BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATIONS NO. 45,46,47,48,49,55, & 56 OF 2021

In the matter of change of tariff category

(i)	Mayur Cold Storage Pvt. Ltd.	(Rep.45 of 2021)
(ii)	Lalji Lakhamshi & Sons (Agro) Pvt. Ltd.	(Rep.46 of 2021)
(iii)	Amratlal Ashokkumar Cold Storage & Ice Factory Pvt. Ltd.	(Rep.47 of 2021)
(iv)	Meramax Pvt. Ltd.	(Rep.48 of 2021)
(v)	Shree Sadhk Stockage	(Rep.49 of 2021)
(vi)	Welworth Foods Pvt. Ltd.	(Rep.55 of 2021)
(vii)	Sanfoods and Cold Storage Pvt. Ltd.	(Rep.56 of 2021)

…… Appellants

V/s.

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

Appearances:

For Appellant : 1. Pratap Hogade, Representative
2. Sudhanshu Bhatt

For Respondent : 1. R.B. Mane, Superintending Engineer
2. M. K. Sangle, Executive Engineer

Coram: Deepak Lad

Date of hearing: 20th August 2021

Date of Order : 4th October 2021

ORDER

Representations No. 45,46,47,48 and 49 of 2021 are filed on 3rd June 2021 and Representations No. 55 and 56 of 2021 are filed on 2nd July 2021 under Regulation 19.1 of the Maharashtra Electricity

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020) against the individual Review Orders dated 31st March 2021 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).

2. The date of issue of the original and their review orders in these Representations are tabulated below:

Table 1

Rep. No.	Name of Appellant	Date of filing the complaint to the Forum	Original Order of the Forum		Order of the Forum in Review Application	
			Case No.	Date	Case No.	Date
45/2021	Mayur Cold Storage Pvt. Ltd.	12.03.2020	129 of 2020	19.11.2020	47 of 2021	31.03.2021
46/2021	Lalji Lakhamshi & Sons (Agro P. Ltd.)		123 of 2020		41 of 2020	
47/2021	Amratlal Ashokkumar Cold Storage & Ice Factory Pvt. Ltd.		128 of 2020		46 of 2020	
48/2021	Meramax Pvt. Ltd.		125 of 2020		43 of 2020	
49/2021	Shree Sadhk Stockage		126 of 2020		44 of 2020	
55/2021	Welworth Foods Pvt. Ltd.		127 of 2020		45 of 2020	
56/2021	Sanfoods and Cold Storage Pvt. Ltd.		124 of 2020		42 of 2020	

All the Appellants had initially filed their respective individual grievance applications with the Forum on 12.03.2020. Case wise details of which are given in the above **Table 1**. The Forum issued orders in all these cases on 19.11.2020 and partly allowed the grievance applications. The operative part of its order being same in individual cases, is reproduced below:

"2. The applicant is entitled for the recovery of refund of the tariff HT-V B Agriculture and other tariff for a period of 24 months prior to filing of this petition of this CGRF (12.03.2020).

3. The Respondent hereby directed to prepare the bill of refund remaining and it be adjusted in future bill. MSEDCL shall do needful to adjust the refund amount in the future bills".

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

3. Aggrieved by the Orders of the Forum dated 19.11.2020, all the Appellants have individually filed Review Applications with the Forum on 10.12.2020 which are registered as shown in **Table 1**. All these Review Applications were rejected by the Forum by its individual orders dated 31.03.2021.

4. Not satisfied with the Individual Orders of the Forum dated 31.03.2021 on Review Applications, these Appellants have filed Representations separately. The issue involved in all these Representations being same, they are combined for the purpose of this order. The submission of the Appellants in brief is generalised as below: -

(i) All the Appellants are HT Consumers of MSEDCL Vashi Circle and having existing tariff category of HT V(B): HT – Agriculture Others. Details are tabulated as below: -

Table 2

Rep. No.	Name of Appellant	Consumer No.	Date of Connection	Sanctioned Load (KW)	Present Contract Demand (KVA)
45/2021	Mayur Cold Storage Pvt. Ltd.	000299024210	01.04.2000	950	850
46/2021	Lalji Lakhamshi & Sons (Agro) Pvt. Ltd.	000149005072	07.03.1974	473	300
47/2021	Amratlal Ashokkumar Cold Storage & Ice Factory Pvt. Ltd.	000079017981	30.06.1992	400	283
48/2021	Meramax P. Ltd.	000149035490	16.03.2009	830	525
49/2021	Shree Sadhk Stockage	000149041040	13.08.2014	450	425
55/2021	Welworth Foods Pvt. Ltd.	000299024360	16.06.2000	183	180
56/2021	Sanfoods and Cold Storage Pvt. Ltd.	000119026110	20.12.2002	273	182

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(ii) The Commission through its order dated 21.12.2009 in Case No.116 of 2008 issued Errata and Corrigendum Order. This order corrected the earlier one to the extent of applicability of tariff under "HT V: HT – Agricultural". This is made applicable to "Pre-cooling & Cold Storage for Agricultural Produce".

(iii) Then the Maharashtra Electricity Regulatory Commission (the Commission) has issued various directions and clarifications vide its Tariff Orders dated 12.09.2010, 16.08.2012 and 26.06.2015. In this period, the Appellants had applied for change in tariff category. The MSEDCL officials had not denied it but continuously avoided to change the tariff category. In many districts this change was implemented but it was not implemented in Vashi Circle.

(iv) The Commission has created new tariff category HT V(B): HT – Agriculture Others vide its Tariff Order dated 03.11.2016 in Case No. 48 of 2016. After this order, the Appellants through 'Navi Mumbai Cold Storage Owners Welfare Association' had approached the Respondent, Vashi Circle. The Respondent sought guidelines from its Corporate Office vide letter dated 22.03.2017 and 31.03.2017. After continuous follow up for one year by the Appellants and the Association, the Corporate Office has issued guidelines on 05.03.2018 to all MSEDCL Circle Offices and directed to apply HT V(B): HT – Agriculture Others tariff to all concerned consumers with effect from 01.11.2016. Also, Corporate Office issued specific letter to SE Vashi Circle on 08.03.2018 with the list of the consumers in Navi Mumbai and directed for necessary verification and action as per guidelines dated 05.03.2018.

(v) Thereafter, Vashi Circle has changed the Tariff Category of the Appellants from HT-I-A (HT-Industrial) to HT V(B): HT – Agriculture Others from 01.04. 2018. Actually, Corporate Office guidelines are clear that the tariff category change should be effective from 01.11.2016 but Vashi Circle has avoided to implement it. The Appellants have submitted Undertakings and Reminders on 24.04.2018 and 02.09.2019 respectively to the Respondent for change in tariff category and refund of tariff difference for the period of 01.11.2016 to 31.03.2018 as per the Corporate Office guidelines.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(vi) However, having not received any response or approval on refund from the Respondent, the Appellants submitted their complaints to Internal Grievance Redressal Cell (IGRC) on 12.12.2019. The IGRC did not take hearing or issue any orders. Hence, the Appellants filed grievance applications before the Forum on 12.03.2020. The Forum, by its orders dated 19.11.2020 has rejected all the grievance applications.

(vii) The Appellants therefore filed Review Applications before the Forum on 10.12.2020, however, the Forum has rejected all the Review Applications. Hence, these instant Representations are filed before the Electricity Ombudsman (Mumbai).

Submissions / Grounds in Support of the Representation –

(viii) The Respondent, Vashi Circle has not given any response to the Appellants' applications for refund on the basis of the Corporate Office guidelines. Also, IGRC has not even taken cognizance of their complaints. Thereafter, the Forum has also rejected their grievances and review applications on wrong basis. This denial of refund is totally wrong, illegal and against the orders of the Commission and Corporate Office guidelines. The detailed submissions in this regard are given in the following paragraphs.

a) **Corporate Office MSEDCL Guidelines dated 05.03.2018 and 08.03.2018:**

The Respondent, C.E.(Commercial) from Corporate Office has issued clear guidelines to all Circle Offices on 05.03.2018 for applicability and implementation of the HT V(B): HT – Agriculture Others tariff to all the concerned consumers from 01.11.2016 and that too on the basis of the approval of the Competent Authority at the Corporate Office level. Such guidelines cannot be ignored or denied by any circle office of the Respondent. In another letter dated 08.03.2018, specifically to SE Vashi, the C.E. (Commercial) from Corporate Office has clearly included names of ten consumers of Vashi Circle, including names of the Appellants, in general and clearly directed to verify their claims and take further action as per guidelines dated 05.03.2018. But SE Vashi has not done it. This is a gross violation of the Corporate Office guidelines. The

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Appellants are fully eligible for change in tariff category and refund of tariff difference with interest on the basis of Corporate Office guidelines. Hence, the Appellants request the Hon'ble Electricity Ombudsman to implement the guidelines issued by Corporate Office in letter and spirit and to oblige the Appellants.

b) **Compliance of other eligibility conditions:**

The Appellants are fully eligible for HT V(B): HT – Agriculture Others tariff category. Appellants have already submitted all the necessary documents to the Respondent and thereafter, the Respondent has changed their tariff category from April 2018. The Appellants have kept on record following documents for immediate and ready reference as below,

