

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 159 OF 2016

In the matter of applicability of tariff category

M/s. Aircel Limited Appellant

V/s

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

For Appellant : 1. Mr. Ramasubramanian, General Manager
2. Mr. Mohit Agrawal, DGM
3. Mr. Deep S. Singh, Manager

For Respondent : 1. Mr. C. B. Mankar, Superintending Engineer, Vashi
2. Mr. D. B. Pawar, Executive Engineer, Vashi
3. Mr. A. A. Jagzap, Dy. Executive Engineer, Vashi
3. Mr. G. A. Mali, Asst. Law Officer, Vashi

Coram: Mr. R.D. Sankhe

Date of Order: 7th April, 2017

ORDER

This Representation is filed on 25th November 2016 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (*CGRF Regulations*) against the order dated 28th September, 2016 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone (*the Forum*).

2. The Forum, by its order dated 28th September, 2016 while partly allowing the complaint of the Appellant and setting aside the commercial tariff charged since 2012, has directed the



Respondent MSEDCL to issue the revised bill charging commercial tariff from the date of joint inspection.

3. Not satisfied with the order of the Forum, the Appellant, M/s. Aircel Limited has filed this representation stating as under:-

- (i) The Appellant (M/s Aircel Ltd.), is having ITES centre at Unit No. 603, United Infotech Park, TTC Industrial Area at Mahape, Navi Mumbai.
- (ii) The Appellant inter alia, is engaged in the business of providing telecommunication services/ mobile telephony and internet services such as voice calls, data transmission, voice mail, e-mail, short messaging service and broadcasting, internet access, multimedia messaging service, internet applications through wireless application protocol and inter-networking with the internet. The Appellant has been issued the License under Section 4 of the Indian Telegraphs Act by the Department of Telecommunication, Ministry of Communication, Government of India as the Telecom Service Provider (TSP) for providing Unified Access Services in Maharashtra Service Area. The Appellant has installed Base Trans Receiver Stations (BTS), towers which in turn are controlled by Multi-Convergent-Node named as the Master Switching Centre (MSC) situated on the roof top of 9th floor of the United Infotech Park Building.
- (iii) The Appellant is having around 4 MSC, 30 Base Switching Centres (BSCs), 3800 BTS and 70 IBS in Maharashtra. The premises at Mahape is connected with power supply by the Respondent, MSEDCL to the consumer (No 000149035560) in the name M/s. Patel Punit Builders Pvt. Ltd.
- (iv) The Appellant entered into an agreement for lease with M/s. Patel Punit Builders Pvt. Ltd. on 10th December 2008 initially for a period of 8 years and mutually extended further at the said premises, where one such Information Technology (IT) and IT Enabled Services (ITES) Centre of the Appellant is located and installed.
- (v) The Respondent has allotted separate meter (No. 053-0904839) and provided electricity connection to the Appellant at Industrial rate since inception on 9th November, 2009.



- (vi) The Government of Maharashtra announced IT and ITES Policy in 2003 and thereafter in 2009, according to which, the IT/ITES units are to be supplied power at Industrial rates. As per the IT/ITES Policy-2015, IT/ ITES Units registered with the Directorate of Industries are to be supplied power at Industrial rates applicable as per Tariff Orders issued by the Maharashtra Electricity Regulatory Commission (*the Commission*) from time to time.
- (vii) The Appellant has obtained Permanent Registration Certificate issued by District Industries Centre (DIC), Pune on 27th February, 2009 as the Telecom and Internet Service Provider.
- (viii) The Appellant has been also issued Registration Certificate dated 15th March, 2010 by Maharashtra Industrial Development Corporation (MIDC) as IT Services Unit for ITES - Telecommunication Services provider. The MIDC has given this certificate on the basis of the license for unified access services issued by the Government of India.
- (ix) In view of the usage of the electricity supply for the IT/ITES activities being carried out by the Appellant at the said premises, the Respondent MSEDCL was levying charges under the Industrial Tariff.
- (x) The Respondent MSEDCL erroneously issued an internal Circular dated 26th June 2009, wherein it was mentioned that instead of Industrial Tariff, Commercial Tariff should be applied to all the mobile operators and telephone exchanges and that the commercial tariff shall be retrospectively applied from June 2008. One of the mobile operators, the Tata Teleservices (Maharashtra) Limited preferred Writ Petition No. 6702 of 2009 before the High Court of Bombay inter alia, challenging the aforesaid circular dated 26th June 2009. The Hon'ble High Court in its order dated 17th August 2009 observed that it was, prima facie, of the opinion that Regulation 13 of the Supply Code was contrary to Sections 50 and 62 of the Electricity Act, 2003 (*the Act*). The MSEDCL thereafter issued Circular dated 17th August, 2009 to levy Industrial tariff on furnishing the undertaking.
- (xi) The MSEDCL had approached the Commission in 2009-10 for categorization of the mobile/ telecom towers as commercial users. The Commission, however, rejected the proposal of the MSEDCL vide its order dated 17 August, 2009 in Case No. 116 of 2008.



