

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005  
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**Case No. 81 of 2008**

**In the matter of Petition seeking review/ clarification of the Commission's Order dated 24.04.2007, passed in Case No. 75 of 2006, in the matter of approval of REL's Distribution business ARR for Control Period FY 2007-08 to FY 2009-10 and Retail tariff for FY 2007-08.**

**Shri A. Velayutham, Member**  
**Shri S. B. Kulkarni, Member**

R.S.Associates,  
113-117, 1<sup>st</sup> Floor,  
RASSAZ Theatre,  
Siddhartha Nagar Layout,  
Opp. Singapore Plaza,  
Mira Road (East), District – Thane.

...Petitioner

Versus

Reliance Energy Limited,  
Santacruz (East),  
Mumbai – 400 055.  
Br. Off: 369, DSV Road,  
Kandivali (West),  
Mumbai – 400 067.

... Respondent

**ORDER**

**Dated: December 17, 2008**

M/s. R.S. Associates filed a Petition on 14.8.2008 and made the following submissions therein:

(a) Consequent to the Commission's Order dated 24.4.2007, the Respondent has erroneously changed the tariff category of the Petitioner's premises 'RASSAZ' cine theatre from LTP-2 to LT-9 with effect from 24.4.2007.

(b) Being a responsible organization, the Petitioner regularly paid the whole bill amounts without making any default or delay and presuming on good faith, that the excess amount will be refunded after due clarification, however, despite various correspondences and emails, it did not get any positive reply from the Respondents.



(c) By virtue of Section 3(13)(a) and (b) of the Bombay Entertainment Duty Act, 1923, Multiplexes are exempted from entertainment tax and are getting many other privileges.

(d) The premises 'RASSAZ' cine theatre is not a Multiplex within the meaning of Section 3 (13)(a) and (b) of the Bombay Entertainment Duty Act, 1923 and the Petitioner is paying 40% Entertainment Tax to the Government of Maharashtra.

(e) By virtue of Section 2(f-a) of the Bombay Entertainment Duty Act, 1923:

*"Multiplex Theatre Complex means an entertainment-cum-cultural centre which provides –*

*i) within the limits of Municipal Corporation of Brihanmumbai not less than four theatres in a complex with minimum seating capacity of 1250; and*

*ii) anywhere else in the State, not less than three theatres in a complex with minimum seating capacity of 1000."*

(f) The 'RASSAZ' has only two theaters in its complex with total seating capacity of 783 all together. Therefore, the stand of the Respondents is contrary to the Bombay Entertainment Duty Act, 1923. The complex cannot be treated as a Multiplex.

(g) By virtue of Section 3 (13) (a) and (b) of the Bombay Entertainment Duty Act, 1923, Multiplexes are exempted from Entertainment Tax by the Government. The 'RASSAZ' is not getting any tax benefits since its origin and regularly paying 40% entertainment tax to the Government of Maharashtra. Therefore, it is clear that 'RASSAZ' is not a Multiplex.

(h) As per the Order of the Commission, the tariff category LT-4 is applicable to cine theatres and the same was applied to other theatres in this region. The 'RASSAZ' also falls within the category of a theatre and hence, the Petitioner deserves to be placed in category LT-4 instead of LT-9.

(i) The act of the Respondents in defining the premises 'RASSAZ' as a Multiplex is bad in law. The Respondent should be directed by the Commission to charge tariff under the consumption tariff category of LT-4 instead of LT-9, in respect of the electricity connection connected at the premises of the Petitioner.

2. The Petitioner has made the following prayers in its Petition:

*"a) This Hon'ble Commission be pleased to re-define and clarify the word Multiplex in view of the section 2 (f-a) of the Bombay Entertainment Duty Act, 1923, setting aside the levy of the arbitrary tariff of LT-9 by the respondent holding the premises Rassaaz does not fall within the scope and ambit of Multiplex.*



b) *This Hon'ble Commission be pleased to set aside and cancel the tariff LT-9 of the respondent and fix the Tariff to LT-4 in respect of the electricity connections vide Contract Account No. 102689727 and 102689728.*

c) *Hon'ble Commission further be pleased to direct the Respondent to refund the additional/ excess amounts of bills already recovered from the Petitioner."*

3. On 4.9.2008, the Petitioner filed an application seeking permission to add certain grounds not mentioned in the Petition as under:

(a) The Commission has absolute jurisdiction to entertain and try the present Petition under Regulation 85 (a) of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004.

(b) The Bombay Entertainment Duty Act, 1923 defines the word "Multiplex" under Section 2(f-a) thereof. The decision, definition, and direction dated 24.4.2008 concerning the Tariffs for Multiplexes requires clarification in accordance with the Bombay Entertainment Duty Act, 1923.

