. 110 of 2009 & Batch titled Association of Hospitals

v. MERC & Anr., whereby it was held that the purpose for which the supply is required by hospitals, educational institutions, spiritual organisations, etc. cannot be equated at par with other consumer categories in the ‘Commercial’ tariff category.

3.5. Further, on 26 June 2015, the Commission in Case No. 121 of 2014 - while approving MSEDCL’s Multi Year Tariff for FY 2013-14 to FY 2015-16 divided ‘Public Services’ category into two, viz., (A) ‘Public Services – Government Educational Institutes and Hospitals’; and (B) ‘Public Services – Others’. By creating a sub-category under ‘Public Services’, the Commission rightly recognized that private entities can be engaged in providing public services. All the BCP’s were initially categorised under ‘commercial’ category for the purpose of tariff computation.

3.6. BCP’s have combined and integrated facilities such as clearance / checking of commercial and private vehicular traffic, detention of vehicles/ violators, etc. for the following governmental departments who have their offices and living quarters at the BCP’s:-

- (i) Department of Transport, GoM.
- (ii) Department of State G.S.T., GoM.
- (iii) Department of Excise, GoM.

3.7. On 22 July 2019, MSRDC issued a letter stating that an agreement for implementation of “Modernisation and Computerisation of interstate border check posts” has been executed between the GoM and MBCPNL. Therefore, the operation and maintenance of these BCPs is to be done by MBCPNL on behalf of the Transport Department GoM. The integrated BCPs and CCR (Central Control Room) including the land, buildings and the equipment belong to the Department of Transport (GoM).

3.8. Between 30 July 2019 and 5 August 2019, MBCPNL issued various letters to MSEDCL and also made Online Applications, requesting MSEDCL to apply appropriate tariff i.e., ‘Public Services – Others’ instead of ‘Commercial’ for all its BCP’s, considering the nature of activity. Consequently, MBCPNL also requested refund/ adjustment of additional tariff paid by it to MSEDCL.

3.9. Earlier, MSEDCL granted connection to MBCPNL’s BCP for supply of power at HT level, under HT Commercial tariff category. On 23.08.2019, SE (O&M) MSEDCL Palghar Circle vide letter SE/PLG/Accts/4110 submitted an audited proposal to the Jt. MD MSEDCL and recommended revision in tariff category for MBCPNL’s Achhad BCP from HT Commercial to HT IX -(8): Public Service – Others.

3.10. Accordingly, on 15.11.2019, the Jt. MD– MSEDCL (Konkan Region Kalyan) vide his letter, in consultation with General Manager (F&A) accorded approval for revision of tariff applicable for MBCPNL’s Achhad BCP from HT Commercial to HT IX – (B) : Public Service – Others. In the said communication, Jt. MD MSEDCL rightly observed that:-

- (i) As per the latest Tariff Order passed by the Commission and MSEDCL Commercial Circular No.311 & 124, and recommendation by the SE Office, HT IX-(B): Public Service – Others would be applicable as MBCPNL’s BCP comes under State or Municipal / Local Authority Transport establishments, including their Workshops.
- (ii) Those consumers connected after sub-meter are to be charged as per Commercial Tariff as shown in the Single Line Diagram. This was done considering general services are also provided to the public by way of food courts, restaurants, public restrooms, tyre puncture kiosks etc.

3.11. Consequently, MSEDCL segregated the load based on the purpose of use and installed sub-meters where provisions were made at the BCP’s for general public by way of public restrooms, food courts, restaurants, tyre puncture kiosks etc. However, in complete volte-face, MSEDCL vide its Monthly Bill for June 2022 and letter dated 12.08.2022, has now taken a contrary position that BCP’s ought to be considered as a ‘Commercial’ category solely on the basis that MBCPNL is a private entity.

3.12. From November 2019 onwards, MSEDCL rightly billed MBCPNL’s Achhad BCP as under:-

- (i) Approx. 70% load/ units were considered under HT IX – (B) : Public Service – Others tariff category, being utilized by various Government Departments for carrying out public service; and
- (ii) Balance approx. 30% load/ units considered under HT - Commercial category, being after the sub-meter, where provisions are made for drivers / cleaners by way of public restrooms, restaurants, etc.

3.13. However, on 03.06.2022, MSEDCL’s flying squad carried out a spot inspection at MBCPNL’s Achhad BCP and observed as under:-

- (i) MBCPNL is presently billed under HT IX-(B) : Public Service – Others. However, being a consortium and owned by a private firm, HT Commercial tariff should be applicable.
- (ii) MBCPNL should submit various documents including application or order copy of other MBCPNL being billed under HT IX-(B) : Public Service – Others category.

(iii) Case is kept under observation for verification of documents.

3.14. Subsequently, on 07.07.2022, MSEDCL in the Monthly Bill for June 2022 levied a sum of Rs. 30,13,860/- considering Commercial Tariff rate (HT-II) and Debit Bill Adjustment amount of Rs. 21,82,009/- (without providing necessary details).

3.15. On 14.07.2022, MBCPNL vide its letter to SE – MSEDCL Circle Office at Palghar, informed that it was paying the Monthly Electricity Bill for June 2022 including the Debit Bill Adjustment amount of Rs. 21,82,009/- under protest and taking up the issue with the concerned authority for resolution.