- (xii) The MSEDCL again sought re-categorization of mobile towers, but the Commission by its order dated 12th September 2010, rejected the said prayer for re-classification of mobile towers and continued the coverage of IT/ITES establishments under Industrial Tariff Category
- (xiii) The Commission issued Tariff Order dated 16th August, 2012 in Case No.19 of 2012 changing the tariff category of Mobile Towers, Microwave Towers, Satellite Antennas used for communication activities into Commercial category. Some of the Mobile Operators namely, Vodafone India Ltd., Bharti Airtel Ltd., Idea Cellular Ltd. engaged in the business of telecommunications, approached the Appellate Tribunal for Electricity (APTEL) against the order dated 16th August, 2012 passed by the Commission, challenging change of tariff category of mobile operators from HT/LT Industrial to HT/LT Commercial. The APTEL by its order dated 7th November, 2012 set aside the order of the Commission dated 16th August, 2012 of this recategorization into HT / LT commercial category. The APTEL also directed that its order would apply to all the consumers coming under the specified category of Telecommunication Towers.
- (xiv) The MSEDCL thereafter issued Circular dated 15th April, 2013 to all its field offices to implement the decision of the APTEL and to refund the tariff difference for the period from 1st August, 2012 to 7th November, 2012.
- (xv) The Appellant was, however, shocked to receive demand notice dated 18th June 2014 addressed to M/s. Patel Punit Builders Private Limited by the Respondent for recovery of Rs. 1,00,74,041/- towards difference between Industrial and Commercial tariff for the period from August 2012 to January 2014. The Appellant, however, continued to pay the electricity bills at Industrial rate.
- (xvi) Several mobile operators such as Tata Tele Services (Maharashtra) Ltd., Vodafone India Ltd., Vodafone Cellular India Ltd., Bharti Airtel Ltd., Idea Cellular Ltd. have challenged the action of the MSEDCL before the High Court Bombay and have obtained interim reliefs restraining the MSEDCL from taking coercive action for enforcement of demand notices towards recovery of such tariff difference.
- (xvii) The Appellant submitted representation dated 24th September, 2014 to the Commission placing on record that MSC, Transmission Equipments and Tower housed at Mahape in TTC Industrial Area, is classified under IT and ITES and supply of electricity is to be charged under Industrial Tariff. The Appellant have



also given two separate representations to the MSEDCL at their Corporate office and to the Superintending Engineer of the MSEDCL at Vashi.

(xviii) The Appellant as well as other cellular companies in mobile and telecommunications continued to be in the industrial category.

(xix) The MSEDCL moved fresh petition for approval of Multi Year Tariff for second control period FY 2013-2014 to FY 2015-2016 before the Commission suggesting for re-classification of mobile operators in the appropriate category. The Commission in its Tariff Order dated 26th June, 2015 in Case No.121 of 2014 interalia regarding tariff for mobile towers held as under :-

"Hence, the Commission does not agree with MSEDCL's proposal in this regard and rules that IT & ITES will be charged at industrial rates (HT and LT rates, as applicable), without getting into the details of whether mobile towers and commercial broadcasting towers and all other similar activities are covered under the Government of Maharashtra Policy on IT & ITES."

The Commission is of the view that the rationale and ruling of its earlier Order in Case No. 116 of 2008 should continue to apply. In other words, the Industrial tariff will apply to Mobile Towers or other activities cited by MSEDCL only if they are covered as IT/ ITES and the provisions of GoM's Policy apply to them."

(xx) The issue of coverage of Data Centre of the Idea Cellular Ltd. in the Industrial Tariff Category is pending before the Hon'ble High Court in Writ Petition No. 9875 of 2013 and interim order staying recovery at commercial rate has been passed on 22nd October, 2013. Similar order dated 8th July, 2014 is also passed in W.P. No. 6292 of 2014.

(xxi) While the other mobile operators were being charged at industrial rate, the Appellant was surprised to receive electricity bills dated 10.3.2014, 03.04.2014, 03.05.2014, 04.06.2014, 03.07.2014, 04.08.2014, 03.09.2014, 2.10.2014 levying charges at commercial rate in respect of ITES units at United Infotech Park, Mahape, without assigning any reason and the excess amount of Rs. 46,82,818/- was collected. The MSEDCL had neither re-classified the said ITES



premises under Commercial Tariff Category nor communicated any decision about re-classification before raising the bills.

(xxii) The Appellant submits that out of total 23 BTS tower installations of the Appellant situated in and around Mumbai and Navi Mumbai, commercial tariff has been charged only for seven locations. It is contrary to the order dated 07.11.2012 of the APTEL and various orders of the High Court of Bombay.

(xxiii) The MSC at Mahape is housed with Transmission equipments and BTS Tower is also equipped with Voice Switch, STP and Media Gateway Equipment and other transmission equipments configured on the directives of regulatory requirement mandated by the Dept. of Telecommunications, Government of India. Lawful Gateway Interception equipment housed as per ILD License is obligated to provide required data on demand by various Government Law Enforcement Agencies such as Police, IB, Raw, etc. The NLD and ILD equipments are functioning as a conduit for calls and data originated from any or all mobile operators passes through the NLD & ILD gateway through the BTS Tower to the respective destinations and it also functions viz-a-viz on a similar way in both directions.

(xxiv) The premises of M/s. Patel Punit Builders Pvt Ltd. have been classified as Private IT Park by the MIDC and issued Permanent Registration Certificate dated 29th June, 2010 by the DIC, Thane.

(xxv) The Appellant was further shocked to receive bill dated 2nd October, 2014 from the Respondent for the month of September 2014 levying commercial rate after having received the order dated 13th August, 2014 in Writ Petition No. 7531 of 2014 passed by the Hon'ble High Court restraining the MSEDCL from charging the MSC of Idea Cellular Ltd. at Commercial rate.

(xxvi) Apprehending disconnection of electricity supply to the said ITES premises, the Appellant made the payment reserving the right to recover and claim the refund in case it is held by the Hon'ble Court that the Appellant was not liable to pay the electricity charges in respect of their ITES premises as per Commercial rate as raised in the bills.

(xxvii) The Appellant submits that despite Order dated 18th March, 2015 passed by Hon'ble High Court of Bombay extending protection to the Appellant against coercive action for a period of two months, the Respondent issued notice dated 20th March, 2015 addressed to M/s. Patel Punit Builders Pvt. Ltd. which was



delivered to the Appellant on 23rd March, 2015 threatening disconnection of electricity supply for alleged non-payment of electricity charges amounting to Rs. 43,48,594.43 being the amount of Bill dated 05.03.2015 which amounts to Contempt of Court.