- Copy of SSI registration certificate
- Copy of FSSAI license
- Copy of Factory Act registration certificate
- Copy of an Undertaking for utilizing the cold storage exclusively for Agricultural Products.

c) **Corporate Office Guidelines Compliance:**

After Commission`s Tariff Order dated 03.11.2016, the Appellants have approached the Respondent and expected that it will change the tariff category as per the order, but it was not done by it. Hence, Appellants and Navi Mumbai Cold Storage Owners' Welfare Association approached Vashi Circle in February 2017, who then sent it to Corporate Office for clearance & guidelines. After a long follow-up for a year, Corporate Office has issued guidelines with certain conditions vide its letter dated 05.03.2018. The Appellants have fully complied all the conditions.

d) **Commission`s Tariff Order dated 03.11.2016:**

The Commission`s Tariff Order dated 03.11.2016 in Case No. 48 of 2016 has created a separate new category of HT V(B): HT – Agriculture Others and included all other activities (except Pump sets) in this newly created category, including Pre-Cooling

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Plants and Cold Storage Units. This new category and revised tariff applicable from 01.11.2016.

e) **MSEDCL Commercial Circular No. 275 dated 18.11.2016:**

The MSEDCL has issued Commercial Circular No. 275 on 18.11.2016 for the implementation of the Tariff Order dated 03.11.2016.

- *Page 4 Action Plan - The field officers are directed to categorize properly the consumer in newly created tariff Category/Redefined category by actual field inspection and the data to be immediately updated in the IT data base.*
- *Page 5 Clause - iv) HT Agriculture - Others category has been created. This will include pre-cooling plants and cold storage units for Agricultural Products, Poultries (exclusively undertaking layer and broiler activities, including Hatcheries), high technology agriculture etc.*
- *Page 5 end - All the stipulations & provisions are to be strictly followed.*

It is clear from these directions that whenever there is a change in tariff category with respect to its earlier applications or creation of new tariff category, then it is fully and solely the responsibility of the Respondent to categorize the consumer properly in new/redefined category. As per this circular, it is the duty of the field officers to recategorize the consumers and to update the data in the IT data base. Also, in general, the consumers are not aware of such changes through the tariff orders. Such changes are known to the Respondent officials only. Such changes are not being published in the newspapers. Consumers themselves cannot change their tariff category. Sometimes consumers apply for change in category, but Respondent ignores it. Actually, implementation of such newly created or redefined category changes is the sole responsibility of the Respondent's Authorities/ officers. Also, as per Tariff Order, concerned Tariff Schedule and concerned Commercial Circular, the change in tariff category and revised tariff is applicable to all concerned from 01.11.2016. Hence, it is binding on the Respondent to implement the change with effect from the date of implementation of the Tariff Order i.e., from 01.11.2016. Hence, considering these facts, Corporate Office has issued guidelines for implementation of change in tariff category from 01.11.2016, which may please be noted.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

f) Provisions of Maharashtra Agricultural Produce Marketing (Development and Regulation) Act 1963 (MAPM (D & R) Act 1963):

The important provisions of the MAPM (D & R) Act 1963 are as below,

- Definition of Agricultural Produce as per Section 2(1)(a) - "Agricultural Produce" means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture, (fisheries) and forest specified in the Schedule.
- Section 62 - Power of State Government to amend Schedule.

The Appellants are preserving Agricultural Produce or Agricultural Products as per provisions of this Act and hence, Appellants are fully eligible for the tariff category HT V(B): HT – Agriculture Others.

g) **Amendment Ordinance dated 05.07.2016:**

The Respondent in its Corporate Office guidelines letter dated 05.03.2018 has referred this Amendment Ordinance dated 05.07.2016 to MAPM (D & R) Act 1963. It should be please noted that there is no change or any effect on the tariff applicability due to this Amendment Ordinance.

h) Provisions of "Agricultural Produce (Grading & Marketing) Act 1937" AP (G & M) Act 1937:

The copy of the " AP (G & M) Act 1937" along with the concerned Schedule of items enacted by Government of India is kept on record. Important Provisions are as below:

- Definition of Agricultural Produce as per Section 2(a)

  (a) "agricultural produce" includes all produce of agriculture or horticulture and all articles of food or drink wholly or partly manufactured from any such produce, and fleeces and the skins of animals.

  (h) "Scheduled article" means an article included in the Schedule.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

All the items being preserved by the Appellants in their Cold Storage are included in the list of Schedule appended to AP (G & M) Act 1937 as mentioned above. Hence, the Appellants are fully eligible for HT V(B): HT – Agriculture Others tariff on the basis of this Central Act also.

i) Provisions of Section 62 (6) of the Electricity Act, 2003 and Interest:

Section 62 (6) of the Act reads as below,

S.62(6) - "If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

As per provisions of the Act mentioned above, the Appellants are fully eligible to get the interest on the excess paid amount from the date of payment up to the date of repayment.

j) **Interest - Practice Directions, Circular & Bank Rate:**

The Commission has recently issued the Practice Directions on 22.07.2019, regarding the interest to be paid to consumers. As per Practice Directions the interest rate will be equivalent to the Bank Rate declared by the Reserve Bank of India prevailing during the relevant period.

The Respondent has recently issued Commercial Circular No. 319 dated 28.06.2019 regarding the policy for refund of tariff difference amount to consumers on the basis of Board Resolution No. 1671. As per this circular, the Respondent can retain 12 months amount for adjustments through bills and the excess amount should be refunded to the consumer through direct payment transfer mechanism in case of live consumers.

k) **Compensation**:

The Appellants' complaints are complaints other than bills. Hence, as per Regulation 7.6 of the Maharashtra Electricity Regulatory Commission (Standards of

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 [SOP Regulations 2014], "*In other cases, the complaint shall be resolved during subsequent billing cycle*." Corporate Office MSEDCL has issued guidelines in March 2018. It was necessary and binding on Vashi Circle to implement it in subsequent billing cycle means maximum up to the end of April 2018. Hence, the Appellants are eligible for SOP Compensation of Rs.100/- per week or part thereof from 01.05. 2018.

l) **IGRC and Discrimination:**

In similar two cases, Case No. 49 and 50 of Savala Foods & Cold Storage Pvt. Ltd., IGRC by its Orders dated 26.02.2020 has ordered refund of tariff difference with interest from 01.11.2016. It is to clarify that the two cases of Savala Foods & Cold Storage Pvt. Ltd. and Appellants' grievances are totally identical and 100% similar. No change or difference in the facts. The above mentioned two orders are passed by IGRC in the same period when these petitions were pending before IGRC. This is nothing but clear cut discrimination. The Vashi circle has refunded tariff difference amount of similar in nature of other two consumers, M/s. Prabhu Hira Ice & Cold Storage and M/s. DMK Agro Care Pvt. Ltd. on plain demand without any grievance. This is a clear discrimination between identically placed consumers which is against the law, against the Commission`s orders and also against the Corporate Office directions.

m) **Hon'ble High Court Judgement dated 10.02.2020 in W.P. No. 8712 of 2018**:

Hon'ble High Court has clearly observed in W.P. No. 8712 of 2018 the Action Plan directions in the Respondent's circular for implementation of tariff order which is stated as under:-

> *"Change in tariff category is the sole responsibility of the MSEDCL. It is the duty of the field officers to categorise the consumers in redefined or newly created categories immediately after the order and feed the data in IT data base. Hence consumers cannot be punished due to the ignorance or negligence of the MSEDCL authorities. Hence consumers have full rights to get the benefits of newly created category from the date of implementation of the order."*

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Similar Action Plan was issued by the Respondent in the concerned Commercial Circular dated 18.11.2016 as applicable in the Appellants' case. On this basis also, Appellants are eligible to be categorised as HT V(B): HT – Agriculture Others and eligible for refund with Interest from 01.11. 2016.

(ix) **Issues raised by the Respondent and Comments:**

(1) Tariff applicable after compliance:

The Respondent stated that the Corporate Office Circular bearing No. CE (Comm)/Tariff/cold storage/No. 4759 dated 05.03.2018 includes conditions which are necessary to be fulfilled. Hence, after compliance HT V B tariff is applied.

Comments: It is partly true. The copy of this circular is kept on record. The conditions are (1) DIC Certification (2) FSSAI licensee (3) Undertaking. Appellants wish to clarify that all 7 Appellants had completed and complied all these 3 conditions. After the field inspection, MSEDCL has implemented HT V(B): HT – Agriculture Others tariff from April 2018 in 6 Cases and from May 2018 in Case of Welworth Foods Pvt. Ltd.

But it is also a fact that the Corporate Office in its circular had clearly issued directions that the HT V(B): HT – Agriculture Others tariff to the concerned consumers shall be effective from 01.11.2016 onwards i.e. from the date of implementation of tariff order in Case No. 48 of 2016. This important direction was not complied by the Respondent; hence, Appellants have approached before this Hon'ble Ombudsman for the compliance of this direction.