3.16. On 12.08.2022, SE – MSEDCL issued a letter to the Jt. MD- MSEDCL – Kalyan Office and copied to MBCPNL, stating that:-

(i) MBCPNL was converted from HT-Commercial to Public Services (Others) considering the consumer under State or Municipal / Local Authority Transport establishment including their workshops.

(ii) As per the Concession Agreement MBCPNL is responsible for construction, operation and maintenance of BCP on BOT basis for a period of 24 years. The lead members of the Consortium are private companies and cannot be viewed as State/ Municipal/ Local Authority Transport establishments. Other consumer connections of MBCPNL are being billed under Commercial HT-II category.

(iv) As per the Flying Squad letter, MBCPNL's tariff category has been changed to HT Commercial and Debit Adjustment amount of Rs. 21,82,009/- has been raised against recovery of tariff difference (between HT-Public Service and HT-Commercial) for the period Nov-2019 and Jun-2022, in the Bill for June 2022. MBCPNL has paid the amount under protest and informed that they will take up the issue with the concerned authority for resolution.

3.17. Similarly, MSEDCL had granted connection to its MBCPNL's Chorwad BCP and MBCPNL's Degloor BCP, under '70 LT-II B (Commercial)' tariff category. Further, it changed to Public Services – Others in view of Jt. MD – MSEDCL's directions.

3.18. However, on 05.10.2022, in the Monthly Electricity Bill for September 2022, MSEDCL arbitrarily and without any notice, changed Chorwad BCP's and MBCPNL's Degloor BCP tariff category from '88LT-VII B1 (Public Services – Others)' to '70 LT-II B (Commercial)'. Also, MSEDCL, levied an amount of Rs.6,78,736.59/- as Debit Bill Adjustment to MBCPNL's Chorwad BCP, without providing any supporting details.

- 3.19. Consequently, MBCPNL on 10.10.2022 issued a letter disputing the arbitrary change in tariff category and stated that it was paying the bill including the Debit Bill Adjustment under protest. MSEDCL was requested to revert the tariff category to Public Services with immediate effect since the BCP was used by Governmental Departments to carry out public service.
- 3.20. On 18.10.2022, Dy-EE Raver Sub-Division MSEDCL, vide its letter informed MBCPNL that the activity carried out at the BCP was identified as ‘commercial’ activity and the Commercial Circular No. 323 did not include the BCP activity under Public Service Category i.e., LT – VII B1. Hence, MBCPNL was requested to pay the difference in tariff.
- 3.21. On 27.10.2022, MBCPNL once again informed Dy-EE MSEDCL that Maharashtra BCP project is an Integrated BCP project of the GoM, and the facilities are utilized by Governmental Departments.
- 3.22. The aforesaid facts demonstrates that MSEDCL has applied different tariff categories for the same purpose in different periods and at different locations in the State. It cannot be permitted to approbate and reprobate at the same time, and retrospectively recover differential tariff.
- 3.23. The Commission has the power and jurisdiction to address the instant issue and clarify the applicability of ‘Public Service – Others’ the tariff category qua MBCPNL’s BCPs, considering the nature of the activity carried out on behalf of the Transport Department, GoM. The Commission in a similar matter in Order dated 16.07.2022 passed in Case No. 26 of 2022 Mahanagar Gas Ltd. v. MSEDCL, wherein MSEDCL had applied different tariff category for the same purpose in different period of time, has exercised jurisdiction to adjudicate the present matter. A combined reading of Section 61 (which deals with the principles of tariff determination) and Section 62 (which deals tariff determination) indicate that, the Appropriate Commission shall, while determining tariff shall not show any undue preference to any consumer of electricity, but it may differentiate between the consumer according to the consumer’s load factor, power factor, voltage, total consumption of electricity, nature and purpose of supply.
- 3.24. Although MBCPNL is a private company, its sole objective is to operate and maintain the BCP’s on behalf of the GoM, which is used by Governmental Departments to perform their official duty, i.e., public service in nature. Even otherwise, the Public Services – Others category specifically include ‘State or Municipal/Local Authority Transport establishments, including their Workshops’.
- 3.25. MBCPNL accepts that the general activities/ services provided at certain BCP’s i.e., providing services to the general public by way of public restrooms, food courts,

restaurants, tyre puncher kiosks etc. may be levied 'commercial' tariff, by installing sub-meters as was earlier done, considering the purpose for which supply is expended. However, MSEDCL's act of retrospectively recovering differential tariff in the Monthly Electricity Bills for MBCPNL's Achhad and Chorwad BCP's is illegal and deserves to be set aside by the Commission since:-

- (a) MSEDCL itself had revised tariff applicable for Achhad and Chorwad BCP from 'Commercial' to 'Public Service – Others' and installed appropriate sub-meters; and
- (b) MSEDCL has not contended that MBCPNL's aforesaid BCP's were erroneously levied tariff under 'Public Services – Other' category.

3.26. MBCPNL has paid the Monthly Electricity Bills raised by MSEDCL (considering Commercial tariff rates) as well as the Debit Bill Adjustments, under protest and subject to its rights in law. MSEDCL's aforesaid unlawful recovery, has constrained to pay excess tariff of Rs. 4,74,08,751/- during the period 01.04.2018 to 31.12.2022 for 22 BCP's.

3.27. The services provided by MBCPNL at the BCP's are public service in nature and are undisputedly provided for and on behalf of the Department of Transport – GoM in terms of the Concession Agreement, the BCP's ought to be levied tariff under "Public Services – Others" tariff category. Therefore, MSEDCL is liable to refund the excess amounts unlawfully recovered from MBCPNL's BCP's by wrongly levying tariff as per Commercial rates, along with applicable interest.