(xxviii) The Appellant approached the Internal Grievance Redressal Cell (IGRC). All the contentions and submission made by the MSEDCL before the IGRC were misconceived and ill-conceived in the light of the following distinguishing features as to how the Telephone Exchange (T.E.) is different from the Master Switching Centre (MSC).

Telephone Exchange (TE)	Master Switching Center (MSC)
T.E. Provides Landline / Wireline services	MSC provides Wireless service through mobile technology.
T.E. all customers are connected thro physical wire connection.	MSC all customers are connected using licensed spectrum.
T.E. are not having BTS / BSC as part of their structure	Whereas BTS & BSC are the integral part of MSC.
T.E. Provide services without BTS tower	MSC requires BTS tower to provide service.
T.E. is only a single switching centre which supports all functions.	MSC has a distributed Architecture which integrates BTS , BSC, Etc.
T.E. not having WPC clearance	MSC provides services using WPC compliance.
T.E are not having HLR / VLR Nodes	MSC has HLR/VLR nodes which supports mobile services.
T.E. not requires BTS / IBS to transmit message	MSC requires BTS / IBS (In Built Solution) to transmit message. THE COMMISSION has decided Industrial Tariff for BTS Towers based on this Point.
T.E. are not having License to provide services thro spectrum	MSC provides services thro spectrum thro a separate license.
In T.E. Subscriber data base is fixed.	In MSC subscriber data base varies from month to month since it handles roaming customers.
T.E. cannot provide certain value added services.	Value added services can be provided by mobile thro MSC (mobile banking)

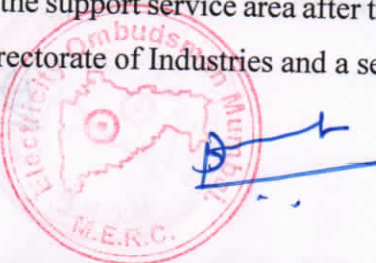
(xxix) The Appellant continued to pay electricity charges at industrial rate as directed in the order dated 13th October, 2014 passed by Hon'ble High Court of Bombay. The Appellant submits that thereafter the Appellant received letter dated 14th March, 2016 from the Superintending Engineer, Vashi Circle from which the Appellant was shocked to note that IGRC had passed purported order dated 21.05.2015 against the Appellant.



(xxx) The Appellant aggrieved by the decision of IGRC approached the Forum on various ground including that ITES Unit at Mahape is MSC coupled with BTS Towers as a single structure to serve the customers and it is not a Telephone Exchange. The Tamil Nadu Electricity Board and the West Bengal Electricity Board are charging MSC, BSC and BTS Towers under the Industrial Tariff only.

(xxxii) Appellant has made application before the DIC, Thane for registration of their Mahape Unit. The Appellant, however, stated that it is not provided in IT Policy that unit is required to be separately registered when the developer has obtained a registration for the Private IT Park. The Respondent is well aware about the activity of BTS Mobile Towers and MSC being conducted by Aircel Limited on leased premises and electricity bills in the name of M/s. Patel Punit Builders Pvt Ltd. being sent by email to M/s. Aircel Limited and are paid by them at industrial rate. BTS and MSC cannot be called as the Telephone Exchange as BTS and MSC is wireless technology and spectrum. The Appellant has obtained Permanent Registration Certificate dated 27th February, 2009 from the DIC, Pune of Government of Maharashtra in respect of IT /ITES Unit of Aircel Limited and it is applicable to all the units of the Appellant including one at Mahape. The IT / ITES unit at Mahape is thus covered by definition of IT / ITES unit in Government of Maharashtra IT / ITES Policy 2015.

(xxxiii) The submission of MSEDCL that the APTEL order dated 7th November, 2012 is applicable to Telecommunication Towers only and not to total exchange load is erroneous and misconceived as MSC is not Telephone Exchange and MSC cannot function without BTS Tower. The purpose of activity and the use is relevant for charging the tariff. The MSC with BTS Tower is a Single integrated unit. IT / ITES Unit of Appellant at Mahape is squarely covered by IT /ITES Policy of GoM-2015. The clarification given by the DIC that Units located in IT park are required to obtain a separate individual registration certificate to avail benefit of tariff concession under IT / ITES Policy, 2015 is not binding on the Appellant, as it is not supported by any authority, more particularly, it is not a Competent Authority such as DOT of Government of India. It has been clarified in Para 5 A (iii) of GoM IT / ITES Policy, 2015 that power consumed at the industrial rate for the common facility in the Private IT Park which are used by units, excluding the support service area after the registration is granted to the IT Park by the Directorate of Industries and a separate meter will have to



be provided by the developer to the individual IT / ITES units in the IT parks for the leased or purchased premises.

(xxxiii) The Forum has held that Respondent can recover the tariff from the date of joint inspection dated 16th January, 2015. The Forum has, however, erroneously directed the Appellant, M/s. Aircel to apply and to produce IT / ITES Certificate issued by the Competent Authority and till then, Commercial Tariff is made applicable.

(xxxiv) The Forum failed to appreciate that in none of the orders issued by APTEL or the High Court, it was held that activity for Telephone Exchange which is a part of Spectrum and IT / ITES Centre, should be segregated or separated and charged at Commercial rate instead of Industrial rate as erroneously contended by the Respondent. The Forum failed to appreciate that the observations of the Recovery Committee that in case of mixed load, separate meter shall be installed and Telephone Exchange power supply should be charged at Commercial Tariff and Mobile Towers should be supplied at Industrial Tariff are not valid and not based on any sound legal footing.

(xxxv) The Appellant is aggrieved by the part of the decision of the Forum, whereby the Forum has directed the Appellant to obtain individual ITES certificate for every location of the M/s. Aircel Ltd. without considering the Permanent Registration Certificate issued by DIC, Pune in 2009 which holds good for the all the units of the Appellant situated across the Maharashtra. The Appellant has, therefore, prayed that Respondent MSEDCL may be directed to charge Industrial tariff to MSC at Mahape and not to insist upon separate Permanent Registration Certificate of IT / ITES unit.