(2) Corporate Office letter dated 08.03.2018:

It is important that this letter was send specifically to SE Vashi, which includes all earlier references from 22.03.2017 up to 05.03.2018. CE (Commercial) of Corporate Office has clearly included names of 10 consumers from Vashi and issued specific instructions with respect to Navi Mumbai Cold Storage Owners Welfare Association

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

submissions. But MSEDCL Vashi Circle has avoided to implement these directions also. Out of these 10 consumers, refund to 2 consumers were ordered by IGRC and all others are deprived of their legitimate rights

(3) Earlier Period Verification:

MSEDCL stated that the consumers' storage in their Cold Storage Units cannot be ascertained for the earlier period means from November 2016 up to March 2018.

Comments: In fact, it is a gross mistake of the Respondent and not of the consumers. Essentially as per Action Plan, it was the duty of the Respondent to do Spot Verification and to recategorize the consumers in the proper and redefined tariff category. The Appellants have demanded for it from November 2016 to February 2017, but it was not done by the Respondent. Also, the Respondent sent the demand of HT-V-B category to Corporate Office for guidelines in March 2017. At that time also it was the duty of the Respondent to send the proposal along with necessary Spot Inspection Report. But it was not done. It should be noted that in such cases, consumers cannot be vexed when the licensee is at fault. If it was done in February 2017 or earlier, then it was not possible for the Respondent to raise this objection. Hence this question is totally hypothetical and arisen only due to fault of the Respondent, for which consumers cannot be punished.

(4) Earlier Period Reports:

While hearing MSEDCL stated that two consumers were having storage of other than agricultural products, found in August & October 2016 spot inspection report.

Comments: Appellants' refund demand period is from 01.11.2016 to March or April 2018. Hence, any report before November 2016 cannot be considered valid in these cases. Also, the Association and all these 7 consumers had participated in Public Hearing of the then Tariff Petition in July 2016. Hence, no consumer was having any other products in his storage unit from November 2016. Also, these consumers were well aware of the fact that the Respondent has prayed before the Commission for

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

separate HT V(B): HT – Agriculture Others category in this petition. Hence, consideration of any such earlier period reports will be inconsistent and contrary to the provisions of the regulations and the order of the Commission. Such earlier events cannot be considered in the eyes of the law.

Also, these consumers and the association took continuous follow-up for 1 year i.e., from March 2017 to March 2018 at the level of Corporate Office. Then the circular was issued and with the directions of tariff for applicability from dated 01.11.2016 considering all these above-mentioned facts.

(5) Issue of Limitation as per Regulation 6.6 of CGRF Regulation, 2006:

The Respondent contended that the cause of action has arose in November 2016. Grievance on 12.03.2020 means after 39 months. Hence the grievances are time barred.

This contention is totally wrong. The date of cause of action is 01.05.2018, when Appellants received first bill as per HT V(B): HT – Agriculture Others tariff without any refund amount. In one Case, Welworth Foods Pvt. Ltd., it is from 01.06.2018. Thereafter Appellants have reached before Forum on 12.03.2020 means within the time limit of 2 years. Hence there is no issue of limitation.

Appellants referred the Hon'ble Supreme Court Judgement dated 12.02.2016. The Hon'ble Supreme Court has observed that the cause of action starts when one party asserts, and other party denies.

Also, another Judgment of the Hon'ble Supreme Court dated 14.07.2009 is referred which says that cause of action is a bundle of facts. All these facts are in detail described in the review applications at the Forum. Here the repetition is avoided for the sake of brevity. It is clear from the details that the cause of action starts on 01.05.2018 / 01.06.2018.

(x) **Forum Rulings dated 31.03.2021:**

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

The rulings of the Forum, Bhandup Zone are totally wrong, illegal, and making injustice on the Appellants. All the contentions of the Appellants in the original grievances and in the review applications are totally ignored without any valid or legal grounds. Both the orders dated 19.11.2020 and dated 31.03.2021 are not the reasoned orders.

The Forum has not considered why the Respondent has not acted as per its own Action Plan and why Appellants are not recategorized. The Forum has not considered why the Spot Inspection was not done by the Respondent authorities from November 2016 to February 2017. The Forum has not considered the order of the Hon'ble High Court dated 10.02.2020 regarding change of tariff category and regarding the implementation of Action Plan in redefined or newly categorised tariff categories. The Forum has not considered that the consumers cannot be victimised when the licensee is clearly in fault. The Appellants referred the order of the Commission dated 19.08.2016 in Case No. 94 of 2015. It is clearly stated and ruled by the Hon'ble Commission that SOP Regulations prevails in case of change in tariff category. Regulation 9.2 of the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 [SOP Regulations 2005] clearly states that *"Any change of name or change of tariff category shall be effected by the Distribution Licensee before the expiry of the second billing cycle after the date of receipt of the application."* Also, same provision is done by the Hon'ble Commission in SOP Regulations 2014.

The Appellants through their Association has applied for change in tariff category vide their application dated 14.02.2017 acknowledged by the Respondent on dated 15.02.2017. Hence on this basis also Appellants are eligible to get change in tariff category from 01.04. 2017.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

The Appellants request Hon'ble Ombudsman to set aside both the abovementioned orders of the Forum on the basis of all abovementioned grounds and submissions.

(xi) The Appellants humbly pray to the Hon'ble Ombudsman as below,

(a) The tariff category should be declared as HT V(B): HT – Agriculture Others from 01.11.2016 on the basis of Commission`s Tariff Order dated 03.11.2016 and HO, MSEDCL Guidelines dated 05.03.2018 and 08.03.2018.

(b) The tariff difference between HT-I-A and HT-V-B means the excess billed and paid amount by the Appellants from November 2016 up to March 2018 should be refunded to Appellants along with interest thereon as per Commission`s Practice Directions, from the date of payment up to the date of repayment, or alternatively full amount along with interest should be credited in Appellant's further bills as per MSEDCL Commercial Circular No. 319 dated 28.06.2019.

(c) SOP Compensation, for delay in Complaint Resolution, amount Rs.100/- per week from 01.05 2018 should be awarded.

(d) Any other orders may be passed by the Hon'ble Ombudsman, in the interest of justice, as it may think fit & proper.

5. The Respondent MSEDCL has submitted its common reply for all these Representations dated 09.07.2021 which is in brief as under: -

(i) At the very outset, the Respondent deny all and singular allegations, statements and contentions made in the grievance to the extent that the same are contrary to and/or inconsistent with what is stated herein. Further, nothing shall be deemed to have been admitted by it merely because the same may not have been dealt with specifically and/or traversed seriatim.

Preliminary Objection:

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(ii) The cause of action of this grievance has arisen in November 2016. The litigation journey begins from this cause of action and law mandates that the consumer should approach the Forum, within two years from the cause of action if his grievance is not redressed by the IGRC. But the Appellant has filed this Grievance before the Forum on 12.03.2020 i.e., after the lapse of near about 39 months. As per Regulation No. 6.6 of CGRF Regulations 2006, the Forum shall not admit any grievance unless it is filed within two years from the date on which the cause of action has arisen. Therefore, this application is time barred and hence required to be rejected.

Brief History and Facts:

(iii) Appellants were billed as per Industrial tariff up to April 2018, and later on tariff of Appellants were changed from HT-I Industrial to HT-V B Agriculture Others, as per directions from Corporate Office vide letter No. CE (Comm)/Tariff/cold storage/No.4759 dated 05.03.2018 and letter No. CE(Comm)/Tariff/cold storage/05084 dated 08.03.2018.

(iv) The Respondent`s Corporate Office vide letter dated 05.03.2018 issued some guidelines to be followed while implementing HT V-B Agriculture others tariff as below.

"1) HT Cold storage for Agriculture products (Processed or otherwise) are to be billed as HT-Agriculture Others i.e., HT-V-(B) from 01.11.2016 onwards (i.e. from date of implementation of tariff order in case no 48 of 2016).

2) Amendment Ordinance dated 05.07.2016 to Maharashtra Agriculture Produce Marketing Act 1963 may be referred for specifying the Agriculture Produce.

3) While applying HT V (B) Tariff, DIC certification or license from FSSAI authority for storage of Agriculture product/produce may be verified.

4) An undertaking from consumer for utilizing the cold storage exclusively only for storing Agriculture products (processed or otherwise) is to be obtained by the Circle office before effecting the appropriate tariff application."

(v) As per these directions, the Appellants have submitted their undertakings in April 2018, and FSSAI certificates along with other documents to Circle Office.

(vi) Tariff of Appellants were changed to HT-V-B Agriculture others form April-2018.

"HT V (B): HT – Agriculture Others
Applicability:

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

This tariff category is applicable for use of electricity / power supply at High Voltage for:

a. *Pre-cooling plants and cold storage units for Agricultural Products – processed or otherwise; Poultries exclusively undertaking layer and broiler activities, including Hatcheries;*
b. *High- Technology Agriculture (i.e. Tissue Culture, Green House, Mushroom cultivation activities), provided the power supply is exclusively utilized for purposes directly concerned with the crop cultivation process, and not for any engineering or industrial process;*
c. *Floriculture, Horticulture, Nurseries, Plantations, Aquaculture, Sericulture, Cattle Breeding Farms, etc."*

(vii) Thereafter, the Appellants approached IGRC on 12.12.2019 for refund of tariff difference amount from MSEDCL for the period of November 2016 to March 2018, and further on 12.03.2020, the Appellants approached to the Forum with the same grievance.