4. On 15.10.2008, the Respondent filed its reply to the Petition. In the said reply, the Respondent has made the following submissions:

(a) The Petition is not maintainable in view of the admissibility criteria prescribed under Regulation 85(a) of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 which reads as under:

*" 85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission."*

(b) The Commission had vide its order dated 23.9.2008 in Case No. 31 of 2008 referred to the Hon'ble Supreme Court's Judgment dated 14.8.2008 in Civil Appeal No. 2846 of 2006 and held that the Commission will have no jurisdiction to decide on billing disputes between the consumers and licensees.

5. On 21.10.2008, a hearing in the said matter was held before the Commission. In the said hearing, Shri D. R. Mishra, Advocate was present on behalf of the Petitioner while Shri Vivek Mishra, Shri Krishna Shenoy and Shri Sanjay Balakrishnan were present on behalf of the Respondent.



6. In the said hearing, the Counsel for the Petitioner submitted that the word "Multiplex" was not defined in the Commission's Clarificatory Order dated 21.9.2007, but has been defined under the Bombay Entertainment Duty Act, 1923. He further submitted that the Petitioner was paying entertainment tax although Multiplexes as defined under the Bombay Entertainment Duty Act, 1923 were exempt from paying entertainment tax. He further submitted that the Respondent has erroneously changed the tariff category of the Petitioner's premises 'RASSAZ' cine theatre from LTP-2 to LT-9 with effect from 24.4.2007. He further pleaded before the Commission to define and declare that the premises 'RASSAZ' cine theatre is not a Multiplex and LT-9 tariff should not be applicable to it.

7. Shri Vivek Mishra, on behalf of the Respondent submitted that the Petition was not maintainable as the dispute was in the nature of a billing dispute. He added that the correct Forum before which the Petitioner should present his case is the Consumer Grievance Redressal Forum ("CGRF").

8. The Respondent was directed to file its substantive reply within one week and to serve a copy of the same on the Petitioner. The Petitioner was directed to file his rejoinder to the substantive reply of the Respondent within one week from the date of receipt of the Respondent's substantive reply.

9. The Respondent filed its reply on 3.11.2008, wherein it has submitted as under:

- a) The contentions in the reply earlier filed have been repeated and reiterated;
- b) It has been further submitted that even on merits, the Petition ought not be entertained;
- c) It has been submitted that the Respondent is only billing the Petitioner on the basis of the classification made by the Commission in the Order dated 24.4.2007. Annexure IV to the said Order which sets out the tariff schedule has clearly made a separate category viz., LT 9, whereunder multiplexes and shopping malls are to be billed. The fact that the Petitioner has more than one screen in its premises is admitted. Further, the fact that the Petitioner not only has a sanctioned load above 20 KW but also consumes more than 20 KW is also not disputed. The ingredients set out in Annexure IV, clause 9, are clearly satisfied insofar as the Petitioner's classification as a multiplex is concerned.
- d) While complying and following the Tariff Order dated 24.4.2007, Respondent has classified the Petitioner in a category approved by the Commission based on the purpose of usage of supply, which indisputably is for more than one screen and with load more than 20 KW. No tariff category is created by Respondent and therefore, the Respondent is clearly following Regulation 13 of the MERC (Electricity Supply Code & Others Conditions of Supply), Regulations 2005. The purported reliance on the Bombay Entertainment Duty Act, 2003 is misplaced and has no relevance in the matter, especially in view of the order dated 23.9.2008 passed by the Commission in Case No. 31 of 2008 in the matter of Hotel & Restaurant Association, Western India Region vs. MSEDCL, wherein a contention similar to that raised by the Petitioner herein has been rejected by the Commission.
- e) Without prejudice to the aforesaid, it is submitted that multiplex theatre has been defined in clause (da) of Section 80-IB (14) of the Income-Tax Act,



1961, to mean a building of a prescribed area comprising of two or more cinema theatres and commercial shops of such size and numbers having such other facilities and amenities as may be prescribed. Thus, the aforesaid definition supports the categorization of the Petitioner under LT 9, and the same also makes it clear that the Petitioner's contention that in view of the provisions of Bombay Entertainment Duty Act, 1923, the classification is incorrect ought not to be accepted by the Commission.