4. The Respondent MSEDCL has filed reply dated 21st December, 2016 and stated as under: -

- (i) M/s. Patel Punit Builders Pvt. Ltd. is HT consumer (No. 000149035560) of the MSEDCL from 10th April, 2009 at 22 KV level at unit No. 603, Plot No. R-797 at TTC MIDC with Contract Demand 400 KVA and Connected Load 470 KW under HT II Commercial (Non-Express) tariff category.
- (ii) M/s Patel Punit Builders Pvt. Ltd leased their premises at Mahape to the Appellant, M/s Aircel Ltd. The Appellant has installed BTS – mobile towers and MSC since 9th November, 2009 but neither M/s Patel Punit Builders Pvt.



Ltd. nor M/s Aircel Ltd. informed the Respondent regarding this change of activity.

(iii) On 16th January, 2015, the Respondent MSEDCL carried out inspection of the premises in the presence of representatives of the Appellant, when it was found that out of total connected load of 470 KW, only about 20 to 25 KW load was used for mobile towers and the major load was of Telephone Exchange. It was also revealed during the inspection that entire premises on the 6th floor was used only for telephone exchange activity.

(iv) The Appellant has given chart showing difference between the Telephone Exchange and MSC, but the MSC is acting as the Telephone Exchange with sophisticated wireless network equipments and technologies. The Respondent has referred the Book on Fundamental of Computer Networks authored by Sudakshina Kundu mentioning that the MSC is similar to Telephone Exchange configured specifically for mobile application.

(v) The Chief Engineer (Commercial) of the MSEDCL issued guidelines with reference to Commercial Circular No. 175 dated 5th September, 2012 that all the Telephone Exchanges shall be checked for confirmation of tariff. In case, there is mixed load of Telephone Exchange and Mobile Tower, a separate meter be installed segregating the load and the Telephone Exchange be billed at Commercial tariff and Mobile Tower at Industrial tariff.

(vi) The Appellant has submitted that it is engaged in the business of providing Telecommunication services / mobile telephony and applications through wireless application protocol and inter-networking with the internet. It has set up ITES centres with tower and switching centres as per the design and directives of Department of Telecom of Govt of India. However, as per the tariff order of the Commission, no certificate from the Competent Authority has been produced by M/s. Aircel in its name certifying that the activity at Mahape is covered under IT & ITES.

(vii) The Appellant has relied on provision of Maharashtra's IT / ITES Policy, 2015 for applicability of Industrial tariff but as per Commercial Circular No. 212 of the MSEDCL, to avail Industrial tariff on basis of IT/ITES activity, a certificate is required from the competent authority. Tariff Order of the Commission for FY 2015-16 which is circulated by Commercial Circular No. 243, it is stated as regards applicability of Industrial tariff to IT/ITES activity as under :



"HT Industrial tariff category shall also be applicable for use of electricity/ power supply to IT/ITES units covered under IT Industry and IT enabled Services (as defined in the Policy of Government of Maharashtra as may be prevailing from time to time). Till the establishment doesn't receive permanent registration certificate as may be applicable; Tariff shall be as per HT-II Category and after receipt of permanent registration certificate HT I category shall be applicable till the validity of the Certificate".

"The Industrial tariff is applicable to Mobile Towers or other activities only if they are covered as IT / ITES and the provisions of GoM's policy apply to them."

(viii) Similarly, after Tariff Order for FY 2016-17, the MSEDCL issued Commercial Circular No. 275. In the matter of Tariff for telecommunication towers it is stated as under :

Tariff for Telecommunication Towers:

The Industrial tariff will apply to Mobile Towers or other activities only if they are covered as IT/ ITES and the provisions of GoM's Policy apply to them. Telecommunications Towers shall be covered under the Commercial category, unless specifically included in the IT & ITES Policy of the Government of Maharashtra for coverage under the Industry category

(ix) M/s Aircel Ltd. has referred to Registration Certificate dated 29th June, 2010 issued by the DIC, Thane but it is granted to M/s Patel Punit Builders Pvt. Ltd as a Private Information Technology Park, on Plot No. R-797, TTC Rabale, Navi Mumbai.

(x) The General Manager, DIC, Thane in his letter dated 5th January, 2015 has clarified that Units coming in Public or Private IT Park have to obtain Individual IT Unit LOI/Registration to avail benefits under IT Policy.

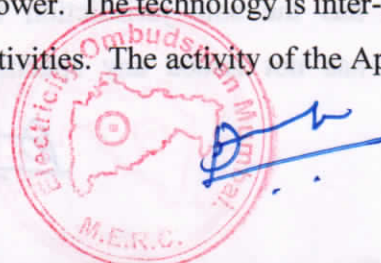
(xi) The whole claim of the Appellant that their MSC is different from the Telephone Exchange is contrary to the definition and the process involved. The Commission has the sole jurisdiction to create a tariff category. The Commission has not issued any specific order regarding the MSC. The



Appellant therefore should have approached the Commission during the Public hearings while issuing the Tariff Orders. The APTEL in Appeal No. 42 of 2013 has stated that tariff category can only be created by the State Commission. Hence, in the absence of any different tariff category created for MSC, the action of categorising the Appellant under Commercial category is justified. The Respondent has, therefore, prayed that the representation be rejected.

5. Hearing was fixed on 28th December, 2016. After some arguments, the Appellant pointed out that the reply of the Respondent was received by them only on the date of hearing and hence sought time to file the rejoinder to the reply of the Respondent. The hearing was, therefore, adjourned. The Respondent MSEDCL was also given liberty to file sur rejoinder, if any. The Appellant, thereafter, filed rejoinder dated 6th January, 2017. The Respondent also filed additional reply dated 28th February, 2017 and 2nd March, 2017. The Appellant, M/s Aircel Ltd. filed their further submissions dated 7th March, 2017 and again on 15th March, 2017.