Point wise reply: -

(viii) It is denied that Circle office has not taken any action as per directions received from Corporate Office vide its letter dated 05.03.2018 and 08.03.2018. Tariff of the Appellants were changed on basis of guidelines received from Corporate Office after receiving the relevant documents such as SSI Certificate, FSSAI certificate and undertaking etc.

(ix) The claim of the Appellants to be eligible to get tariff difference from November 2016 to March 2018 is respectfully denied because the products stored in cold storage are changed with time. For allowing the tariff difference the Respondent is not in position to ascertain that Appellants were engaged in activity of storage of agriculture produce only or any items which don't fall under agriculture produce. In this regard the kind attention of this Hon'ble Forum is invited towards FSSAI certificate submitted by the Appellants, in the annexure "Food Product category" are given. This shows the list of food products which can be stored as per certificate. The list shows that –Fish and Fish products including mollusc, crustaceans, and echinoderms at Sr. No .3, it shows- Sherbet & Sorbet and Sr No.7 it shows Bakery products. From this, Respondent concludes that the Appellants were not storing only the agriculture produce in cold storage as general observation.

(x) The Respondent submits that from the above FSSAI certificate, the Respondent cannot refuse the possibility that the Appellants may be involved in storage of products other than

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

the agriculture products for the period of November 2016 to March 2018. Hence, the Respondent is not inclined to allow the tariff difference to these Appellants for retrospective period.

(xi) The Respondent submits that, as per the Appellants` submissions, they have fully complied with the guidelines from the Corporate Office. But they ignored that Corporate Office has specifically instructed to obtain Undertaking for storage of agriculture produce in cold storage and same can be verified in prospective dates. The retrospective verification of storage items by taking Undertaking from the Appellants are not possible and hence application of tariff to Appellants from 01.11.2016 is not possible. Therefore, the claim of the Appellants for retrospective refund of tariff difference is not maintainable and is deserves to be rejected.

(xii) The order of the Commission in Case No 48 of 2016 and Commercial Circular No. 275 dated 18.11.2016 based on tariff order in Case No. 48 of 2016 is followed by the Respondent and have not deviated from it

(xiii) The tariff of all these Appellants is revised prospectively relying on its Undertaking and other documents and this Appellants are not entitled for refund of any tariff difference amount for period November 2016 to March 2018.

(xiv) After receiving the Undertaking and other relevant documents from the Appellants, the Respondent have immediately processed for change in tariff category and effect is given from April 2018. Hence, the Respondent have not committed any breach of any SOP Regulations. Therefore, the Respondent is not responsible for payment of any SOP compensation amount to the Appellant as claimed.

Reply on Merits: -

(xv) As per Applicability Clause of Tariff Order of the Commission, for pre-cooling plants and cold storage units for Agricultural products, it is intended for 'Agricultural Produce Only'.

(xvi) Further, the Commission in its Order in Case No.114 and 119 of 2015 dated 06.12.2016 in Case of Maha. Cold Storage Association and Navi Mumbai Cold Storage Owners Welfare Association), ruled that

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

"12. As regards the suggestion for a full listing of agricultural produce, considering the Schedules applicable under the Agricultural Produce (Grading and Marking) Act, 1937 or other such material, the Commission is of the view that this is impractical, and that such listings vary depending on the different purposes of the respective statutes or orders. The Licensee is expected to interpret the terms used in the applicability clauses of the Tariff Orders depending on their context or in the sense of their ordinary usage unless illustrations or further specifics have been provided. The consumer grievance redressal mechanism is available to resolve difference on this account with the Licensee, and the Commission for generic clarification where necessary."

(xvii) In view of above order, the Respondent is expected to interpret the terms used in applicability clause of tariff order depending on their context or in the sense of their ordinary usage unless illustrations or further specifies have been provided.

(xviii) As per the provision of Section 62 (3) of the Act which states as

"62(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and ***the purpose for which the supply is required." …(Emphasis added)***

(xix) It is very clear from the above, the tariff applicability is basically based on purpose for which the supply is required. Appellants claim to avail concessional tariff from November 2016 cannot be accepted as it cannot be ascertained if Appellants were involved in storage of Agriculture produce or other items.

(xx) The Appellants in its individual FSSAI license, have already taken permission for storage of fish and fish items. This clearly prompts possibility that Appellants may have been involved in activity of storing fish and fish items which are not eligible for HT-V-B tariff.

(xxi) Hence, for this reason alone and/or for the reasons stated here above these grievance applications may have to be rejected by this Hon'ble Forum.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(xxii) In view of the above, the Respondent prays that the Representations of the Appellants be rejected.

6. Physical hearing was held at Vashi on 20.08.2021 after observing Covid-19 guidelines for appropriate behaviour. Both the parties argued in brief in line with their written submissions which is captured above, however, some important arguments are taken on record as below.

7. The Appellants argued that the reply of the Respondent, which was sent to the office of the Electricity Ombudsman (Mumbai) was not sent to the Appellants by the Respondent till the date of hearing. This is highly unbecoming of the Respondent, and it should be reprimanded for the same. The Appellants further argued that the Commission has created new tariff category HT V(B): HT – Agriculture Others vide its Tariff Order dated 03.11.2016 in Case No. 48 of 2016. After this order, the Appellants through 'Navi Mumbai Cold Storage Owners Welfare Association' had approached the Respondent, Vashi Circle vide its letter dated 14.02.2017 for change of tariff category from Industrial to HT V(B): HT – Agriculture Others. The Respondent Vashi Circle sought guidelines from its Head Office vide letter dated 22.03.2017 and 31.03.2017. After continuous follow up for one year by the Appellants and the Association, the Corporate Office has issued guidelines on 05.03.2018 to all its Circle offices and directed to apply HT V(B): HT – Agriculture Others tariff to all concerned consumers with effect from 01.11.2016. Also, the Corporate Office issued specific letter to the Superintending Engineer of Vashi Circle on 08.03.2018 with the list of the consumers in Navi Mumbai and directed for necessary verification and action as per guidelines dated 05.03.2018. This is continuous process. The Appellant further argued that the tariff of six Cases out of seven Cases has changed from Industrial to HT V(B): HT – Agriculture Others from April 2018. The tariff category in Representation 55 of 2021 was changed from May 2018. However, the Respondent failed to give tariff difference retrospectively from 01.11.2016. The Appellants cited the Judgment of Hon'ble High Court dated 10.02.2020 in W.P. No. 8712 of 2018 where it was mentioned that the change in tariff category is the sole responsibility of the Respondent. It is the duty of the field officers to categorise the consumers in redefined or newly created categories immediately after the order and feed the data in IT data base. Hence, consumers cannot be

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

punished due to the ignorance or negligence of the MSEDCL authorities. Appellants referred the Hon'ble. Supreme Court Judgement dated12.02.2016. Hon'ble. Supreme Court has observed that the cause of action starts when one party asserts, and other party denies. The Appellants argued that the Forum did not understand the basic issue of continuous cause of action and hence, order of the Forum be quashed and set aside. The Appellants pray that the Respondent be directed to refund tariff difference from Industrial to HT V(B): HT – Agriculture Others from 01.11.2016 or February 2017 as per Association`s letter dated 14.02.2017 along with interest.

8. The Respondent apologised for not providing reply to the Appellants and assured to give it immediately. The Respondent argued that the case squarely falls under Regulation 6.6 of the CGRF Regulations 2006. The Appellant filed the case with the Forum on 12.03.2020 and the cause of action period is tenable for retrospective two years i.e., 12.03.2018. Therefore, the remedy for cause of action prior to 12.03.2018 is time barred. Hence, the claim of the Appellant is not tenable.

9. The Electricity Ombudsman has directed the Respondent to forward its reply in all these Representations to the Appellants by email up to 27.08.2021 and Appellants have been given an opportunity to submit additional say, if any, up to 06.09.2021.

10. The Respondent filed its additional separate individual reply dated 26.08.2021. The brief in common is as below:

(i) It is denied that the Respondent has not taken any action as per directions received from Corporate Office vide its letter dated 05.03.2018 and 08.03.2018. Tariff of the Appellants were changed on basis of guidelines received from Corporate Office after receiving the relevant documents such as SSI certificates, FSSAI certificates and undertakings etc.

(ii) The claim of Appellants for refund of tariff difference is denied from November 2016 to March 2018, as the products stored in cold storages were changed time to time and is dynamic in nature. The Respondent is not in a position to inspect the same and to ascertain

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

that Appellants were engaged in activity of storage of agriculture produce only or any items which do not fall under agriculture produce retrospectively.

