

**Before the Appellate Tribunal for Electricity
Appellate Jurisdiction**

Appeal No. 16 of 2008

Dated: 18th February, 2008

Present: **Hon'ble Mr. A.A. Khan, Technical Member**
Hon'ble Mrs. Justice Manju Goel, Judicial Member

Spencer's Retail Ltd.
Spencer's Plaza
4th Floor, Channai 600002

-Applicant(s)

Corporate office at:
"Duncan House"
31 Netaji Subhas Road,
1st Floor, Kolkata - 700001

V/s.

Maharashtra Electricity Regulatory Commission
World Trade Centre, Centre No. 1,
13th Floor, Cuffe Parade,
Mumbai - 400005

-Respondent(s)

Reliance Energy Ltd.
Reliance Energy Centre
Santacruz (E)
Mumbai

Counsel for the Applicant(s) : Mr. M. G. Ramachandran,
Mr. Sanjeer Kapoor and
Mr. Avinash Menon, Adv.

Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan for MERC
Mr. Syed Naqvi for REL

JUDGMENT

Per Hon'ble Mr. Anwar Ahmad Khan, Technical Member

The Appellant, M/s Spencer's Retail Ltd. a company incorporated under the Companies Act 1956 is having their retail business outlets of different formats such as Express, Daily, Super and Hyper Market Stores across the country. The Appellant has the retail outlets spread across state of Maharashtra and some of them are the consumers of M/s Reliance Energy Limited (for short referred to as 'REL') being situated in its area of supply. It has challenged the original impugned tariff order dated 24 Apr. 2007 in Case No. 5 of 2006 read with clarificatory order dated 21 Sep. 07 in Case No. 75 of 2006 passed by Maharashtra State Electricity Regulatory commission (for short referred to as the 'Commission'). The impugned order dated 24 Apr. 07 relates to determination of Annual Revenue Requirements (ARR) of REL for the FY 2007-08 to 2009-2010 and retail tariff for the FY 2007-08. The Appellant's Single Ownership Stand Alone/Departmental Stores having a sanctioned load of more than 20 KW, in the earlier tariff regime belonged to the category of LTP-2(LT Industrial), and were reclassified and placed in a newly created LT-9 by the impugned order. The tariff of LTP-2 category consumers carried the demand charge of Rs. 374 per KVA per month and energy charge of Rs. 3.50 per Kwh aggregating approximately to Rs. 6.00 per Kwh per hour. This reclassification has imposed an exorbitant higher tariff on the Appellant consumers with demand charge of Rs. 300/- KVA per month and energy charge of Rs. 8.49 per Kwh aggregating approximately to Rs. 10/- per Kwh. The change in category from LPT-2 to LT-9 has resulted in an increase in the tariff by about 70%.

2. The Appellant has submitted that the Respondent No.2, REL, in its petition for determination of ARR, before the Commission did not propose any separate

category for “Multiplexes and Shopping Malls”. The Appellant has submitted that the new class of consumers category namely LT-9, for “Multiplexes and Shopping Malls” as envisaged in the impugned order of 24 Apr. 07 has excluded the Single Ownership Establishment other than Larger Shopping/Departmental Stores like Shopper Stop, Big Bazaar, Shop Rite, Spencer’s etc. Prior to this “Multiplexes and Shopping Malls” were treated as any other commercial/industrial consumers.

3. The Commission when approached by Maharashtra State Electricity Distribution Company Ltd. (hereinafter referred to as ‘MSEDCL’) another licensee, passed a clarificatory order dated 24 Aug. 07 in case no. 65 of 2006 and clarified that Single Ownership Larger Shopping/Departmental Stores like Shoppers Stop, Big Bazaar, Shop Rites, Spencer’s etc. with sanctioned load of about 20 KW shall be classified under LT-9 category.

4. The Appellant has further submitted that the clarificatory order dated 21 Sep. 07 passed by the Commission in instant case drew reference to the above mentioned clarificatory order passed by the Commission on 24 Aug.07 in the case of MSEDCL being Case No. 26 of 2007 and Case No. 65 of 2006 and clarified its position vis-à-vis categorization of consumers under LT-9 category under “Multiplexes and Shopping Malls” for REL as well. The Appellant’s averment is that but for the reclassification the Appellant would have been placed under the old classification of LTP-2, (now LT-4 in the impugned order) and would have been charged tariff of demand charges of Rs. 300/- per KVA per month and energy charges @ Rs. 4.99 per KWh.

5. In light of the above, the Appellant is aggrieved that it has to bear an excessive and arbitrary increase in the retail tariff for its essentially Single Owner Shopping/Departmental Stores and such exorbitant increase is in complete violation of the provisions of the Electricity Act, 2003 as well as policies notified

therein. The Appellant prays to set aside the impugned order dated 24 Apr. 07 and clarificatory order dated 21 Sep. 07 in case No. 75 of 2006 passed by the Commission insofar as it creates a new tariff category of LT-9 for Single Ownership Shopping/Departmental Stores etc. for sanctioned load of more than 20 KW. It seeks direction to Respondent No. 1, the Commission to re-determine the tariff of Respondent NO. 2, REL for FY 2007-08 in accordance with the Section 61, 62(3) and other relevant provisions of National Electricity Policy and National Tariff Policy.