- f) The Petitioner is guilty of delay and laches in approaching the Commission and the year in question has already come to an end. Any change in the classification, now ordered by the Commission will impact the cash flow of Respondent. No ground for condonation of delay whatsoever has been made by the Petitioner.
- g) In any event and without prejudice to the aforesaid, it is respectfully submitted that the Petitioner under the current Tariff Order is being billed in LT II (b) category. The tariff made applicable by the Commission is similar to the tariff earlier applicable to the Petitioner who has been classified in LT 9 category for FY 2007-08. This further fortifies the contention of the Respondent that the categorization made for FY 2007-08 was correct.
- h) In the circumstances, the present petition is liable to be dismissed with costs.

10. Having heard the Parties, and after considering the material placed on record, the Commission is of the view as under:

11. The tariff category of LT-4 (INDUSTRIAL) has been specified in the Tariff Order dated 24.4.2007, which is applicable to LT Cinemas and Theatres besides others. Paragraph 4 of the Annexure IV of the Tariff Order dated 24.4.2007 provides as under:

***“4 LT-4 (INDUSTRIAL)***

*This category was formerly known as LT Industrial – (LTP -2) category.*

***4.1 APPLICABILITY***

*Electricity used at Low / Medium voltage used by LT Industries with sanctioned load above 20kW (equivalent to 26.5 HP), LT Film studios (Film Companies), LT Cinemas and Theatres, IT Industry and IT enabled services (as defined in the Government of Maharashtra policy).”*

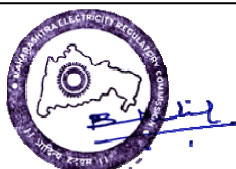
The rate schedule applicable to Multiplexes is contained at paragraph 9 of Annexure IV of the Tariff Order dated 24.4.2007 as under:

***“9 LT-9 (Multiplexes and Shopping Malls (MSM))***

***9.1 APPLICABILITY***

*This category will be applicable to shopping malls and multiplexes with sanctioned load above 20 kW.”*

12. In both the above tariff categories of LT-4 and LT-9, there is one thing in common and that is of sanctioned load being above 20 kW. The Respondent has vide its reply submitted that the premises ‘RASSAZ’ cine theatre has sanctioned load above 20 kW. Therefore, what remains to be examined is whether the premises



'RASSAZ' is within the meaning of "LT Cinemas and Theatres" or "multiplexes". The Petitioner has contended that the Tariff Order dated 24.4.2007 does not define the term "multiplexes", and hence, part of the prayers made is that the Commission is required to "to re-define and clarify the word Multiplex in view of the section 2 (f-a) of the Bombay Entertainment Duty Act, 1923".

13. At this stage, the Commission would like to clarify that the Commission would be well within its powers and jurisdiction to issue a clarification on the Order dated 24.4.2007 that it has passed. This does not amount to adjudication of dispute between the consumer and distribution licensee but will be taken into account by the Respondent / CGRF, as the case may be. The Clarification is as follows:

(a) Section 2(f-a) of the Bombay Entertainment Duty Act, 1923, provides as under:

*"Multiplex Theatre Complex" means an entertainment-cum-cultural centre which provides –*

*i) within the limits of Municipal Corporation of Brihanmumbai not less than four theatres in a complex with minimum seating capacity of 1250; and*

*ii) anywhere else in the State, not less than three theatres in a complex with minimum seating capacity of 1000*

*and such other incidental and connected matters and facilities and multi entertainment activities and other facilities as specified by Government in this behalf, by notification in the Official Gazette".*

Section 80-IB (14)(da) of the Income Tax Act, 1962 as in force, provides as under:

*"multiplex theatre" means a building of a prescribed area, comprising of two or more cinema theatres and commercial shops of such size and number and having such other facilities and amenities as may be prescribed."*

14. From a reading of the above definitions, there is clearly a difference in how the term "Multiplex Theatre Complex" has been defined in the Bombay Entertainment Duty Act, 1923, and how the term "multiplex theatre" has been defined in the Income Tax Act, 1962 as in force. As contended, the Tariff Order dated 24.4.2008 does not define the term "multiplexes". Therefore, the Commission has been called upon to clarify as to how the said term "multiplexes" should be understood for the applicability of the correct rate schedule. The question before the Commission is whether the term "multiplexes" should be understood as defined in the Bombay Entertainment Duty Act, 1923 or as defined in the Income Tax Act, 1962 as in force. Whereas the Bombay Entertainment Duty Act, 1923 is an enactment of the State of Maharashtra, the Income Tax Act, 1962 is an enactment of the Parliament. Entry 62 of List II- State List under the Seventh Schedule of the Constitution of India provides as under:



*“62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.”*

In the case of *"Y. V. Srinivasamurthy v. State of Mysore"* AIR 1959 SC 894, the Supreme Court had the occasion to give its findings on the issue as to whether “cinemas” were included in Entry 62 of List II- State List. The Supreme Court held thus:

3. ....