(iii) The Respondent submits that, as per Appellants` submission they have fully complied with the guidelines issued by the Corporate Office. But they ignore that Corporate Office have specifically instructed to obtain undertaking for storage of agriculture produce in cold storage and same can be verified in prospective dates. The retrospective verification of storage items by taking undertaking from the Appellants` are not possible and hence application of tariff to these Appellants` from 01.11.2016 are not possible. Therefore, the claim of the Appellants for retrospective refund of tariff difference are not maintainable and deserve to be rejected by this Hon'ble Authority.

(iv) The Respondent submits that the order of the Commission in Case No. 48 of 2016 and Respondent`s Commercial Circular 275 based on the said tariff order, are followed by the Respondent, and have not deviated from it

(v) The Appellant in its submission referred the MAPM(D&R) Act 1963 and its amended ordinance. In this regard, the Respondent states that the tariff category of Appellants are already changed to HT V(B): HT – Agriculture Others from April 2018 in six Representations, and in Representation No. 55/2021 in May 2018 after inspection prospectively relying on its undertaking and other documents. Hence, Respondent has not committed any breach of any SOP Regulations. Therefore, the Respondent is not responsible for payment of any SOP compensation to the Appellant as claimed

Reply on Merits: -

(vi) As per Applicability Clause of Tariff Order, the Commission in its all three conditions intended to provide the benefit of agricultural tariff to products related to agricultural produce, pre-cooling plants and cold storage units for agricultural products, is intended for agricultural produce only. This intention of the Commission is clearer in Clause b where the Commission used words *'exclusively utilized'* for purposes directly concerned with the crop cultivation process, and not for any engineering and industrial process.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(vii) It is specifically to submit that even after possessing valid FSSAI Certificate and submission of Undertaking for utilisation of cold storage exclusively for agriculture produce, many consumers indulged in storing products other than agricultural produce. Therefore, special drive for checking of HT cold storages, precooling plants was conducted by the Respondent, Vashi Circle in December 2020, and January 2021. It is observed that the Appellants namely, Meramax Pvt. Ltd. (Rep. No. 48 of 2021) and Sanfoods & Cold Storage Pvt. Ltd. (Rep. No. 56 of 2021) indulged in activity not allowed under the tariff applicable to them. Therefore, the Respondent issued supplementary bills to these two Appellants. The Respondent mentioned the provision of Section 62 (3) of the Act emphasising the nature of supply and the purpose for which the supply is required.

(viii) It is very clear from the above that tariff applicability is basically based on purpose for which the supply is required. Appellants claim to avail concessional tariff from November 2016 cannot accepted as it cannot be ascertained if Appellant was involved in storage of Agriculture produce or other items

(ix) The Respondent submits that, Appellants in their FSSAI licenses have already taken permission for storage of fish and fish items. This clearly prompts possibility that the Appellants may have been involved in activity of storing fish and fish items which are not eligible for HT-V-B tariff.

(x) Hence for this reason alone and/or for the reasons stated hereinabove, this grievance application may be rejected by this Hon'ble Forum.

11. In pursuance to the reply of the Respondent, the Appellants have filed rejoinder dated 04.09.2021 which is taken in brief as under: -

(i) The Respondent has repeated many points in its reply, which were argued during the hearing and have been appropriately captured in submission as well as the argument part. Hence, for the sake of clarity & brevity, point wise reply in the following paragraphs as below:

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(a) Directions of Corporate Office violated by Vashi Circle

Vashi Circle says that they have complied the directions and applied the HT V(B): HT – Agriculture Others tariff from April 2018. But this is not full compliance of the directions from Corporate Office, hence, request the Hon'ble Ombudsman to please go through the guidelines of 05.03.2018 and 08.03.2018. In the letter dated 05.03.2018, it is clearly directed as below:

"(1) HT Cold Storage for Agriculture products (processed or otherwise) are to be billed as HT V(B): HT – Agriculture Others tariff from 01.11.2016 onwards (i.e., from the date of implementation of tariff order in Case No. 48 of 2816)."

It is a clear verdict on the basis of SE Vashi letters dated 22.03.2017 and 31.03.2017 and the pendency of this issue at the corporate level for one year. Also, nowhere it is directed to apply tariff prospectively in both the letters. Letter dated 08.03.2018 is specifically sent to SE Vashi which includes all the names of the consumers (except only Mayur Cold Storage Pvt. Ltd.). Both these letters and the specific directions cannot be ignored or denied by any circle office of the Respondent. Hence, request the Hon'ble Ombudsman to please note that this is a clear violation of the Corporate Office Circular and directions to Respondent Vashi Circle.

(b) Respondent's Say – Earlier period use cannot be ascertained.

The Respondent submits that the Appellants may have used their units for storage of products other than agriculture produce. This is totally wrong and hypothetical statement. Respondent, in its reply has stated that the storage of various products cannot be ascertained for the period from 01.11.2016 up to 31.03.2018 as the field inspection was not done. Hence, there is a possibility of storage of other products, hence refund for this period cannot be considered. Now the question arises that who is responsible for this fault? The answer is Respondent solely is responsible. Respondent itself has the powers of Classification and Reclassification. Also, as per Action Plan mentioned in Commercial Circular No. 275 dated 18.11.2016 (and

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

as mentioned by Hon'ble High Court in its order dated 10.02.2020) that it was the duty of the licensee to do field inspection, verification of use immediately and to apply proper tariff immediately from 01.11.2016. Respondent has not done its own duty and causing injustice and burden of higher tariff on the consumers. It is a basic principle that the consumers cannot be penalised or vexed for the fault of the licensee. Hon'ble High Court, in the order mentioned above, has clearly ruled it. Hence, such hypothetical statements or contentions cannot be considered as proof or evidence, while deciding such matters, when the Respondent is only at fault and the consumers are not at fault.

After the Tariff Order in November 2016, the consumers approached the Respondent for field inspection and proper tariff. Here Vashi Circle was duty bound to do the field inspection but has not done so. Hence, the consumers through Association approached the Corporate Office in February 2017. After continuous follow up for a year, Corporate Office issued Circular on 05.03.2018 and also directed that the HT V(B): HT – Agriculture Others tariff should be implemented from 01.11.2016. But these directions are not complied by the Vashi Circle.

If Vashi Circle would have done the field inspection of the Appellants' units or all the concerned units immediately after Tariff Order dated 03.11.2016 or the Commercial Circular dated 18.11.2016 in November/December 2016, or then after up to February 2017 before asking the guidelines from Corporate Office, then there would not have been any issue and the proper tariff would have been applied immediately. But the Respondent has totally ignored its own legal duty and now blaming the consumers and rejecting their valid legal claims on wrong grounds. Unfortunately, the Respondent is free to raise all such doubts and to deny the legal rights of the consumers on such fictitious basis and to victimize the consumers unnecessarily on such illegal and wrong grounds.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai
M.E.R.C.

Also, it may please be noted that MSEDCL is the "State" within the meaning of Article 12 of the Constitution of India. And any such inequality leads to the violation of the Article 14 of the Constitution of India. Hence, request Hon'ble Ombudsman not to allow such inequality and injustice.

(c) Respondent's Say on Limitation under Regulation 6.6

Respondent has contended that the cause of action had arose in November 2016. The consumers have filed the grievances on 12.03.2020 i.e., after a lapse of 39 months. Hence the grievances are time barred. This contention is totally wrong and on wrong basis, which is explained below,

The actual and earlier date of 01.05.2018, which is clear from the chronology given below:

03.11.2016	The Commission's Tariff Order in Case No. 48 of 2016 in which new tariff category HT V(B): HT – Agriculture Others was created.
18.11.2016	Corporate Office issued its Commercial Circular No. 275 for the implementation of the tariff along with the Action Plan for Newly created categories.
After 18.11.2016	Consumers & Association approached the Respondent.
Up to 13.02.2017	Vashi Circle for field inspection and proper tariff. But Vashi Circle has not taken any cognizance, though they were duty bound to do it.
14.02.2017 & 21.02.2017	Association submitted letters to SE Vashi and requested for proper tariff.
22.03.2017 & 31.03.2017	SE Vashi sent letters to Corporate Office and sought guidelines from it in this matter, without any reason.
20.05.2017	The matter was placed before the Competent Authority by Corporate office vide its Office Note dated 20.05.2017.
05.03.2018	C.E. (Comm.), Corporate Office issued Circular to all circles after approval from the competent authority and directed that the HT

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

	V(B): HT – Agriculture Others tariff should be implemented from 01.11. 2016.
08.03.2018	C.E. (Comm.), Corporate Office issued specific letter to SE Vashi with names of 10 consumers and application of proper tariff as per Circular dated 05.03.2018.
March 2018	Consumers had complied the conditions, papers and undertaking as per the Circular dated 05.03.2018 and requested for proper tariff from 01.11.2016.
01.05.2018	Consumers received the bills of April 2018 with the new tariff category i.e. HT V(B): HT – Agriculture Others, but not received the earlier period credit in the bill.
01.05.2018	Consumers came to know that prospective implementation from April 2018 is done by Vashi Circle but earlier period from 01.11.2016 as per the Circular is not considered.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Hence, the earliest or first date of cause of action can be considered or confirmed as 01.05.2018. Any earlier date cannot be considered considering the facts mentioned above.