6. The hearing of the representation was held on 7th March, 2017. During the hearing, the Appellant argued on the basis of their written submissions and the voluminous documents filed. The Appellant pointed out that the Appellant is in mobile telephone and telecommunication services. The Appellant has been issued the license under Section 4 of the Indian Telegraph Act of Telephone Services Provider by the Government of India. In order to provide mobile telephone and internet services, electronic equipments are installed which are called as BTS which in turn are controlled by MSC. The Appellant in support produced the information available on Google network to show the functioning of the MSC. The BTS, BSC, IBS (In Building Solution Towers) and MSC are all connected as network. In Maharashtra, the Appellant is having 4 MSCs, 13 BSCs, 3000 BTS and 17 IBS. One such centre of the Appellant is located at Mahape in the premises of M/s. Patel Punit Builders Pvt. Ltd. since 9th November, 2009. The Respondent has allotted separate meter exclusively to the Appellant, M/s. Aircel. The Appellant is paying the bills at the Industrial rate since inception. The Respondent, however, issued supplementary bill of Rs. 1,00,74,041/- towards tariff difference from Industrial to Commercial. The Appellant submitted that the premises of M/s. Patel Punit Builders is a Private IT Park who was issued Permanent Registration Certificate by the DIC Thane. In the inspection carried out by the Respondent, it is stated that out of 470 KW, only 20 to 25 KW load is used for mobile tower. The technology is inter-related and interdependent and it cannot be split into different activities. The activity of the Appellant is not a Telephone



Exchange but it is MSC and MSC cannot be treated as the Telephone Exchange. The Appellant has a certificate of Permanent Registration from DIC, Pune which is applicable for all units in Maharashtra. APTEL, by its order dated 7th November, 2012 has set aside the Tariff Order dated 16th August, 2012 of the Commission in the Case No. 19 of 2012 changing the consumer category of Mobile Towers and similar activities into Commercial category. Order of the APTEL applies to all consumers coming under the category of Telecommunication Towers.

7. The Appellant also contended that the categorisation of tariff whether MSC or BSC are to be treated as the Commercial or the Industrial, is vested with the Commission and the Respondent has no authority to create a separate tariff category for MSC. Moreover, this issue is pending in the High Court in the Writ Petitions filed by Idea Cellular Ltd. and Vodafone India Ltd. and the Appellant will be also governed by the orders of the High Court in those petitions. Similarly, only the Directorate of Telecommunication, Government of India is competent to examine whether MSC is to be treated as Telephone Exchange or not. The ITES Policy, 2015 of GoM is silent about telecom activities. It is also incorrect on the part of the Respondent to say that the dispute raised by the Appellant is billing dispute when, in fact, it is related to the tariff categorisation. The Appellant has already approached the DIC, Thane for obtaining necessary certificate as IT and ITES unit. The Tariff Orders issued by the Commission in Case No. 116 of 2008 and in Case No. 121 of 2014 as well as in Case No. 48 of 2016 show that the Commission did not agree with the proposal of the MSEDCL to categorise Mobile Towers and other activities into Commercial category. The Commission has held that IT and ITES will be charged at Industrial rate without getting into details as to whether Mobile Towers and other similar activities are covered under IT and ITES Policy of GoM. The Appellant therefore vehemently stated that the industrial tariff should be made applicable to the Appellant, M/s. Aircel Ltd. and billed accordingly.

8. The Respondent, on the other hand, argued that the supply was released in the name of M/s. Patel Punit Builders Pvt. Ltd. and no intimation was given about different activities carried out by M/s. Aircel Ltd. Agreement dated 8th April, 2009 made by the Licensee with M/s. Patel Punit Builders prohibits the consumer to extend the supply other than to the consumer. When the inspection was carried out on 16th January, 2015, it was revealed that the premises was used for the activities mainly of Telephone Exchange. The guidelines were issued by the Chief Engineer (Commercial) on 8th December, 2014 with reference to the order of the APTEL dated 7th November, 2012 that the Telephone Exchange is to be billed with Commercial tariff and



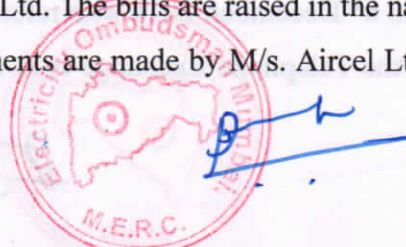
the Mobile Towers at Industrial tariff. The Appellant has referred to the IT & ITES Policy, 2015, but has not produced any Certificate of Registration from the DIC, Thane which is the competent authority. In the Tariff Order in Case No. 48 of 2016, the Commission has held that Industrial tariff is applicable to Mobile Towers, only if they are covered under ITES Policy. The Commission has also clarified that their ruling in Case No. 116 of 2008 will continue to apply. The Commission has further clarified that Telephone Towers would be covered under Commercial category only. In the absence of IT & ITES certificate, the Appellant has been rightly categorised under Commercial category. The IGRC as well as the Forum have also held that the Appellant is to be billed under the commercial category. As such, there is no substance in the representation of the Appellant and the same be rejected.

9. Heard the parties at length. The issues raised for consideration are as under :-
- (i) Whether Appellant, M/s. Aircel Ltd. is entitled to file a grievance and to be charged Industrial tariff?
 - (ii) Whether supplementary bills raised by the Respondent MSEDCL are liable to be set aside?
 - (iii) What order?

10. The Respondent MSEDCL has raised the issue that the Appellant, M/s. Aircel Ltd. is not a consumer within the meaning of Section 2 (15) of the Electricity Act, 2003 (*the Act*) and cannot file the grievance. Section 2 (15) of the Act provides as under:

(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supply electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.