4. **MSEDCL Submission dated 29 August, 2023 is summarized below:**

4.1. MBCPNL issue revolves around a billing dispute and MBCPNL should exhaust remedies available through the Consumer Grievance Redressal Forum (**CGRF**). The Concessional Agreement entered into by MBCPNL with the GoM is of a commercial nature, authorizing the collection of service fees for using project facilities. The nature of the contract is a purely commercial one for a period of 24 years and 6 months. MBCPNL is a private entity, not a government organization, and the contract involves the construction, operation, and maintenance of 23 modernized and computerized integrated border check posts on a BOT basis.

4.2. The classification of the 23 connections of MBCPNL was done in accordance with the tariff category and wherever it bonafide mistakes were found, the correct tariff category had applied and supplementary bill for the difference of tariff category was claimed from the MBCPNL.

- 4.3. As per the contract the amount of performance security which is required to be furnished by MBCPNL is to be returned after one year of completion of the project period. The documents show that contract is purely for commercial purpose, as per clause 4.1 of the agreement the Petitioner is entitled to levy, demand and collect service fees in accordance with the service fee notification. MBCPNL requires to provide sufficient area lighting near the check post. The contract clauses show that the Petitioner had to construct and operate various project facilities and had to provide facilities which are used by official from the department of transport, GST and Excise for the purpose of clearance/ checking of commercial and private vehicles, collection of compounding fees etc. and to provide drinking water and toilet facility for road users. However, varied activities are being carried out by MBCPNL at different check post site including commercial activities which includes hotels, rest house, godowns, commercial shops etc.
- 4.4. The contract also involves the operation of commercial activities such as hotels, rest houses, godowns, and commercial shops at different check post sites. Therefore, classification of the 23 connections under the commercial category is done based on the usage of electricity.
- 4.5. On 3rd June 2022 the Flying Squad Personnel checked the connection of the MBCPNL, Achhad and it was found that the actual use was commercial in nature, accordingly the commercial tariff should have been applied. The said Check Post is operated by Consortium viz. Sadhar Engineering Ltd., SREI Infrastructure Finance Ltd. and SREI Shaje Village Ltd. and the said Check Post run by private entity. The Flying Squad recommended that the tariff categorization of the consumers should be changed and accordingly MBCPNL issued the tariff difference bill. From June 2022 onwards MBCPNL is billed under commercial tariff. The Petitioner was not charged any interest or penalty, but the assessment bill issued only for the difference amount of tariff category.
- 4.6. Similarly, MBCPNL Degloor BCP having Consumer No.55801061922 was billed under commercial tariff category (LT-II (B)) from the date of connection i.e. 20th May 2019. The said tariff category was changed from LT-II (B) to LT- VII (B-1) “Public Services – Others” from February 2021 till March 2023. The mistake for applicability of wrong tariff category was corrected upon the said being detected.
- 4.7. The classification of the category was done correctly, since MBCPNL was earning commercial profit out of the contract. The supplementary bill is issued to the MBCPNL by applying the correct tariff. MSEDCL is not liable to refund the amount recovered towards difference of tariff rates.

- 4.8. As per the provision of Section 61 read with Section 62 of the Electricity Act, 2003, the Commission determined the tariff after considering all suggestions and objections received from the stake holders. The tariff policy tries to balance the interest of consumer and Distribution Licensee. The Commission fixed tariff category applicable to various categories. After considering the purpose for which the supply is required the tariff category applied by. MBCPNL is not providing public service as alleged. However, the MBCPNL has entered into Concessional Agreement which is in nature of commercial contract and authorized for collection of the service fees for using project facility.
5. During the hearing held on 1 September 2023 MBCPNL sought 2-week times for filing rejoinder and short adjournment in the matter. Upon request, the Commission allowed MBCPNL to file its rejoinder within 15 days.
6. **Rejoinder filed by MBCPNL on 15.09.2023.**
- 6.1. MSEDCL has alleged that MBCPNL is required to exhaust remedy available by approaching the CGRF for adjudication of its disputes. The jurisdiction and authority to categorize / re-categorize consumers are only with the Commission under Section 62 of the EA, 2003. Neither the CGRF nor the Electricity Ombudsman has the jurisdiction to retrospectively change the MBCPNL's tariff category or even approve differential tariff prospectively or retrospectively. In this regard, the Hon'ble Bombay High Court's Order dated 24.01.2023 passed in Writ Petition No. 1009 of 2023 titled UltraTech Cement Ltd. v. MSEDCL & Ors.,
- 6.2. Further, the instant Case does not fall within the definition of 'grievance' and is not within the jurisdiction of the CGRF or the Electricity Ombudsman as held by the Hon'ble Bombay High Court. Further, the MBCPNL has justified that it should be classified as public service due to following reasons:
- a. All the 23 integrated BCPs and the Central Control Room including the land, buildings and the equipment thereon belong to the Department of Transport - Government of Maharashtra. Maharashtra State Road Development Corporation Ltd.
 - b. The primary facilities at these BCP's are solely used by officials from the Departments of Transport, G.S.T. and Excise for undertaking official government work i.e., clearance / checking of commercial and private vehicles, collection of compounding fees, detention of vehicles and cargo, etc. These functions are an integral part of the State's operational mechanism, to not only generate revenue for the Government through excise and tax but also penalties and revenue from checking tax evasion and

smuggling. Indeed, the primary activity carried out at BCP's by the user departments of the Government of Maharashtra constitute public service.