The date of cause of action is 01.05.2018. In case of Rep. No. 55 of 2021 (Welworth), the change of tariff category was done in May 2018 and the bill was received on 01.06.2018. Hence, in this case, the date of cause of action is 01.06. 2018. Then the Appellants again submitted letters to the Respondent for implementation of HT V(B): HT – Agriculture Others tariff & refund from 01.11.2016 as per the Corporate Office Circular. This was ignored by Respondent Vashi Circle. Thereafter, the Appellants have filed grievances before the Forum on 12.03.2020.

The total travel i.e. from 01.05.2018 to 12.03.2020 was completed by the Appellants well within the stipulated limitation period of 2 years as per the CGRF Regulations. This is also clear from the Hon'ble High Court Order dated 10.07.2013 in W.P. No. 1650/2012 submitted by the Respondent itself along with own say.

The ruling on the last page of the order is as below:

> *"These articles provide the period of limitation and the time from which the period starts to run. In all the cases referred in these articles, it is provided that the period of limitation start on the date breach occurs. This was a case of breach of contract."*

In the Appellants' cases, the breach occurred on 01.05. 2018 in six cases and 01.06.2018 in Rep. No. 55 of 2021. Before that it was not known to the Appellants or not denied by the Respondent. Hence, the date of cause of action or the date of breach is 01.05. 2018 and have submitted complaints before the Forum on 12.03.2020, which is clearly well within the limitation period. Hence, there is no issue of limitation. Hence, the preliminary objection raised by the Respondent should be quashed and set aside by the Hon'ble Ombudsman.

All the concerned papers and documents with respect to above mentioned submissions and statements are already filed and submitted along with representation.

(d) MSEDCL Say on Reg. No. 9.2 of the SOP Regulations 2005

"*Any change of name or change of tariff category shall be effected by the Distribution Licensee before the expiry of the second billing cycle after the date of receipt of application*."

This was the provision in SOP Regulations 2005. Also, same provision was done in SOP regulations 2014 by the Commission. Respondent states that Appellants have not filed their individual applications to it. Hence, this provision of the Commission's order dated 19.08.2016 in Case No. 94 of 2015 is not applicable in these cases.

The contention is totally false. All the Appellants have individually applied to the Respondent in May 2016. Copies of the applications were submitted during hearing on 20.08.2021. Respondent had not taken the cognizance of these applications. The Appellants have already stated in their representations that the consumers had also submitted such applications from year 2010 up to year 2015 but the Respondent intentionally ignored all the earlier applications.

Also, it should be noted that finally and jointly Appellants` had moved this issue through their Association. Respondent Vashi Circle was fully conversant about the consumers. Also, Corporate Office was fully conversant. Hence, it had issued specific letter to SE, Vashi along with names of 10 consumers. Hence, it is necessary to be accepted that Appellants had applied for change in tariff category in February 2017 and it was sent to Corporate Office by Vashi Circle.

Hence this Regulatory provision and the order of the Commission dated 19.08.2016 in Case No. 94 of 2015 is fully applicable in our cases. In this case, Respondent allowed change in tariff from July 2017 i.e. from the date of application. Then the Forum allowed the tariff change & refund of difference along with interest from August 2012. Hon'ble High Court upheld the Forum's order & dismissed the MSEDCL petition on the grounds that in case of new/redefined tariff category, it is the duty of the MSEDCL as per its own Action Plan. The same things have happened in the Appellants' cases. HT-Ag-Others new tariff category was created by the Commission, in its

order dated 03.11.2016. In such cases, it is the duty of the MSEDCL to recategorise the concerned consumers. In such cases consumers cannot be penalised, as it was the fault of the licensee and not of the consumers.

(e) Other Use and Spot Inspection Reports submitted by the Respondent:

Respondent has contended two issues with respect to use of the Cold Storage:

(1) There are many other items included in FSSAI certificate, hence other purpose/use should be assumed/there.

(2) Respondent's Spot Inspection Reports and Supplementary Bills for the period from January 2020 to June 2021.

Both these above contentions are wrong and only hypothetical. We wish to clarify the details as below:-

(1) FSSAI Certificates include other items - This is a general practice and routine procedure that while in any registration, it may be SSI or FSSAI or any other, generally all the owners/consumers use to register various products, so that they can go for various products in case of changes in the market conditions. Hence only on the basis of items in the certificate, it cannot be assumed that such other products are stored by the concerned consumers. Consumers know very well the tariff order and reasons of the lower tariff for the storage of Agriculture products. Also, they have given undertaking to that effect to MSEDCL. If there is any misuse, then in such cases, MSEDCL can take all the necessary legal action as per E Act 2003, concerned Regulations and Commission`s orders.

Hence inclusion of various items in FSSAI certificate cannot be the reason to assume other purposes storage or also it cannot be the reason to change the tariff category of the concerned consumers.

(2) MSEDCL has attached following Spot Inspection Reports & Supplementary Bills-

Spot Inspection Reports, submitted by the Respondent barring two instant representations, rest of the consumers are not concerned with the instant cases and even in these two cases, the period for billing is after 2020. Therefore, it has no relevance.

(f) Use Issues – Meramax, Sanfoods & Mayur

(1) Meramax Pvt. Ltd. - In this case, MSEDCL submitted SIR dated 16.12.2020 & Supplementary Bill dated 02.02.2021. The consumer has filed grievance with the Bhandup Forum which has not been declared by MSEDCL. The Forum in this Case issued order on 27.04.2021 and allowed the application partly. All the earlier period recovery before 01.12.2020 is set aside. Tariff category change from HT-Ag-Others to HT-Industrial is allowed from 01.12.2020 onwards.

(2) Sanfoods & Cold Storage Pvt. Ltd. – In this case, MSEDCL submitted SIR dated 29.01.2021 & Supplementary Bill dated 02.06. 2021.The further fact is that M/S. Sanfoods & Cold Storage Pvt. Ltd. has filed complaint with Bhandup Forum on 20.08.2021 which is in process. Also, it is a fact that to avoid the further harassment & torture from MSEDCL authorities, the consumer has accepted HT-Industrial tariff from February 2021.

(3) Mayur Cold Storage Pvt. Ltd. In this case, MSEDCL submitted the FSSAI registration paper in which 1 paper is showing the registration for storage of Buffalo Meat @ 500 Kg/day. This paper is also only the part truth to create doubt regarding Mayur Storage activities. As per submitted papers, MSEDCL had taken many spot inspections. But any SIR regarding Mayur is not attached. It is a fact that MSEDCL inspected many times Mayur premises but found nothing but agricultural products. Hence, no such paper attached. Actually, Mayur had stopped to store other than Agricultural Products from the year 2016. This fact is fully known to MSEDCL, but it is not disclosed by MSEDCL before the Hon'ble Ombudsman in its say/reply. Also, it is a fact that Mayur in its undertaking in March 2018 had shown maximum 10% Buffalo meat

storage in separate building on the basis of main purpose/dominant use criteria. Then after MSEDCL applied HT-Ag- Others tariff accepting the undertaking. Mayur made allowable provision in its undertaking, but never used it. If only papers are to be considered & inspected, it can be seen that the storage capacity of Mayur is @ 16400 Kgs. Buffalo Meat registration is only for 500 Kgs. It is only 3% of the total capacity. It shows @ 97% use for agricultural products means main purpose/dominant use.

(g) **Respondent reference of High Court Order dated 10.07.2013 in W.P, No. 165 of/2012**

Respondent has referred the High Court, Nagpur Bench order dated 10.07.2013 in W.P. No. 1650/2012. The facts of this case are totally different. Consumer got disconnected in the year 2003 and had approached IGRC on 03.05.2011. The cause of action was in the year 2003. Also, it was not the issue of newly created or redefined category. Hence, this case is not similar case, which can be considered in these representations. Also in the findings, Hon'ble High Court has ruled that the period of limitation starts on the date breach occurs. In the instant cases the period of limitation started on 01.05.2018 (and 01.06.2018 in Welworth case).

Questions not answered by Respondent and Other Submissions

Respondent has not answered many questions, few of which are listed here as below,

(1) Hon`ble Ombudsman had raised a question while hearing that why the spot inspection/field verification was not done after issue of tariff order dated 03.11.2016 and Commercial Circular dated 18/11.2016. But the issue was not answered.

(2) Hon. Ombudsman had also raised a question that why the verification was not done in February 2017 after the application of association & why it was not sent to Corporate Office with field reports. But this question is nowhere answered.

(3) The Appellants have submitted copies of the applications in May 2016 for change in tariff category while hearing and raised the question why these applications were not considered as per SOP regulations. It is not answered by MSEDCL.

(4) MSEDCL Vashi Circle has refunded similar tariff difference from 01.11.2016 to other two consumers M/S. Prabhu Hira Ice & Cold Storage and M/S. DMK Agro Care Pvt. Ltd. on simple application. This is not denied. But the discrimination between similarly placed consumers is nowhere answered.