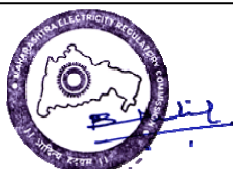
*Learned counsel concludes that that law made with respect to entry 62 cannot permit imposition of taxes on cinemas, for the word "cinemas" mentioned in entry 33 has been omitted from entry 62. We do not think there is any substance in this argument. Learned counsel agrees that the words 'entertainments' and 'amusements' are wide enough to include theatres, dramatic performances, cinemas, sports and the like. If his argument is correct, then, on a parity of reasoning, the State Legislature will have no competence to enact a law imposing a tax on theatres or dramatic performances or sports, for none of those words are mentioned in entry 62. This is sufficient to repel this argument. The truth of the matter is that cinema" had to be specifically mentioned in entry 33 of List II in order to avoid any possible conflict between it and entry 60 in List I.*

15. Therefore, it cannot be contended that because the word “cinema” is specifically mentioned in Entry 33 of List II and omitted from Entry 62 of List II- State List, no tax can be imposed under the said Entry 62 upon cinemas. In any case, Entry 33 of List II gives power to the State Government to legislate upon “Theatre and Dramatic performances, cinemas subject to the provisions of Entry 60 of List I; sports, entertainments and amusements”. However, Entry 60 of List I gives power to the Parliament to legislate on “Sanctioning of cinematograph films for exhibitions”. This Entry 60 of List I relates only to one particular aspect of cinematograph viz., the sanctioning of films for exhibition. But the legislations which have been brought before the Commission for interpretation do not deal with the sanctioning of films for exhibition. Therefore, Entry 60 of List I is not relevant for the purposes of this Petition.

16. Under Article 246 of the Constitution of India, the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule. However, under Article 246, the Parliament still has the powers to legislate on matters enumerated in List II. Article 246 read as under:

*“Art. 246. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).*

*(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).*



(3) Subject to clause (1) and (2) the Legislature of any State have exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in the Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

Clause (4) is not relevant for the present petition and so are not Clauses (1) and (2) because the Commission is only concerned with Entry 62 of List II- State List under the Seventh Schedule of the Constitution. The State enactment will prevail over the Central enactment on a matter enumerated in List II- State List. The Bombay Entertainment Duty Act, 1923 can therefore be looked upon for issuing clarification and not the Income Tax Act, 1962. Therefore, the definition of "multiplex theatre" under Section 80-IB (14)(da) of the Income Tax Act, 1962 cannot be taken into account.

17. In view of the above discussions, the Commission hereby clarifies that the term "multiplexes" as used in the Tariff Order dated 24.4.2007 will have the meaning ascribed under Section 2(f-a) of the Bombay Entertainment Duty Act, 1923. The clarifications given in this Order will come into effect from 24.4.2007, and will be applicable for the period for which the tariffs determined under the Tariff Order dated 24.4.2007 were in force, i.e, till May 31, 2008.

18. Given the lack of a proper definition of 'Multiplexes' under the Tariff Schedule approved by the Commission, the interpretation of the same could have led to the ambiguity. Hence, the Respondent should revise the bills of the affected consumers in line with the above clarifications, which may give the necessary relief to the Petitioner. However, in case the Petitioner is still aggrieved, then he may seek redressal from the appropriate Consumer Grievance Redressal Forum (CGRF), which will deal with individual billing disputes.

19. The issue of whether the premises 'RASSAZ' is within the meaning of "LT Cinemas and Theatres" or "multiplexes" would be required to be gone into by the Respondent or the CGRF (that is if the Petitioner initiates such proceedings), based on the clarification that the Commission has issued in this Order in relation to the prayer made by the Petitioner requiring the Commission "to re-define and clarify the word Multiplex in view of the section 2 (f-a) of the Bombay Entertainment Duty Act, 1923".

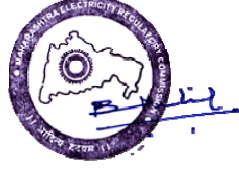
20. However, whether the premises 'RASSAZ' cine theatre would come within the meaning ascribed under Section 2(f-a) of the Bombay Entertainment Duty Act, 1923 is a point which necessarily involves an investigation into facts and depends upon the evidence that may be adduced. No such evidence can be led under the present proceedings as the Commission will not go into adjudication of billing dispute between the consumer and distribution licensee.



With the above clarifications, the present petition stands disposed of.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member



(P. B. Patil)  
Secretary, MERC