6.3. MSEDCL's contention that MBCPNL is carrying out various commercial activities such as hotels, rest houses, godowns, commercial shops, etc., it is most respectfully submitted that: -

6.3.1. MBCPNL has disclosed that in terms of the Concession Agreement, apart from providing facilities to Government Departments, it also provides services to general public (drivers/cleaners) by way of public restrooms, drinking water facilities, food courts, restaurants, tyre puncture kiosks.

6.3.2. MSEDCL's allegation that MBCPNL operates hotels and godowns at the BCP's is false and denied as misleading. In case of overloaded vehicle, the governmental authorities at the BCP require such excess cargo / goods to be unload from overloaded vehicles and the same is temporarily detained/ stored in the warehouse at the BCP. Such storage is not voluntary but in detention of cargo by government officials. Therefore, MSEDCL's contention that MBCPNL is operating godowns at BCP's is fallacious and misleading.

6.3.3. BCP's also provide dormitory facilities for truck drivers, when their vehicles are detained by the government officials in the detention area for completing departmental functions such as fines to be paid, etc. These dormitories provide beds, bathrooms and a Mess to enable truck-drivers to rest and freshen up before the continue their journey on the Highways, once the governmental departments permit their exit. Similarly public toilets for people along with drinking water facilities are provided at BCP's for general public and officials operating therein.

7. At the E-Hearing held on 9 February 2024, the Commission noted that different approach was adopted by MSEDCL at 23 BCP's location. Therefore, to gain a thorough understanding of the electricity usage and the nature of activities at each location, the Commission directed MSEDCL to submit inspection report all Border Check Posts based on which it has changed their tariff category.

8. **Additional written submission filed by Respondent-MSEDCL on 5 March 2024.**

8.1. Pursuant to direction given by the Commission on 9 February 2024, it is placing on the record the factual and correct used of electricity supply by MBCPNL for its various activities along with inspection reports to adjudicate the dispute between the parties.

- 8.2. The present matter is a peculiar, one-of-a-kind matter involving Border Check Post which is carrying out activities at its 23 check posts including commercial and non-residential purpose. The very ambit of MBCPNL involved is clearance/checking and commercial vehicles, collection of fees, levy of service charges etc. which are the primary activity, however MBCPNL also used the electricity for hotel, food courts, yard lights which are under commercial tariff and also guest house/canteen/toilet etc. which are under residential tariff. However, the MBCPNL has neither informed the Respondent about use of supply nor segregate supply. It is therefore very peculiar kind of operation, distinct and different from other consumers and there is no specific tariff category for such consumer.
- 8.3. The Concession Agreement that the MBCPNL requires to provide different kinds of facilities including Dhaba, Puncture Repairing Shops, General Shops, Medical Stores, Cyber Cafes, Auto-mechanical and Electrical Repair works and Vehicles spare part shops. Further the MBCPNL is entitled to display and advertise on the walls of border check post. These all activities are commercial activities.
- 8.4. The Concession Agreement reveals that any services provided by MBCPNL on BCP's it may be included in the charges which the MBCPNL charged for the providing services. MBCPNL is operating and maintaining the border check post for and on behalf of the GoM in terms of the Concession Agreement and the services provided are towards the general public and qualify as "Public Services" for the purpose of tariff determination. It is not relevant for the purpose of tariff category as for effecting changes in tariff category specific application along with documents required to be submitted and after verification of the check post of the MBCPNL and relevant documents the applicable tariff may be apply.
- 8.5. MBCPNL had placed on record only data of three border check post i.e. Achhad, Chorwad and Degloor and contended that MSEDCL arbitrarily and unlawfully changes tariff category. The Respondent after carried out of inspection of three check post changed the tariff category and claim for differential tariff.
- 8.6. As stated above though MBCPNL in its Petition placed on record data of the three check posts, pursuant to the direction given by the Commission on 9 February 2024 MSEDCL Officials carried out inspection of 23 check posts of MBCPNL between 9 February 2024 to 14 February 2024. MSEDCL has submitted consolidated list of the Spot Inspection taken out by MSEDCL of 23 Border Check Posts of MBCPNL showing the contract demand, connected load and activities along with Inspection Reports.
- 8.7. The reports reveals that MBCPNL is using supply of electricity for RTO Quarters, Rest House, Toilets, Hostels in certain check post, however MBCPNL is using supply also for

commercial purpose for its commercial activities. The said mixed supply of residential and commercial are utilized by MBCPNL from one meter therefore it is difficult to find out how much electricity supply is used for residential, commercial and border check post main activity. The summary of inspection carried out at 23 BCP is as below:

Spot Inspection report of 23 No. of Border Check Post Consumers

| SN | Circle | Name of Border Check Post | Consumer No | Tariff Applied | Contract Demand & Connected Load | Total Connected load against sanction load (KW) | Load Sharing | | | | | Total Load at site | Sub Meter | Remark | |
|----|------------|---------------------------|-------------------|----------------|----------------------------------|-------------------------------------------------|---------------------------------|--------------|--------------------------|----------------------------|------------|--------------------|-----------|------------------------------|--------------------------------------------|
| | | | | | | | Border Check Post Main Activity | RTO quarters | Guest/Rest House/ Hostel | Hotel/ Commercial Activity | Yard Light | | | | Jio Tower |
| 1 | Dhule | Hadakhed | 94029006940 | Commercial | 150 KVA, 730 KW | 288.28 KW | 78.33% | 5.94% | 15.73% | 0.00% | 0.00% | 100.00% | No | | |
| 2 | Gondia | Deori | 443489055950 | Commercial | 100 KVA 360 KW | 360 KW | 97.50% | 1.67% | 0.83% | 0.00% | 0.00% | 100.00% | No | | |
| 3 | Yavatmal | Pimpalkutti | 374259006730 | Commercial | 100 KVA 938 KW | 938 KW | 100.00% | 0.00% | 0.00% | 0.00% | 0.00% | 100.00% | No | | |
| 4 | Nagpur R | Saoner | 420819011490 | Commercial | 100 KVA 800 KW | 33 KW | 30.30% | 9.09% | 60.61% | 0.00% | 0.00% | 100.00% | No | | |
| 5 | | Ramtek | 410039012440 | Commercial | 100 KVA 938 KW | 154.917 KW | 81.41% | 15.58% | 1.73% | 1.29% | 0.00% | 100.01% | No | | |
| 6 | | Kelod | 419185555152 (LT) | Commercial | 60 KVA 60 KW | 60 KW | 100.00% | 0.00% | 0.00% | 0.00% | 0.00% | 100.00% | No | | |
| 7 | Amravati | Warud | 357079006450 | Commercial | 100 KVA 300 KW | 151.545 KW | 68.91% | 12.77% | 18.32% | 0.00% | 0.00% | 100.00% | No | | |
| 8 | | Kharpi | 354459006460 | Commercial | 100 KVA 300 KW | 300 KW | 87.55% | 1.46% | 9.15% | 1.84% | 0.00% | 100.00% | No | | |
| 9 | Malegaon | Borgaon | 68129023760 | Commercial | 200 KVA, 300 KW | 300 KW | 100.00% | 0.00% | 0.00% | 0.00% | 0.00% | 100.00% | No | | |
| 10 | Chandrapur | Rajjura | 455299100430 | Commercial | 150 KVA, 1200 KW | 106.63 KW | 79.12% | 16.15% | 2.89% | 1.84% | 0.00% | 100.00% | No | | |
| 11 | Nandurbar | Akkalkuwa | 99490003866 | Commercial | 45 KVA 45 KW | 30 KW | 100.00% | 0.00% | 0.00% | 0.00% | 0.00% | 100.00% | No | | |
| 12 | | Navapur | 84539006570 | Commercial | 150 KVA 1200 KW | 93.2 KW | 80.04% | 17.81% | 0.86% | 1.29% | 0.00% | 100.00% | No | | |
| 13 | Kolhapur | Shinoli | 257100003571 | Commercial | 44.76 KVA 44 KW | 45 KW | 99.33% | 0.00% | 0.67% | 0.00% | 0.00% | 100.00% | No | | |
| 14 | | Kagal | 251019055820 | Commercial | 200 KVA 500 KW | 0 KW | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | No | Border Check Post not in use | |
| 15 | Nanded | Degloor | 558010616922 (LT) | Commercial | 50 KVA 40 KW | 37 KW | 81.08% | 0.00% | 18.92% | 0.00% | 0.00% | 100.00% | No | | |
| 16 | | Biloli | 555429007080 | Commercial | 100 KVA 200 KW | 200 KW | 80.00% | 10.00% | 5.00% | 5.00% | 0.00% | 100.00% | | | |
| 17 | Jalgaon | Chorwad | 114020003079 | Commercial | 40 KVA 40KW | 37 KW | 86.49% | 8.11% | 5.41% | 0.00% | 0.00% | 100.01% | No | | |
| 18 | | Muktainagar | 116709007130 | Commercial | 200 KVA 300 KW | 79.5 KW | 50.31% | 13.84% | 1.89% | 22.64% | 11.32% | 100.00% | No | | |
| 19 | Sindhudurg | Insuli | 235979052670 | Commercial | 201 KVA 300 KW | 58 KW | 0.00% | 0.00% | 31.03% | 68.97% | 0.00% | 100.00% | No | Border Check Post not in use | |
| 20 | Palghar | Achhad | 07549038980 | Commercial | 150 KVA 172.77 KW | 172.777 KW | 44.16% | 10.67% | 33.74% | 2.80% | 0.00% | 8.64% | 100.01% | Yes | 2 No.s of submeters with commercial tariff |
| 21 | Dharashiv | Omerga | 596549003400 | Commercial | 100 KVA 450 KW | 450 KW | 66.67% | 3.33% | 18.89% | 11.11% | 0.00% | 100.00% | No | | |
| 22 | Solapur | Marawade | 342120001360 | Commercial | 50 KVA 15KW | 14 KW | 7.14% | 14.29% | 28.57% | 0.00% | 50.00% | 100.00% | No | | |
| 23 | | Mandrup | 331979054460 | Commercial | 100 KVA 900 KW | 80.2 KW | 78.80% | 11.97% | 9.23% | 0.00% | 0.00% | 100.00% | No | | |