11. The Appellant has stated that the premises in TTC Industrial area at Mahape has been taken by the Appellant from M/s. Patel Punit Builders Pvt. Ltd. upon entering into lease agreement on 10th December, 2008. The Respondent MSEDCL has also provided separate Meter No. 053-904839 to M/s. Aircel Ltd. The bills are raised in the name of M/s. Patel Punit Builders Pvt. Ltd., however, the payments are made by M/s. Aircel Ltd. Section 2(15) of the



Act provides that the consumer means any person who is supplied with electricity for his own use. Similarly, Section 43 of the Act also provides that the distribution licensee shall give supply to the occupier of the premises. The Appellant, M/s. Aircel Ltd. is thus the end user of electricity supplied by the MSEDCL. This apart, the Appellant, M/s. Aircel Ltd. had filed W.P. No. 9877 of 2014 in the High Court of Bombay and the High Court while disposing of said Writ Petition by the order dated 18th March, 2015 has given the liberty to M/s. Aircel to resort to remedy of redressal forum available under the Electricity Act, 2003. In view of this, the stand of the Respondent MSEDCL that the Appellant, M/s. Aircel Ltd. is not a consumer and cannot file this grievance is not tenable and the same is rejected.

12. The Appellant has stated that M/s. Aircel is into Unified Access Services as per the license of Telecom Service Provider given under Section 4 of the Indian Telegraph Act by the Department of Telecommunication of GOI. The Appellant has given a chart showing distinguishing features between Telephone Exchange and the MSC. The Appellant has explained in detail the functioning of the MSC and pointed out that any cellular radio system in given area is covered on number of base stations or cells and each of these cells are connected to Master Control Centre also called as Mobile Switch Centre (MSC). The MSC controls all the cells and provides the centre office between each cell. The MSC is also the Telephone Exchange that makes the communication between mobile use within the network or mobile user of the public switch of the telephone network and between the mobile user to the other telephone users.

13. Tariff is determined by the Commission and it will be relevant to consider tariff order issued by the Commission from time to time for application of tariff category of different activities. The Commission in its Tariff Order dated 17th August, 2009 in Case No. 116 of 2008 has interalia held regarding mobile services and other similar activities as under:-

iv "IT & IT Enabled Services is classified by Industries department. It is proposed to classify the mobile tower and commercial broadcasting towers and all other similar activities under the Commercial category."

"In view of the above, the Commission rules that IT and ITES will be charged at Industrial rate (HT-LT rates as applicable) without getting into details of whether



the mobile towers and commercial broadcasting towers and all other similar activities are covered under GoM Policy of IT & ITeS."

14. The Commission thereafter, in its order dated 16th August, 2012 in Case No. 19 of 2012 categorised Mobile Towers, Microwave Towers, Satellite Antennas used for telecommunication activities under HT-II Commercial category.

15. The order dated 16th August, 2012 of the Commission in Case No. 19 of 2012 was challenged before the APTEL by the Cellular companies. The APTEL, by its order dated 7th November, 2012 set aside the order dated 16th August, 2012 of the Commission regarding recategorization of mobile towers, and telecommunication activities into LT / HT Commercial category from HT Industrial category prevailing prior to 16th August, 2012. APTEL also clarified that its order dated 7th November, 2012 will apply to all the consumers coming under specified category of telecommunication towers. Liberty was, however, granted to the Distribution Licensee to file a fresh petition before the State Commission regarding recategorization of the telecommunication towers in appropriate tariff category and the Commission was asked to pass appropriate order in accordance with law after hearing all the concerned parties. The APTEL was moved by the Cellular Companies for non compliance of the order dated 7th November, 2012. The APTEL passed the order on 16th April, 2013 recording an undertaking given by the licensee MSEDCL that the MSEDCL has directed to levy Industrial tariff with effect from 1st August, 2012 to telecom towers.

16. The Commission thereafter while issuing Tariff Order dated 26th June, 2015 in Case No. 121 of 2014 held with regard to tariff for mobile towers as under:-

6.24 Tariff for Mobile Towers

MSEDCL's submission

6.24.1 MSEDCL has submitted that, in the Tariff Order in Case No. 19 of 2012, Mobile Towers and Telephone Exchanges were included in the Commercial Category. As per the ATE Judgment dated 7 November, 2012 on the Appeal filed by some telecom companies, the relevant part of the Tariff Order was set aside and MSEDCL was directed to charge the Industrial tariff to Mobile Towers w.e.f. 1 August, 2012. ATE also ruled that MSEDCL may file a fresh



Petition regarding the appropriate tariff category for Mobile Towers, and the Commission may consider it same and pass appropriate Order after hearing all the concerned parties.

6.24.2 *In its MYT Petition, MSEDCL has now submitted that Mobile Towers are devices which are used for transmitting telecommunication signals, and there is no manufacturing or industrial activity. Accordingly, MSEDCL has proposed that the tariff for Mobile Towers should be as per the Commercial category only. MSEDCL has stated that it is purely a commercial activity and the Commission had correctly categorized it accordingly.*

6.24.3 *However, in its additional submission, subsequent to the Public Hearings, MSEDCL has proposed to include Mobile Towers in a newly created sub-category of Service Industries, under the main category of Industries, along with Telephone Exchanges, Telecom industries, IT/ITES Industries, Data Centres, etc.*

Commission's Ruling

6.24.4 *The Commission, in its Order in Case No. 116 of 2008 dated August 17, 2009, had discussed the categorisation of Mobile Towers in detail as follows:*

"As regards MSEDCL's proposal to classify certain telecom towers, etc., under commercial category, irrespective of whether they were covered under the IT & ITES Policy of the Government of Maharashtra, no rationale has been submitted by MSEDCL for this specific proposal. The Commission had consciously included IT and IT enabled Services (IT & ITES) under industrial category (HT and LT as applicable) in the Tariff Order for the erstwhile MSEB in 2004. Since then, the IT & ITES category continues to be charged under industrial tariffs. In the existing Tariff Schedule of MSEDCL as well as the approved Tariff Schedule for the distribution licensees in Mumbai issued in June 2009, the Commission has included IT & ITES category under industrial category. Hence, the Commission does not agree with MSEDCL's proposal in this regard and rules that IT & ITES will be charged at industrial rates (HT and LT rates, as applicable), without getting into the details of whether mobile towers and commercial broadcasting towers and all other similar activities are covered under the Government of Maharashtra Policy on IT & ITES."