(5) Why the consumers should be punished or harassed or burdened or vexed, when the fault is clearly of the licensee. This issue was not answered.

(6) "1GRC Case No. 49 & 50 were different" is totally wrong reply submitted by MSEDCL. These cases are 100% similar & identical.

(7) The Appellants deny all other negative contentions of the Respondent's say/reply submitted on 27.08.2021.

(ii) Prayer: The Appellants request Hon`ble Ombudsman to consider all above mentioned submissions. The Appellants are eligible to be categorised as HT Agriculture-Others and are eligible for refund of tariff difference with interest from 01.11.2016 on the basis of the directions of Corporate Office of the Respondent, concerned Circulars, Action Plan and submissions.

Alternatively, the Appellants also eligible for refund of tariff difference from 01.04.2017 on the basis of the applications through Association, SOP Regulations & the Commission's order in Case No. 94/2015.

The Appellants, therefore, request to allow the Representations and order be passed to refund the amount towards tariff difference from 01.11.2016 or alternatively from 01.04.2017.

Analysis and Ruling

12. Heard the parties and perused the documents on record. Following important points are noted:

(a) The Appellants were being billed for their Pre-Cooling Plants and Cold Storage units under Industrial tariff category till issue of the Commission's order dated 03.11.2016 in Case No. 48 of 2016 which was effective from 01.11.2016. It is this order of the Commission whereby the Commission has introduced a new tariff category HT V(B): HT – Agriculture Others.

(b) After this order, the Appellants through 'Navi Mumbai Cold Storage Owners Welfare Association' had approached the Respondent, Vashi Circle vide its letter dated 14.02.2017. The Respondent sought guidelines from Corporate Office of MSEDCL vide its letter dated 22.03.2017 and 31.03.2017. After continuous follow up for one year by the Association, MSEDCL Corporate Office has issued guidelines on 05.03.2018 to all MSEDCL Circle offices and directed to apply HT V(B): HT – Agriculture Others tariff to all concerned consumers with effect from 01.11.2016. Also, Corporate Office, MSEDCL issued specific letter to SE, MSEDCL, Vashi Circle on 08.03.2018 with the list of the consumers in Navi Mumbai and directed for necessary verification and action as per guidelines dated 05.03.2018. After observing the guidelines contained therein, SE Vashi changed the tariff of these 6 Appellants from April 2018, and from May 2018 in case of the other (Welworth).

(c) The Appellants claimed that they have submitted applications for change of tariff from HT Industrial to HT Agricultural Produce in May 2016. The Appellants are also taking shelter of the Commission's order dated 03.11.2016 in Case No. 48 of 2016 which for the first time has introduced a new tariff category HT-V(B) Agricultural Others. It is not understood as to how applications can be prior to the date of the Commission's order. Probably, the Appellants may be referring some orders of the Commission as could be seen from the application dated 05.05.2016 of Sanfoods Cold Storage Pvt. Ltd., and application dated 05.06.2016 of Amritlal Ashokkumar Cold Storage & Ice factory Ltd.,

The orders quoted in reference to above letters are as below:

- Case No. 116 of 2008 dated 17.08.2009, and its Corrigendum order in Case No. 111 of 2009 dated12.09.2010,
- Case No. 19 of 2012 dated 16.08.2012
- Case No. 121 of 2014 dated 26.06.2015

Therefore, this has no relevance as far as the instant Representations are concerned. The Appellants have submitted letter No. 2150 dated 21.03.2016 from SE Vashi to Mayur Cold Storage wherein under Reference 1, it has quoted letter from M/s. Mayur Cold Storage Pvt. Ltd., and Amritlal Ashokkumar Cold Storage & Ice factory Ltd., both having IW No. 13998 dated 17.11.2017. However, this letter has not been kept on record.

(d) The Appellants submitted that their Association "Navi Mumbai Cold Storages Owners' Welfare Association", by letter dated 14.02.2017 addressed a letter to SE Vashi which is acknowledged by MSEDCL on 15.02.2017. In the said letter, it is stated that

"As you are well aware, MERC has passed order for applying agriculture HT-V tariff to all cold storages which store only agricultural produce / products. The tariff was put in place and the order was passed by MERC as far back as in June 2015. Since then during the long period of almost two years, our Association has been continuously striving for making the said tariff application to our eligible members cold storages through long series of communication / discussions, etc. …….. Considering the large scale discontent amongst them, we urge to you to take immediate steps to apply the Agricultural HT-V tariff to all such cold storages who store agricultural produce, process or otherwise. ……."

In order to examine the above submissions, it is necessary to refer various orders of the Commission as regards to cold storage and food processing units. Extracts from such orders are as below: -

(a) Commission's order dated 26.06.2015 in Case No. 121 of 2014 (Tariff Order)

HIGH TENSION (HT) – TARIFF
HT I: HT- Industry
Applicability
This category includes consumers taking 3-phase electricity supply at High Voltage for industrial purposes of manufacturing.
……
j) Cold Storage not covered under HT – (V).

k) Fisheries and integrated sea-food processing units.

HT V: HT – Agricultural

Applicability:

This category shall be applicable for Electricity / Power Supply at High Tension …… …… ……

(i) For pre-cooling plants & cold storage units for Agriculture Produce;

(ii) …… ……

(iii) For High Tech Agricultural (i.e. Tissue Culture, Green House, Mushroom activities), provided the power supply is exclusively utilized by such Hi-Tech Agriculture Consumers for purpose directly concerned with crop cultivation process and further provided that the power is not utilized for any engineering or industrial process;

(iv) …… …… …

(v) …… …… ……

This issue was subsequently raised by MSEDCL to create separate tariff category of "HT – Agriculture – Others" through Petition No. 121 of 2015. However, the Commission in its order dated 29.01.2016 in Case No. 121 of 2015 has said that it cannot be done in absence of public hearing.

(b) Commission's order dated 13.05.2016 in Case No. 42 of 2015

In the matter of Petition of Seafood Exporters Association of India regarding wrongful Tariff categorization by Maharashtra State Electricity Distribution Co. Ltd. in violation of Tariff Order dated 16.8.2012 in Case No. 19 of 2012

Commission's Analysis and Ruling

11. SEAOI is essentially seeking a clarification regarding the tariff category applicable to Units, such as those of its Members, considering the nature of their activities and processes; and the correct interpretation of the terms used in the Tariff Order to define the tariff categories. SEAOI contends that, considering the categorisation set out in the Tariff Order dated 16 August, 2012 in Case No. 19 of 2012, the Industrial category tariff is to be applied to such Units, as against the Commercial category tariff which has been applied retrospectively by MSEDCL.

12. In its Tariff Order of 2012, the Commission defined the tariff categories relevant to this Case as follows:

"HIGH TENSION (HT) – TARIFF HT I : HT- Industry

Applicability

This category includes consumers taking 3-phase electricity supply at High Voltage for industrial purpose…

……

"HT II: HT- Commercial

Applicability

HT II (A): EXPRESS FEEDERS

…….. It does not extend to the further chain of processing, including into essentially different forms, of the raw produce. The Commission is of the view that the latter, for which fish is the raw material, would qualify as activities to which the Industrial tariff would apply. This restricted meaning of the term 'fisheries', which is clear from the nature of the other activities cited in the same Item (m), as used in the tariff categorization is also in consonance with the common or dictionary meaning of the term 'fisheries' (and the Black's Law Dictionary has also been cited during these proceedings). Moreover, as envisaged in the Commercial tariff category, such rearing, breeding and associated activities would generally not be undertaken in industrial premises.

14. The supply of electricity for 'industrial purpose' to which the Industrial tariff under the Tariff Order of 2012 is to be applied has to be construed in the light of the above. Moreover, industrial purpose would commonly include manufacturing as well as processing, and no contrary dispensation has been set out in the Tariff Order. While different statutes are enacted for different purposes, and the meaning ascribed to a term may differ from one statute to another, the Commission also notes that the IDR Act, 1951 and the MSME Act, 2006, for instance, both include such food processing as an industrial activity; that the Petitioner's Members claim to hold Licences under the Factories Act, 1948, and are said to be located on industrial plots in MIDC areas. The various integrated processing activities said to be undertaken by its Members subsequent to the commercial rearing or breeding of fish and other seafood have been described by SEAOI in its Petition, and illustrated through a flow chart.

15. At paras. 12 and 13 above, the Commission has clarified that such seafood processing activities would attract the relevant HT or LT Industrial tariff and not the Commercial tariff. Obviously, the interpretation of terms clarified by the Commission in this Order shall apply to all such undertakings and not only to the Petitioner's Members. MSEDCL shall, within 2 months: review the tariff applied to the Petitioner's Members and other such Units in the light of this clarification; revise (if appropriate) the tariff category sought to be applied to such Units; and refund the consequential excess amount, if any has been recovered……

(c) Commission's order dated 03.11.2016 in Case No. 48 of 2016 (Tariff Order)

HT I: HT – Industry
HT I (A): Industry – General
Applicability:

……..

k) ***Cold Storages not covered under HT V (B)– Agriculture (Others);***
l) Food (including Seafood) Processing units.