- 8.8. Commercial tariff was applied to MBCPNL as per its own application and inspection thereof, which was never objected to by MBCPNL. Further MBCPNL never made any application for wrong categorisation of tariff or change in use. If the connection is sanctioned for one particular purpose the consumer cannot claim for change of tariff without informing the Distribution Licensee and without making appropriate application for wrong application of tariff.
- 8.9. Therefore, as stated above MBCPNL never specifically applied for change of tariff category. Further, MBCPNL using electricity supply for its residential and commercial purpose from the meter and therefore Respondent applied commercial tariff to it. MBCPNL is very well aware that since it is mixed load of supply therefore it requires to segregate the load and install the sub-meters to levy applicable tariff category after making appropriate application to the Respondent. MBCPNL in its Petition agrees and accept that general activities/services provided by MBCPNL may be levied “Commercial Tariff” by installing sub-meters.
- 8.10. As regards the change of tariff of three check posts operated by MBCPNL i.e. Achhad, Chorwad and Degloor, it is submitted that in the interregnum period the tariff category was converted from HT-Commercial to HT-IX-B-Public Service Others considering MBCPNL comes under State/Local Authority of transport. However, MBCPNL is private entity and not a State or local authority and using mixed load of supply therefore, again the tariff category has been changed from Public Services-Others to Commercial and initiate the recovery for the differential tariff.
- 8.11. MBCPNL is contending that it falls under the “Public Service-Others”. MBCPNL had participated in the MYT Mid-term Review Petition being Case No.226 of 2022 and submitted that all border check posts operated by MBCPNL on behalf of the government falls under “Public Service-Others”. The Commission had not included MBCPNL activities carried out under the Public Service-Others. MBCPNL having not succeeded in Mid-term Review Petition has now chosen to file the instant petition for change of tariff category.
- 8.12. It is imperative to transparently reveal such type of consumer for applicability of tariff category, to avoid any confusion and uncertainty on the issue involved in the present petition. MBCPNL has its own manner and mode of functioning, therefore considering the peculiar fact the Commission may take a decision to avoid any ambiguity on the issue.

Commission Analysis and Ruling

9. MBCPNL in the present Petition is seeking applicability of appropriate tariffs to Border Check Posts (BCPs) and the refund of differential tariffs recovered by MSEDCL. MBCPNL has claimed that it serves public service purposes and should be billed under the 'Public Services – Others' tariff category across all locations. The facilities provided at the BCPs primarily serve government purposes and public use, emphasizing the public service nature of its operations on behalf of the Maharashtra Transport Department.
10. Having heard the parties and after taking note of various submissions placed on records, the Commission frames following issues for its considerations:
 - a. Whether this Commission has jurisdiction in this matter?
 - b. Does MBCPNL fall under the 'Public Service - Others' tariff category, considering the nature of its activities and the usage of electricity for various purposes at the Border Check Posts (BCPs)?

The Commission is addressing these issues in the following paragraphs.

11. **Issue A: Whether this Commission has jurisdiction in this matter?**

- 11.1. MSEDCL has objected to the maintainability of this Petition before the Commission on the ground that the grievance raised in the Petition is nothing but a pure billing-related issue and requires to be dealt with under the provisions of Section 42(5) of the EA, 2003.
- 11.2. In response to the above objection, MBCPNL has stated that consumers approach CGRF under Section 42(5) of the EA, 2003, only if the bills/ invoices issued by the Distribution Licensees are contrary to the circular or tariff Order. However, the issue involved in the present matter in effect relates to correct applicability of tariff category as per the Tariff Order issued by the Commission.
- 11.3. The Commission notes that Hon'ble the APTEL in its judgment dated 22 March 2011 in Appeal No. 181 of 2010 has considered all its previous judgments and the judgment of Hon'ble the Supreme Court on jurisdiction of the Commission to deal with individual consumer grievance and has ruled as follows with respect to jurisdiction of the Commission to deal with issue on clarification of Tariff Order:

“10. Thus we find that an individual consumer for redressal of his individual grievance has to approach the grievance redressal forum and then being aggrieved with the

decision of this forum to approach the Ombudsman who shall settle grievance of such consumer in such manner and within such a time as may be specified by the State Commission. What exactly are the powers and functions of the Ombudsman have not been specified in the Act, but it only appears that Ombudsman derives his jurisdiction when an individual consumer brings before him a dispute with a distribution licensee. The Act does not provide for any appeal against the order of the Ombudsman. It can not therefore by gainsaid that when the powers and functions of the State Commission have been specifically determined in terms of Section 86 the Ombudsman is necessarily precluded from entering into the domains of the State Commission. In common parlance, the Ombudsman is approached by an individual consumer when a dispute called a 'billing dispute', arises. If we read subsection (5), (6), and (7) of Section 42 of the Act together it becomes clear that the dispute which the forum for redressal of grievance of the consumer or an Ombudsman is called upon to adjudicate has to be a dispute in relation to a distribution licensee and in that perspective such a dispute may necessarily be a billing dispute or disputes of like nature. But all such disputes which the forum is called upon to adjudicate has to be against a distribution licensee. It is against the decision of the forum that a consumer may approach the Ombudsman who is to settle such disputes or grievance so to speak. The liability for the distribution licensee to establish a forum for redressal of grievance of the consumers or that of the Commission to appoint an Ombudsman entails that the forum or the Ombudsman will hear the complaint against a distribution licensee. As such, the grievances arising out of specific act on the part of a distribution licensee may give rise to cause of action to an individual consumer. This reasoning of ours appears to have been fortified by several decisions of this Tribunal as also a decision of the Hon'ble Supreme Court which we now present here. In BSES Rajdhani Power Ltd. Vs. DERC reported in 2009 ELR (APTEL) 0363 the question arose whether approach to the Commission was justified in the context of the fact where Respondent No. 2 requested the Appellant for surrendering the electric connection and refund of security amount. The Appellant failed to respond whereupon the complaint was filed by the Consumer before the State Commission which entertained the complaint and then only the appellant admitted the mistake against whom commission awarded penalty and compensation. In the appeal before the State Commission this Tribunal held that Commission has no jurisdiction to entertain the appeal holding that it was purely a dispute between a consumer and a distribution licensee. In Polyplex Corporation Ltd., Ghaziabad Vs. Uttrakhand Power Corporation Ltd. reported in 2007 APTEL 115 we find that it was explicitly a billing dispute. Obviously, this Tribunal held that the approach to the said Commission was wrong. In Dakshin Haryana Vijli Vitran Nigam Ltd. Vs. Haryana Electricity Regulatory Commission and Ors. reported in 2007 (APTEL) 356 it was held in a batch of appeals that it is well settled that no authority however higher or supreme it be, cannot usurp the jurisdiction of a statutory authority created specifically for the purpose. It was held

