ETERNITY LEGAL
Advocates & Solicitor
Patent & Trademark Attorneys

ETERNITY:LAW APPRISE

*Private Circulation Only JULY 2025

CHANGE IN NATURE OF INDUSTRIAL ACTIVITY, NOT 'UNAUTHORISED USE' UNDER SECTION 126 OF THE ELECTRICITY ACT, 2003

Case Name: Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) v. Azhar Ahmed Qaisar Ahmed

Case No.: Writ Petition No. 428 of 2019

Court: High Court of Bombay, Nagpur Bench

Date of Judgment: July 09, 2025

Facts

The **Respondent** i.e., Azhar Ahmed Qaisar Ahmed, operated a small-scale packaged drinking water unit in Akola, Maharashtra. The electricity connection for the premises had originally been sanctioned by Maharashtra State Electricity Distribution Company Limited **("MSEDCL")** under the industrial tariff category for manufacturing mattresses.

In 2018, MSEDCL conducted a spot inspection and found that the consumer was no longer manufacturing mattresses but was instead operating a reverse osmosis (RO) water purification and packaging plant. On that basis, MSEDCL alleged a change in the purpose of electricity use and treated the activity as "commercial" rather than "industrial". Consequently, it issued an assessment bill of Rs. 2,19,000/- (Rupees Two Lakhs Nineteen Thousand Only) under Section 126 of the Electricity Act, 2003 ("**Act**"), for "unauthorized use of electricity."

The Respondent challenged this assessment before the Appellate Authority & Superintending Engineer ("**Appellate Authority")**, contending that the water purification and packaging process still constituted a manufacturing activity, thus falling under the industrial category. The Appellate Authority accepted the argument and, in October 2018, set aside the assessment order, holding that MSEDCL had failed to prove either unauthorized use or loss to the licensee.

Aggrieved, MSEDCL filed the present writ petition before the Hon'ble Bombay High Court (Nagpur Bench) ("**High Court**"), arguing that the Appellate Authority had misapplied Section 126 of the Act and that the change in activity amounted to unauthorized use warranting reassessment.

Issues

1. Whether the change in the nature of industrial activity from mattress manufacturing to packaged drinking water production constituted "unauthorized use of electricity" under Section 126 of the Act.

2. Whether MSEDCL could lawfully reclassify the consumer's use from "industrial" to "commercial" in the absence of demonstrable revenue loss or explicit violation of tariff classification.

Findings and Analysis

1. Interpretation of "Unauthorized Use" under Section 126 of the Act

The Hon'ble High Court undertook a close reading of Section 126(1) of the Act which empowers the assessing officer to penalize consumers for unauthorized use of electricity. The Hon'ble High Court emphasized that the provision is penal in nature and, therefore, must be construed strictly. To invoke Section 126 of the Act validly, three (3) essential elements must exist:

- An act of unauthorized use or deviation from sanctioned purpose;
- A corresponding wrongful gain to the consumer; or
- A demonstrable loss to the licensee.

In the present case, MSEDCL failed to produce any material evidence demonstrating that the consumer's change in activity resulted in any loss of revenue, tampering with metering equipment, or misuse of electricity beyond sanctioned load.

2. Industrial character of packaged drinking water units

The Hon'ble High Court found that the process of manufacturing packaged drinking water involves industrial operations such as filtration, purification, treatment, and bottling each requiring machinery and manufacturing processes. Hence, the change from mattress production to packaged water manufacturing did not alter the essential nature of the electricity use. Both activities were industrial in character.

The Hon'ble High Court noted that MSEDCL's own circulars and Ld. Maharashtra Electricity Regulatory Commission ("**MERC**") tariff orders had not classified RO-based packaged water plants as commercial units. The absence of any clear regulatory directive to that effect substantially weakened MSEDCL's case.

3. Judicial approach to tariff classification

The Hon'ble High Court reiterated that *tariff classification* under the Act is a technical and expert determination, guided primarily by Ld. MERC. Courts are generally reluctant to interfere with such classifications unless they are patently arbitrary or contrary to law.