The Commission is of the view that the rationale and ruling of its earlier Order in Case No. 116 of 2008 should continue to apply. In other words, the Industrial tariff will apply to Mobile Towers or other activities cited by MSEDCL only if they are covered as IT/ ITES and the provisions of GoM's Policy apply to them.

17. The Commission thereafter in its next Tariff Order dated 3rd November, 2016 in Case No. 48 of 2016 held with regard to tariff for telecommunication towers as under: -

8.23 Tariff for Telecommunication Towers:

The issue of tariff category applicable to telecommunications towers has been decided by the Commission in its previous MYT Order as follows:

6.24.4 *The Commission, in its Order in Case No. 116 of 2008 dated August 17, 2009, had discussed the categorisation of Mobile Towers in detail as follows:*

"As regards MSEDCL's proposal to classify certain telecom towers, etc., under commercial category, irrespective of whether they were covered under the IT & ITES Policy of the Government of Maharashtra, no rationale has been submitted by MSEDCL for this specific proposal. The Commission had consciously included IT and IT enabled Services (IT & ITES) under industrial category (HT and LT as applicable) in the Tariff Order for the erstwhile MSED in 2004. Since then, the IT & ITES category continues to be charged under industrial tariffs. In the existing Tariff Schedule of MSEDCL as well as the approved Tariff Schedule for the distribution licensees in Mumbai issued in June 2009, the Commission has included IT & ITES category under industrial category. Hence, the Commission does not agree with MSEDCL's proposal in this regard and rules that IT & ITeS will be charged at industrial rates (HT and LT rates, as applicable), without getting into the details of whether mobile towers and commercial broadcasting towers and all other similar activities are covered under the Government of Maharashtra Policy on IT & ITeS."



The Commission is of the view that the rationale and ruling of its earlier Order in Case No. 116 of 2008 should continue to apply. In other words, the Industrial tariff will apply to Mobile Towers or other activities cited by MSEDCL only if they are covered as IT/ ITES and the provisions of GoM's Policy apply to them.

Considering the above, Telecommunications Towers shall be covered under the Commercial category, unless specifically included in the IT & ITeS Policy of the Government of Maharashtra for coverage under the Industry category.

18. It is, therefore, clear from the tariff order dated 26th June, 2015 of the Commission in Case No. 121 of 2014 as well as the order dated 3rd November, 2016 in Case No. 48 of 2016 that Industrial tariff is applicable to telecommunication towers and other similar activities only if they are covered under IT & ITES Policy of the GoM. The Appellant, M/s. Aircel Ltd. has pointed out that their unit at Mahape is located in the Private IT Park at Mahape developed by M/s. Patel Punit Builders Pvt. Ltd. and the said private IT Park has been issued Permanent Registration Certificate by the DIC, Thane and since M/s. Aircel Ltd. is located in the said private IT Park, the Appellant is also entitled for the benefit of IT & ITES Policy. The Respondent MSEDCL has furnished a copy of clarification issued by the DIC, Thane of GoM. In the letter dated 5th January, 2015, the DIC, Thane has clarified that Units coming in Public or Private IT Park have to obtain individual IT Unit LOI / Registration to avail the benefits under IT Policy. The Appellant, M/s. Aircel Ltd has also relied upon the certificate issued by the MIDC dated 15th March, 2010 to M/s. Aircel as the telecommunication service providers on the basis of license issued by the Department of Telecommunication of GOI. The Appellant has also relied upon the certificate dated 27th February, 2009 issued by the DIC, Pune for their unit at Pune. It is, however, to be noted that the said certificates issued by MIDC and by the DIC Pune are for the premises or the units other than at Mahape whereas the Appellant is claiming industrial tariff for unit at Mahape in Thane. The Appellant also pointed out that other telephone operators in similar situation have been categorised under HT Industrial category. The Respondent, however, in their additional reply dated 2nd March, 2017 has given a list of telecom operators namely Tata Teleservices, Tata Telecommunication Ltd., Idea Cellular Ltd., MTNL, Vodafone Cellular Ltd and Bharti Airtel Ltd showing that they are also billed under HT- II Commercial tariff category.



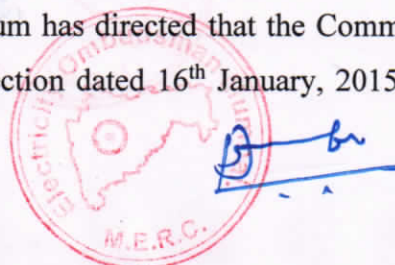
19. The Respondent MSEDCL has pointed out that MSC of the Appellant is nothing but a Telephone Exchange and hence not entitled for the Industrial tariff. The Commission, however, has not separately classified MSC in any of its tariff orders under Commercial category. The functioning of the MSC is explained by the Appellant and attempts were made to show and that it is an integral part of the mobile and telecommunication towers. The Commission however after considering the order dated 7th November, 2012 of the APTEL has held in its Tariff Order dated 26th June, 2015 in Case No. 121 of 2014 that the industrial tariff will be applied to mobile towers or other activities only if they are covered under IT & ITES and the provisions of GOM Policy apply to them. In the Tariff Order dated 3rd November, 2016 in Case No. of 48 of 2016, the Commission has further clarified that telecommunication towers shall be covered under Commercial category unless specifically included in IT & ITES Policy of GoM for coverage under the Industrial category. The Appellant, M/s. Aircel have stated that they have approached the DIC, Thane for ITES certificate which shows that the unit of M/s. Aircel at Mahape is not yet certified as IT & ITES unit by the Competent Authority, namely the DIC, Thane.