6. It is pertinent to mention that this Tribunal in its judgment dated 19 Dec 07 in case of Spencer's Retail Ltd. Vs. MERC and Anr. allowed the Appeal of this very Appellant and set aside the tariff order dated 18 May 07 in Case No. 65 of 2006 and clarificatory order dated 24 Aug. 07 in Case no. 26 of 2007 and Case No. 65 of 2006 passed by the Commission in so far as the Appellant consumer is a direct consumer of the MSEDCL and is located either in "Multiplexes and Shopping Malls" or in Single Ownership Stand Alone Shopping/Departmental Stores, is placed in tariff category LT-9. The said judgment has also directed the Commission to charge tariff applicable to their respective parent categories [i.e. LT-2 (Non domestic) and HT-industrial] from the date on which the new tariff order came into effect and with further direction to adjust the difference in tariff charges in the future bills of the Appellant consumer.

7. Our attention has been drawn to another judgment passed by this Tribunal passed on 26 Nov. 07 in Appeal Nos. 125 of 2007 [M/s Inorbit Mall (India) Pvt. Ltd. Vs. MERC & Anr.] and 126 of 2007 (Vasudev C. Wadhwa Construction Vs. MERC & Anr.) whereby the two appeals were allowed directing the Commission to reconsider the matter afresh giving full opportunity to the two Appellants of being heard as to whether they also should fall under tariff category LT-9. This matter has been decided by the Commission vide its order dated 15 Jan. 08. Mr.

M.G. Ramachandran, learned counsel for the Appellant has submitted a copy of the said order alongwith additional affidavit. From this order it is clear that the Appellants in Case No. 78 of 2007 who was in HT-2 category and located in the area of supply of REL, while making submission before the Commission, has made reference to this Tribunal's judgment dated 19 Dec. 07 to seek relief from the Commission against being placed in the tariff category LT-9. It may be mentioned that this Tribunal judgment dated 19 Dec. 07 deals with the cases of consumers of this very Appellant who were earlier under LT-2 (Non-domestic) and HT-Industrial categories and were shifted to tariff category LT-9 by the Commission's Order.

8. The order dated 15 Jan. 08 passed by the Commission has referred to this Tribunal's judgment dated 19 Dec. 07 in case of ARR determination of MSEDCL and has concluded that the applicability of tariff category LT-9 for "multiplexes and shopping malls" getting supplies at HT voltage in the area of supply of REL no more survive. Para -6 of the order dated 15 Jan. 07 reads as under:

"Although, it has been submitted on behalf of the Distribution Licensee, i.e. REL, that there was no undue enrichment to REL on account of levy of LT-9 tariffs to shopping malls and multiplexes, the Commission after having heard the public (including M/s Inorbit Mall (India) Pvt. Ltd. and M/s Vasudev C. Wadhwa Constructions) and REL, the distribution licensee, is of the view that with the subsequent judgment dated December 19, 2007 issued in case of ARR determination of Maharashtra State Electricity Distribution Company Limited, the applicability of tariff category LT-9 for Multiplexes and Shopping Malls getting supply at Ht voltage in the area of supply of REL, can no more survive. Accordingly, the Commission directs that consumers who were being billed (prior to the Errata/Corrigendum Order dated July 26, 2007) under Ht-2 category and who began receiving

bills as LT-9 consumers (Multiplexes and Shopping Malls (MSM)) be charged tariff applicable to the parent category [i.e. HT-2] with effect from the date on which the new tariff Order came in effect. The difference in tariff charges be adjusted in the future bills of such consumers”

9. The instant Appeal essentially raises issues which are similar to those raised in appeal No. 146 of 2007 in (Case no. 65 of 2006 and 26 of 2007) of Spencer’s Retail Ltd. Vs. MERC and Anr., which was disposed of by this Tribunal’s judgment dated 19 Dec. 07 except in the instant case the area of supply being of REL and change of category from LPT-2(LT industrial) to LT-9.

10. In view of the above we allow the Appeal and set aside the order dated 24th Apr 07 in Case No. 75 of 2006 and the clarificatory order dated 21 Sep. 07 in Case No. 75 of 2006 in so far as the Appellant is Single Ownership Stand Alone Shopping/Departmental Stores, etc., is placed in LT-9 category and direct that it be charges tariff applicable to their parent category of LPT-2 (presently LT-4) from the date on which new order came into effect and the difference in charges be adjusted in the future bill of the Appellant consumer.

11 I.A. No. 212 of 2007, for interim relief has become infructuous.

12. The Appeal is accordingly disposed of with no costs.

Pronounced in open court on this day of February, 2008.

(Manju Goel)
Judicial Member

(A.A. Khan)
Technical Member

Dated : 18th February, 2008