Relying on *Ganapath Singh Gangaram Singh Rajput v. Gulbarga University (2014) 3 SCC 767*, the Hon'ble High Court held that when two (2) interpretations are possible, judicial deference should be given to the interpretation of the competent expert or regulatory authority. Since the Appellate Authority and the Consumer Grievance Redressal Forum had both held the activity to be industrial, the Hon'ble High Court found no reason to depart from that view.

4. Inapplicability of precedents cited by MSEDCL

MSEDCL's reliance on *Malabar Hills Citizens' Forum v. BEST Undertaking (2016)* was found to be misplaced. In that case, electricity was utilised for recreational and residential amenities, which were clearly categorized as "**commercial**" under the relevant tariff orders. The present case, however, concerned industrial production and processing, rather than service or entertainment activity. Hence, the precedent was inapplicable to the facts of the present case.

5. Role of regulatory circulars and Micro Small Medium Enterprises ("MSME") status

The Respondent produced the Udyog Aadhaar and MSME registration certificates, evidencing recognition as a small-scale industrial enterprise. These official classifications carried significant evidentiary weight in determining the nature of the activity. The Hon'ble High Court referred to MSEDCL's internal circulars, which clarified that assessment under ***Section 126 of the Act should be confined to instances of financial loss or wrongful gain*** not merely a change in the product or manufacturing process.

Conclusion

The Hon'ble High Court dismissed writ petition filed by MSEDCL's and upheld the order of the Appellate Authority. The Hon'ble High Court clarified that Section 126 of the Act is not intended to penalize every variation or deviation in the nature of industrial activity but only to address instances involving dishonest abstraction or wrongful financial gain. Therefore, arbitrary reclassification of tariff categories in the absence of express regulatory sanction is impermissible.

The key conclusions were:

1. The packaged drinking water unit constituted an industrial activity, involving a manufacturing process covered under the industrial tariff category.

2. There was no unauthorized use within the meaning of Section 126 of the Act, as no misuse, tampering, or financial loss was demonstrated.

3. The assessment bill of Rs. 2,19,000/- (Rupees Two Lakhs Nineteen Thousand Only) raised by MSEDCL was illegal and unsustainable, and the demand was consequently quashed**.**

KEY REGULATORY CHANGES IN INTER-STATE TRANSMISSION SYSTEM CHARGES AND LOSSES UNDER CERC (FOURTH AMENDMENT), 2025

The present amendment i.e., Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Fourth Amendment) Regulations, 2025 ("**Amendment**") introduces significant modifications to the framework governing the apportionment of Inter-State Transmission System Charges and associated losses, particularly in view of the growing role of Renewable Energy ("**RE**"), storage technologies, and the imperative of grid stability. These changes primarily address definitional consistency, rationalisation of cost apportionment among Designated ISTS Customers ("**DICs**"), and the operational treatment of dual-connected generating stations a growing segment in India's integrated grid.

1. Inclusion of New Definitions under Regulation 2

The Amendment introduces new sub-clauses i.e., (Aa-I) and (Aa-Ii) after clause (Aa) under Regulation 2 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 ("**Principal Regulation**"), inserting definitions for:

i. (Aa-i) defines "Tariff Regulations" as the CERC (Terms and Conditions of Tariff) Regulations, 2024, as amended from time to time.
ii. (Aa-ii) defines "Terminal Bay" as per the General Network Access ("**GNA**") Regulations.

The explicit reference to the CERC (Terms and Conditions of Tariff) Regulations, 2024 ("**Tariff Regulations, 2024**") and inclusion of "Terminal Bay" align cost allocation, tariff computation, and interface definitions across the GNA and Sharing frameworks, ensuring regulatory consistency and uniform application for all stakeholders, including the Central Transmission Utility ("**CTU**") and inter-state generating stations.

2. Rationalisation of Transmission Charge Apportionment – Regulation 9(8)

The revised proviso to Regulation 9(8) mandates that all DICs with separate GNA within a State shall share Inter State Transmission System ("**ISTS**") transmission charges proportionately, ensuring equitable, cost-reflective allocation, preventing cross-subsidisation, and reinforcing the user-pays principle.