HT V(B): HT – Agriculture Others

Applicability: This tariff category is applicable for use of electricity / power supply at High Voltage for:

a) ***Pre-cooling plants and cold storage units for Agricultural Products – processed or otherwise.***
b) Poultries exclusively undertaking layer and broiler activities, including Hatcheries;
c) High-Technology Agriculture (i.e. Tissue Culture, Green House, Mushroom cultivation activities), provided the power supply is exclusively utilized for purposes directly concerned with the crop cultivation process, and not for any engineering or industrial process.
d) Floriculture, Horticulture, Nurseries, Plantations, Aquaculture, Sericulture, Cattle Breeding Farms, etc; ***(Emphasis added)***

(d) Commission's order dated 06.12.2016 in Case No. 114 and 119 of 2015
(Case No. 114 of 2015: In the matter of Petition of Maha Cold Storage Association for review of Tariff Schedule applicable to Pre-Cooling Plants and Cold Storage Units in Order dated 26.6.2015 in Case No. 121 of 2014, and related issues,
&
Case No. 119 of 2015: Petition of Navi Mumbai Cold Storage Owners Welfare Association for review of Tariff Schedule applicable to Pre-Cooling Plants and Cold Storage Units in Order dated 26.6.2015 in Case No. 121 of 2014, and related issues)

Commission's Analysis and Ruling
8. ……
9. As mentioned by the Petitioners during the hearing, their prayer for correction in the applicability of the HT-Agriculture tariff category to include 'agriculture products – processed or otherwise', as in the case of the corresponding LT category, has been addressed by the Commission in its Order dated 29 January, 2016 in Case No. 121 of 2015 as follows:
"the Commission finds a similar and unintended discrepancy between another entry in the Tariff applicability of HT V: HT-Agriculture category and the corresponding LT category in the Approved Tariff Schedule regarding precooling and cold storage units. Para. 6.1.7 of the impugned Order states that
"…the Commission has decided to broaden the existing tariff treatment of cold storages and to consider them in two categories, namely (a) Cold Storages for Agriculture Products; processed or otherwise and (b) Cold Storages for other purposes. While the tariff of Agriculture – Others (Metered) category shall be applicable for Cold Storages for Agriculture Products, the latter would be covered under the Industry instead of the Commercial category as at present."
This is correctly reflected in the applicability of the LT IV (C): LT – Agriculture Metered – Others category in the Approved Schedule, but not in the corresponding HT category. The relevant entry in the HT V: HT-Agriculture category is accordingly corrected to read as follows:
"i) For pre-cooling plants & cold storage units for Agriculture Products – processed or otherwise;…"

10. As regards the treatment of electricity consumption of allied activities as part of the main activity of cold storage, with some limit in terms of a percentage of the total consumption if necessary, the Commission notes that, in its 2015 MYT Order, in order to simplify the energy metering and billing procedure and to take into account the allied activities which are essentially required to support the core activity, the Commission allowed the consumption of such activities in industrial premises to be treated at par with the power consumption for the core industrial activity.

……

11. ……

12. As regards the suggestion for a full listing of agricultural produce, considering the Schedules applicable under the Agricultural Produce (Grading and Marking) Act, 1937 or other such material, the Commission is of the view that this is impractical, and that such listings vary depending on the different purposes of the respective statutes or orders. The Licensee is expected to interpret the terms used in the applicability clauses of the Tariff Orders depending on their context or in the sense of their ordinary usage unless illustrations or further specifics have been provided.

Considering various factors evolved in this entire process, the Respondent applied Industrial tariff to the Appellants, specifically prior to November 2016. This application of Industrial tariff to the Appellants and similarly placed consumers was accepted without any demur. Therefore, the letter of the Association dated 14.02.2017 has no relevance as far as change of tariff category of the Appellants as the tariff applied was after due diligence by the Respondent. It is important to note that any application for change of tariff category from the consumer needs due diligence by the Respondent which includes understanding the processes employed by the consumer, and verification of documentary evidence to decide the purpose of use of power for appropriate applicability of tariff. It therefore follows that the application of the consumer for change of tariff is the sole discretion of the consumer, and he takes a call before submitting an application. It is for these precise reasons that a general letter dated 14.02.2017 on the banner of Association of the Appellants does not serve any purpose vis-à-vis the individual applications of the Appellants. Therefore, letter dated 14.02.2017 cannot be considered as an application from the individual Appellants which is fully inconsonance with the provisions of the Regulations.

The Commission through its order dated 03.11.2016 in Case No. 48 of 2016 has for the first time introduced a new tariff category 'HT V (B): HT- Agriculture Others,' applicability of which includes *"Pre-cooling plants and cold storage units for Agricultural Products –*

processed or otherwise". Therefore, after issue of this order, it was the bounden duty of the Respondent to have undertaken survey / inspection of all cold storages and examine the applicability of this tariff to the eligible consumers. Therefore, the existing tariff of all cold storages was not intended to be changed to this newly introduced tariff category. It therefore follows that whosoever is beneficiary ought to have applied to the Respondent by examining at its level with respect to its fitment in the new tariff category.

The newly introduced tariff category came into being through an order of the Commission by undertaking public hearing, and the Appellants being the sole beneficiaries of the said tariff, they could have well weighed their factory processes vis-à-vis the applicability of the tariff category matrix and could have applied for change of tariff category in their own interest. This is more so important, because it is most likely that any of the Applicants, might be happy with continuation of Industrial tariff depending on the overall purpose of use of power at its premises. It is, therefore, clear that the processes of individuals has direct nexus with the tariff and therefore, submission of the application for the same should be in sync with each other. Therefore, individuality is a prime factor in all these cases. Thus, the Respondent to Suo-motu apply the newly introduced tariff to all such applicants / consumers would not be in the fitness of things. Probably, the Appellants applied for change of tariff category pursuant to this order of the Commission in April 2018 along with the documents after taking appropriate call on the issue.

The Respondent in its submission stated that after changing the tariff of all Appellants in April / May 2018, two Appellants (Rep. 48 & 56 of 2021) were found indulging in processes not covered under the tariff category applied to them. It is, therefore, seen that there is very thin line between cold storage having Industrial tariff, and HT Agricultural Others meaning thereby the processes of both the categories are dynamic.

If the Appellants failed to invoke any response from the Respondent, the Appellants could have well approached the Grievance Redressal Mechanism established under the Electricity Act, 2003, and Regulations made thereunder. This is more so explicit in light of the Commission's order in Case No. 114 and 119 of 2015. The relevant portion of the said order is reproduced below:

> *"12. As regards the suggestion for a full listing of agricultural produce, considering the Schedules applicable under the Agricultural Produce (Grading and Marking) Act, 1937 or other such material, the Commission is of the view that this is impractical,*

and that such listings vary depending on the different purposes of the respective statutes or orders. ***The Licensee is expected to interpret the terms used in the applicability clauses of the Tariff Orders depending on their context or in the sense of their ordinary usage unless illustrations or further specifics have been provided. The consumer grievance redressal mechanism is available to resolve difference on this account with the Licensee, and the Commission for generic clarification where necessary.*** *"* ***(Emphasis added)***

The Appellants instead of adopting this route of Grievance Redressal Mechanism to resolve their grievances, they kept on pursuing with the Respondent's local office as well as the Corporate Office for the reasons best known to them. It is only after reaching the dead end, the Appellants thought it fit to approach the Grievance Redressal Mechanism. If pursuing the offices of the Respondent to get justice is the only way to be adopted, then the legislative intent in establishment of Grievance Redressal Mechanism (which is a quasi-judicial Authority) stands frustrated.

I noted that the Appellants approached the Forum on 12.03.2020 with a prayer for refund of tariff difference from HT I (A) Industrial to HT V (B): HT Agricultural Others tariff category for the period from 01.11.2016 to 31.03.2018 / 30.4.2018. Keeping in view the provisions of Regulation 6.6 which provides a time limit of two years for the Forum to entertain the grievance application from the cause of action, the claim of the Appellant that its prayer for grant of relief from 01.11.2016 is also not tenable.

13. Regulation 6.6 of the CGRF Regulations 2006 is quoted below:

"The Forum shall not admit any Grievance unless it is filed within two years from the date on which the cause of action has arisen."

This Regulation is upheld in W.P. No. 6859, 6860, 6861 and 6862 of 2017 decided on 21.08.2018 by the Hon'ble Bombay High Court, Bench at Aurangabad which is very much relevant to the instant Representation. The relevant portion of the judgment is quoted below: -

"37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any

particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the Regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.

38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.

39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.

42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.

44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.

45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period."

14. The Appellants have referred the Judgments of Hon'ble Supreme Court, and High Court, ratio of which does not apply to the instant Representations in view of the detailed analysis given above.

15. The Forum passed the order granting applicability of HT V (B) Agriculture Others tariff from 12.03.2018. There appears to be some minor mistake in understanding the date as far as grant of relief is concerned, however, I do not intend to go into it and therefore, there is no necessity to interfere with the order of the Forum. All the seven Representations are rejected and disposed of accordingly.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)