that it is the specific provision which excludes the general provision. Reference was also made to *Venkaeswar Vs. State of Andhra Pradesh* reported in AIR 1966 SC 828. In another case namely, *Dakshin Haryana Vijli Vitran Nigam Ltd. Vs. DLF Services and Ors.* Reported as 2007 (APTEL) 766 the same proposition was again reiterated. In *Maharashtra State Electricity Distribution Company Ltd. Vs. Lloyds Steel Industries Ltd.* reported in AIR 2008 SC 1042 the Hon'ble Supreme Court had the occasion to examine the issue against certain factual background which is thus: the Respondent No. 2 Company approached the State Commission complaining that a demand notice issued by MSEDCL should be declared illegal and that the said company be permitted to avail its power supply to the level of 90 MVA without recovery of any additional charges and to further direct that the Appellant MSEDCL to refund the certain amount of money for reinstatement of contract demand to the original level of 90 MVA alongwith interest at the rate of 12% from the date of payment till the date of refund. Being aggrieved with the decision of the MSEDCL the Respondent Company approached the Commission In this context their Lordships of the Supreme Court observed as follows:

“A complete machinery has been provided in Section 42 (5) and 42 (6) for redressal of grievances of individual consumers. Hence wherever a forum/Ombudsman have been created, the consumers can only resort to these bodies for redressal of their grievances. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose.”

The Hon'ble Supreme Court referred to the provisions of Subsection (5), (6) and (7) of Section 42 and Section 86 of the Act to show as to who stands in which place under the law so that there cannot be any usurpation of jurisdiction of one over the other.

11. We have found what the law is. We have found that an individual consumer has no right to approach the Commission when his dispute is with the distribution licensee. Our question now is: whether the dispute raised by the Respondent No. 3 and 4 with the Respondent No. 1 is really a dispute which grievances redressal forum or the Ombudsman can legally and factually address. The factual background of the decisions so far mentioned above is clearly distinguishable from ours in as much as here the **question is whether the order for determination of tariff in terms of the tariff categorization pursuant to which an individual consumer and the distribution licensee entered into an agreement can be interpreted or clarified by an Ombudsman who is not the author of the said tariff determination order and whether the Ombudsman has authority to entertain a petition for change of one category to another**

.....

13. Now these are the categories made by the Commission in the tariff order dated 31st March, 2007. In the tariff order it has not been expressly mentioned as to under which category the Respondent No. 1 which is a HT consumer running a number of educational institutions not governed by the Government would fall. Before answering the question whether the Commission's impugned order is justifiable on merit or not it is necessary to say who is the competent authority under the statute to clarify, explain, interpret or if need be amend the tariff order. **A consumer grievance redressal forum or for that matter an Ombudsman cannot possibly give an interpretation or clarification of what a quasi-judicial or quasi-legislative authority intended to mean by framing a tariff order particularly when they do not have the appellate or revision jurisdiction over the Commission..... To our mind, the power of clarification or interpretation or amendment of the order of the Commission lies with the Commission who is the author of the order and it is only in accordance with the tariff determination order that an agreement between a distribution licensee and a consumer follows. Therefore, if a particular entity is of the opinion that it has been wrongly categorized or that there has been wrong application of the tariff order because of misunderstanding or misinterpretation then it is the Commission that has to clarify the confusion and make the position clear. Therefore, in our estimation redressal forum or the Ombudsman cannot give legal interpretation of the tariff determination order made by a Commission and /or entertain a petition of a consumer for change of one category to another which involves powers of adjudication of fixation of tariff.**

.....

