

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
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Date: 7 December 2021

CORAM: Sanjay Kumar, Chairperson
I.M Bohari, Member
Mukesh Khullar, Member

Case Nos. 100, 101, 121 and 122 of 2021

(Case No. 100 of 2021)

Case of B.S.Channabasappa & Sons for payment of the purchase of surplus units / over-injected units of energy under the MERC (Distribution Open Access) Regulations 2014 and interest thereon at 18 % p.a. from 18 June, 2018.

(Case No. 101 of 2021)

Case of S.K.Veerbhadrappa & Co. for payment of the purchase of surplus units / over-injected units of energy under the MERC (Distribution Open Access) Regulations 2014 and interest thereon at 18 % p.a. from 18 June, 2018.

(Case No. 121 of 2021)

Case of Sridevi Trading Company for payment of the purchase of surplus units / over-injected units of energy under the MERC (Distribution Open Access) Regulations 2014 and interest thereon at 18 % p.a. from 18 June, 2018.

(Case No. 122 of 2021)

Case of Shri Tradco India Pvt Ltd for payment of the purchase of surplus units / over-injected units of energy under the MERC (Distribution Open Access) Regulations 2014 and interest thereon at 18 % p.a. from 18 June, 2018.

1. B.S.Channabasappa & Sons,
2. S.K.Veerbhadrappa & Co.
3. Sridevi Trading Company
4. Shri Tradco India Pvt. Ltd.

..... **Petitioners**

Appearance of the Parties

For Petitioners in Case No. 100, 101, 121 and 122 of 2021 : Ms. Margaret Jyoti D'Souza (Adv.)

For MSEDCL : Shri Ravi Prakash (Adv)

Daily Order

1. The Commission took up the hearing of the Case Nos. 100 of 2021, 101 of 2021, 121 of 2021 and 122 of 2022 together as the issues were similar in nature. The Petitioners and Respondent consented for the same.
2. Advocate of Petitioners re-iterated the submissions as made out in the Petitions and further stated that:
 - (a) All Facts others than name and amounts are similar in these four cases. These Petitions are filed under DOA Regulations 2014. As per Regulation 26.8 of DOA Regulations 2014, surplus units after setting off need to be purchased by the Distribution Licensee at Average Power Purchase Cost (APPC). Pursuant to issuance of the Circular issued by MSEDCL, invoices for these over injected surplus units under Open Access were raised in 2015 and 2016. As no payments were made, reminders were issued. Subsequently, MSEDCL issued corrigendum modifying the APPC at 3.46/Unit and hence revised invoices were again raised on the MSEDCL.
 - (b) MSEDCL had audited the invoices and submitted the Report on 30 August 2019 and confirmed the same for payment of over injected units. As per the Section 18 of the Limitation Act 1963, the Audit Report Acknowledged the liability of payment by MSEDCL and hence the limitation period runs from 30 August 2019. In spite of auditing the invoices and confirmation for the payment, no payment for over injected units made by MSEDCL.
 - (c) The Petitioners submitted the revised invoices in June 2018 post corrigendum to the Circular. Further, Hon'ble Supreme Court Judgement dated 23 September 2021 in Miscellaneous Application No. 665 of 2021 in SMW (C) 3 of 2020 (*In RE: Cognizance for extension of limitation*) for exemption and extension of limitation period due to outbreak of COVID-19 pandemic is applicable in the instant Cases. Hence, the claim of the Petitioners is within the limitation period and sought direction to MSEDCL for the payment of over injected units

3. Advocate of MSEDCL re-iterated the submissions as made out in the Replies and further stated that:
- (a) MSEDCL letter dated 30 August 2019 of the Superintending Engineer (SE), Satara MSEDCL addressed to the Chief Engineer, Renewable Energy (CE RE) MSEDCL, regarding auditing of the invoices was internal departmental communication of MSEDCL and not a decision of MSEDCL.
- (b) Further, the Advocate of MSEDCL referred to the Hon'ble Supreme Court Judgments dated 25 August 2009 in Civil Appeal No.8500-8501 of 2001 (*Shanti Sports Club and Ors Vs Union of India (UOI) and Ors.*) which rules that noting in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned. However, in the present matter, SE Satara of MSEDCL is not the final decision making authority for the liabilities of payments. Therefore, letter between the two departments of MSEDCL cannot be considered as an acknowledgment of the liabilities under Section 18 of the limitation Act.
- (c) Hence, the limitation period cannot be considered from 30 August 2019 as claimed by the Petitioners.
4. The Commission enquired with MSEDCL as to what is the procedure and time frame for processing the invoices/bills for the surplus over-injected units submitted by the Generators. In reply, the Advocate of MSEDCL sought one week's time to file submission on this issue. Accordingly, the Commission directs MSEDCL to file submissions within a week with copy to the Petitioners who could file their reply, if any within a week of receipt of such submissions.

The hearing in the matter is concluded and the Case Nos. 100, 101, 121 and 122 of 2021 are reserved for Orders.

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I. M. Bohari)
Member**

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