20. It is also relevant to point out that the Tower and Infrastructure Providers Association (TAIPA) representing Cellular Companies had addressed the letter dated 2nd June, 2015 to the Commission regarding change of tariff category from Industrial to Commercial for telecom towers in which it was proposed that a separate class can be created for telecom and mobile towers and till then Industrial tariff can continue. It was also requested in the said letter that any increase in the tariff should be made effective prospectively. Thus, even the letter of TAIPA also indicates that Industrial tariff category has not been made applicable to the telecom and mobile towers by the Commission. Similarly, while deciding tariff categories in Case No. 48 of 2016, M/s. Bharti Airtel had also pointed out during the public hearing that the MSEDCL should charge Industrial tariff for mobile towers, BSC and MSC requiring an IT & ITES registration certificate and that in the previous MYT order, the Commission had rejected the proposal of categorisation of mobile towers under the Industrial category. Considering all these aspects, the contention of the Appellant that Mahape unit of M/s. Aircel Ltd. should be categorised under HT Industrial being IT & ITES is not tenable. As per the Tariff Orders dated 26th June, 2015 and 3rd November, 2016, unless, the Appellant, M/s. Aircel produces a certificate from the DIC, Thane that their unit at Mahape is IT & ITES, it cannot be accepted that the Appellant, M/s. Aircel is entitled to charge at HT Industrial tariff category. Issue No. (i) above is, therefore, answered in the **Negative**.



21. The Appellant has stated that the Respondent had issued demand notice dated 18th June, 2014 and sent supplementary bill of Rs. 1,00,74,041/- towards the difference of tariff category from HT Industrial to HT Commercial for the period from August 2012 to January 2014. The Forum, by its order dated 28th September, 2016 however has set aside the action of the Respondent MSEDCL of charging Commercial tariff from August 2012 and directed the Respondent to issue revise bill charging commercial tariff only from the date of joint inspection. The joint inspection was carried out at the premises of the Appellant at Mahape on 16th January, 2015. It is relevant to note that till the Tariff Order dated 16th August, 2012 of the Commission in Case No. 19 of 2012, the Appellant, M/s. Aircel was admittedly charged Industrial tariff. The Commission, by the said Tariff Order dated 16th August, 2012 changed the tariff category of the telecommunication towers into Commercial. As stated above, the APTEL, by order dated 7th November, 2012 however set aside the order of the Commission of charging the Commercial tariff till the fresh petition of recategorization is filed by the licensee MSEDCL before the State Commission and the Commission was directed to pass an appropriate order after hearing all the concerned parties. The Commission, in Tariff Order dated 26th June, 2015 in Case No. 121 of 2014 after considering the order dated 7th November, 2012 of the APTEL held that the Industrial tariff will apply to mobile towers and other activities, only, if they are covered under the IT & ITES Policy.

22. The Appellant has pointed out that the Respondent MSEDCL has billed the Appellant M/s. Aircel under Commercial category inspite of the order of the APTEL dated 7th November, 2012. The Appellant has also pointed out that Writ Petitions filed by Idea Cellular Ltd., Vodafone India Ltd. challenging the action of the Respondent MSEDCL charging the Commercial tariff, the High Court has stayed the action of the Respondent MSEDCL and the petitions are pending final hearing in the High Court. The Appellant has claimed that their case is identical or similar to the cases filed by other Cellular companies, namely, Idea and Vodafone India Ltd. In any case, as per the order of APTEL dated 7th November, 2012, the telecommunication towers and other activities were to be charged Industrial tariff till all the stakeholders are heard by the Commission and appropriate recategorization is made. After the order dated 7th November, 2012 of the APTEL, the Tariff Order came to be passed by the Commission only on 26th June, 2015 in Case No. 121 of 2014 which is made effective from 1st June, 2015. Therefore, though the Forum has directed that the Commercial tariff should be made applicable from the date of inspection dated 16th January, 2015, Commercial tariff is



chargeable to the Appellant M/s. Aircel only from 1st June, 2015. It was pointed out during the hearing that the Respondent MSEDCL has also filed W.P. (ST) No. 5547 of 2017 in the High Court of Bombay challenging the order of Forum directing the MSEDCL to recover the difference only from the date of joint inspection on 16th January, 2015. The Respondent MSEDCL has not produced any order of the High Court, staying the relevant part of the order of the Forum. It is, therefore, not necessary to go into that aspect. The Respondent, therefore, can recover the supplementary bill charging the Commercial tariff to the Appellant, M/s. Aircel only from 1st June, 2015. The order dated 28th September, 2016 of the Forum is, therefore, modified to that extent. Issue No. (ii) is answered accordingly.

23. In the result, the representation of Appellant, M/s. Aircel Ltd. is partly allowed. The prayer of the Appellant, M/s. Aircel to charge HT – I Industrial tariff is rejected. The Respondent MSEDCL is however directed to recover the bills as per the Commercial category only from 1st June, 2015. In the event, however, if the Permanent Registration Certificate of the competent authority is produced by M/s. Aircel Ltd. as the IT and ITES unit for coverage of industrial category, the Respondent MSEDCL shall consider and apply the same, as stated by the Commission as per the Tariff Orders.

24. Compliance to be reported by the Respondent MSEDCL within a period of two months from the receipt of this order.

25. Amount of Rs. 25000/- deposited in this office be refunded to the Appellant, M/s. Aircel.

26. This representation could not be decided as per Regulation 17.13 of the CGRF Regulations within the stipulated period as the parties sought time to file the submissions.

Sd/

(R. D. Sankhe)
Electricity Ombudsman (M)



Certified to be a true copy

(Shri D. S. Dumbre)
Secretary