15. This situation gives rise to the last question: when an individual consumer approached the Commission or when the Commission found the arena of dispute to be resolvable only by the Commission itself what was required of the Commission to do. As the law stands, a commission cannot make any order for a particular or individual consumer irrespective of whether such consumer has good merit in his case or otherwise by departing from its tariff determination order which is a product of a quasi-legislative authority. For, a law cannot be molested to afford relief to an individual howsoever hardship he is beset with. Appropriate course of action would then be to amend the law which is always generic. **The law stands thus that the Commission's function is not to redress grievances of a particular consumer amongst thousands of consumers attached to different distribution licensees in a particular area or areas. Unquestionably, the matter requires an interpretation or clarification or amendment of the order by the Commission alone on the ground that its categorization leaves scope for confusion. The Commission states that the Respondent No. 3 should be treated like an educational institution governed by Government. Well, if this is the perception of the Commission then there may be in Gujarat hundreds of such educational institutions who administer education in the same manner as the Respondent No. 3 does. If, according to the Commission a special dispensation is necessary for such institutions which are not**

covered under HTP-II(B) then appropriate course would have been to issue a public notice to all the concerned distribution licensees and all such entities / persons so as to have them heard before it proceeds to amend the tariff order, provided of course the Commission is of the opinion that such institutions do not fall under any of the categories”

[emphasis added]

In view of above APTEL Judgment, it is clear that in case there is an issue involved for clarification of Tariff Order or there is some confusion in the applicability of proper tariff category, the Commission has jurisdiction to clarify the applicability of tariff Order.

12. Issue B: Does MBCPNL fall under the 'Public Service - Others' tariff category, considering the nature of its activities and the usage of electricity for various purposes at the Border Check Posts (BCPs)?

12.1. MBCPNL has requested for Tariff category of Public Service – Others for electricity consumption for activities related to Border Check posts undertaken by various Government Agencies and further suggested that electricity uses for commercial activities like restaurants can be billed under Commercial tariff category through sub-metering for such activities.

12.2. Whereas MSEDCL has emphasized that the Concession Agreement entered by MBCPNL with the GoM is of a commercial nature, authorizing the collection of service fees for using project facilities. MBCPNL is a private entity, not a government organization, and the contract allows MBCPNL to levy, demand, and collect service fees in accordance with the service fee notification. MSEDCL also alleges that MBCPNL operates hotels, rest houses, godowns, and commercial shops at different check post sites, and therefore, the classification of the 23 connections under the commercial category is done based on the usage of electricity.

12.3. The Commission notes that the MBCPNL is involved in a range of activities at its 23 check posts, including commercial and non-residential purposes. The primary activity of the MBCPNL involves clearance/checking of commercial vehicles, collection of fees, and levy of service charges. Additionally, MBCPNL provides various facilities and services at the Border Check Posts (BCPs) in Maharashtra. These include facilities for government officials from the Departments of Transport, G.S.T., and Excise for the purpose of clearance/checking of commercial and private vehicles, collection of compounding fees, and providing drinking water and toilet facilities for road users. MBCPNL operates and maintains BCPs in Maharashtra on behalf of the GoM and provides various facilities and services primarily for public service purposes.

12.4. Additionally, MBCPNL provides services to the public, such as public restrooms, drinking water facilities, food courts, restaurants, and dormitory facilities for truck drivers. These facilities are utilized when vehicles are detained by government officials for various reasons, such as fines or cargo inspection. MBCPNL also provides facilities for temporary storage of cargo detained by government officials and offers services like medical stores, cyber cafes, and auto mechanical and electrical repair works. The nature of these activities aligns with the 'Public Service - Others' tariff category, as it involves providing services to the public and governmental departments for public service purposes. Therefore, based on the nature of its activities and the usage of electricity for various public service purposes at the BCPs, the Commission deem fits that BCP falls under the 'Public Service - Others' tariff category.

12.5. Regarding, electricity consumption for activities such as RTO Quarters, Rest House, Toilets, Hostels, hotel, food courts, canteen, and other commercial activities which does not fall under Public Service activities, MBCPNL itself has suggested that sub-metering may be undertaken and these activities be billed under appropriate tariff category. The Commission notes that MSEDCL earlier had segregated the load at MBCPNL's Achhad BCP and billed as under:-

- (i) Approx. 70% load/ units were considered under HT IX – (B) : Public Service – Others tariff category, being utilized by various Government Departments for carrying out public service; and
- (ii) Balance approx. 30% load/ units considered under HT - Commercial category, being after the sub-meter, where provisions are made for drivers / cleaners by way of public restrooms, restaurants, etc.

On perusal of the inspection summary report and submission of the parties it is observed that similar segregation of load can be done by MSEDCL at all the BCP Locations. Therefore, the Commission directs MSEDCL to categorize BCP under 'Public Services – Others' tariff category across all locations and provide sub-meter, where provisions are made for drivers / cleaners by way of public restrooms, restaurants, etc. and billed it under Commercial category.

12.6. Having ruled as above, MSEDCL's action of raising bill for differential amount (difference between commercial and public service-others) on MBCPNL needs to be set aside. The Commission notes that MBCPNL has paid such a differential amount under protest. Hence, the Commission directs MSEDCL to refund such differential amount to MBCPNL along with interest at Bank Rate stipulated in Regulation 16.2 of MERC (Multi Year Tariff) Regulations 2019.

13. Hence, the following Order.


ORDER

1. **The Petition in Case No. 32 of 2023 is allowed.**
2. **Border Check Posts to be categorized under Public Service – Others category. Sub-metering be provided to commercial activities and electricity consumption for such activities be billed accordingly.**
3. **Wherever applicable, Maharashtra State Electricity Distribution Co. Ltd. shall revise/reverse electricity bills issued to MBCPNL as per above Orders within a month from the date of this Order.**

**Sd/-
(Surendra J. Biyani)
Member**

**Sd/-
(Anand M. Limaye)
Member**

**Sd/-
(Sanjay Kumar)
Chairperson**


**(Dr. Rajendra G. Ambekar)
Secretary**