3. Treatment of Dual Connectivity and Deviation Computation – Regulation 12(1)(a)

Two (2) new provisos are inserted after the third proviso to sub-clause (a) of Regulation 12(1):

The new provisos mandate net-metered computation of deviations for dual-connected generators and require State Transmission Utilities to share access data with National Load Despatch Centre ("**NLDC**") and CTU, ensuring accurate charge settlement, avoiding double counting, and enhancing coordination, transparency, and grid efficiency across ISTS and Intra State Transmission system.

4. Transmission Charge Waiver Framework – Regulation 13

(i) Inclusion of Offshore Wind-Based Renewable Energy Generating Station ("REGS")

The amendment to Regulation 13(2) includes "REGS based on Offshore Wind" within transmission charge waivers, aligning with national offshore wind policy and renewable energy targets, and providing regulatory clarity and support for offshore wind integration.

(ii) Inclusion of Hydro, Offshore Wind, and Green Hydrogen – Substitution of Sub-Clauses (e) and (f)

Sub-clause (e): Establishes a phased waiver scheme for hydro projects, granting full waivers for those with PPAs signed or construction awarded by June 30, 2025, tapering annually until 2028 to encourage timely execution.

Sub-clause (f): Extends waivers to Offshore Wind and Green Hydrogen/Ammonia projects—full waivers for offshore wind up to 31 December 2032 (tapering till 2035) and for green hydrogen/ammonia plants up to 2033, with 25-year durations linked to commissioning. Projects sourcing at least 51% power from renewable or hydro sources receive the higher applicable waiver.

(iii) Insertion of Sub-Clauses (h) and (i): Force Majeure Extension and Compliance Verification

Sub-clause (h): Allows projects [REGS, Renewable Hybrid Generating System, or Energy Storage System ("**ESS**")] scheduled for Commercial Operation Date ("**COD**") on or before June 30, 2025 to retain waiver eligibility even if delayed due to force majeure, provided COD is achieved within the extended period (up to two six-month extensions).

Sub-clause (i): Mandates that the 51% renewable-charging criterion for ESS be self-declared and verified by NLDC post financial year. Non-compliance triggers retrospective withdrawal of waivers and revised billing. These provisions balance flexibility with accountability, ensuring waiver benefits align with actual renewable usage.

(iv) Clarification on Connectivity-Linked Yearly Transmission Charges ("YTC Liability") – Regulation 13(3*j*)

The revised proviso specifies that where terminal bays are commissioned but the corresponding connectivity grantee's project is not operational, the grantee must pay YTC for such bays. This ensures cost recovery for the CTU and removes ambiguity

regarding unutilised transmission assets, maintaining tariff neutrality for other users.

(v) Terminology Update: Consistency in Scope

All references to "Associated Transmission System" are replaced by "Associated Transmission System and Terminal Bay(s)" in clause (6) of Regulation 13. This harmonises the regulatory text with the physical scope of connectivity assets, ensuring bay-level inclusion in cost and availability calculations.

(vi) Transmission Availability and Cost Attribution – New Clauses (14) and (15)

Clause (14): Clarifies that Transmission System Availability Factor shall be determined strictly per the Tariff Regulations, removing discrepancies between bid-based and regulated frameworks.

Clause (15): Empowers CTU to determine YTC for elements lacking standalone charges, by apportioning integrated project costs on a rational basis.

Conclusion

The Amendment establishes a harmonised framework integrating financial, operational, and environmental objectives in India's power sector. The amendments align the charge-sharing mechanism with the GNA regime, clarify provisions for dual-connected generators and ESS, formalise waivers for renewable and green hydrogen projects, and link cost adjustments to the Tariff Regulations, 2024. Collectively, they enhance regulatory certainty, transparency, and efficiency, advancing a unified, equitable, and sustainable national grid aligned with India's decarbonisation goals.

Dear Readers,

In case you do not wish to receive our monthly update, please send us email on legalupdates@eternitylegal.com with the subject as “Unsubscribe”.

Warm Regards,

Dipali Sarvaiya Sheth

Founder

ETERNITY LEGAL
Advocates & Solicitor
Patent & Trademark Attorneys

D-226, Neelkanth Business Park,

Vidyavihar (West), Mumbai– 400086

Email: contact@eternitylegal.com | Tel no.: +91 22 2515-9001

Website: www.eternitylegal.com