

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

**REPRESENTATION NO. 36 OF 2025**

In the matter of change of tariff category from Industrial to Agriculture- Others

Nirmal Seeds Pvt. Ltd. ....Appellant  
(Con. No. 123279007920)

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Jalgaon Circle .....Respondent  
(MSEDCL)

Appearances:

Appellant : 1. Suresh Patil, GM, (Finance & Admin)  
2. Nilesh Khare, Law Officer  
3. Ajay Bhosrikar, Representative

Respondent: 1. Vinod Patil, Superintending Engineer, Jalgaon  
2. Amit Sonawane, Senior Manager (F&A)  
3. Amit Tak, Assistant Accountant


**Coram: Vandana Krishna [IAS (Retd.)]**

Date of hearing: 10th July 2025 &  
29th September 2025

Date of Order: 11<sup>th</sup> December 2025

**ORDER**

This Representation was filed on 30<sup>th</sup> May 2025 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 9<sup>th</sup> May

  
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2025 passed by the Consumer Grievance Redressal Forum, MSEDCL, Nashik Zone (the Forum) in Case No.208 & 223 of 2024. The Forum by its order dated 09.05.2025 partly allowed the grievance application by reducing the recovery period to 2 years. However, it upheld the application of industrial tariff. The operative part of the order is as below: -


1. *The assessment bill issued due to tariff change since June 2015 has to be set aside.*
2. *As per the Electricity Act, 2003, 56 (2), plain recovery against tariff change for the period of two years prior to the date of inspection (i.e. 20.07.2023) to be recalculated by MSEDCL & bill to be issued to consumer by adjusting payment done during this period. (observation point no. 09)*
3. *No interest, DPC & Penalty should be charged to consumers.*
4. *After Recalculation of bill, excess payment should be adjusted as per Supply Code Regulation 2021, Section 15.6.2 “at a rate equivalent to the Bank Rate of the Reserve Bank of India to the consumer by adjustment in the subsequent bill”.*
5. *Instalments should be given to consumer as per SOP without any cost if requested.*


2. The Appellant has filed this representation against the order of the Forum. A physical hearing was held on 10.07.2025. During the course of the hearing, both parties expressed their willingness to explore the possibility of an amicable settlement. Accordingly, they were directed to hold discussions and make efforts to arrive at a mutually acceptable resolution. Vide letter dated 05.08.2025, the Appellant informed that a joint inspection of the premises had been carried out on 01.08.2025. Despite this, a fundamental difference persisted between the Appellant and the Respondent regarding the proposed settlement. Consequently, a second hearing was held on 29.09.2025 during which both parties were heard at length. *[The Electricity Ombudsman’s observations and comments are recorded under ‘Notes’ where needed.]*

3. The Appellant’s submissions and arguments are stated below:

- (i) The Appellant is a HT Consumer ((No. 123279007920) of the Respondent from 19.09.2018 as per Govt. of Maharashtra Biotechnology Policy, 2001 dated 29.01.2002. The connection details are tabulated below:

Table 1

  
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| Name of Consumer       | Address   | San. Load/ Contract Demand | Date of Supply | Supplementary bill towards tariff difference  |
|------------------------|---|----------------------------|----------------|---|
| Nirmal Seeds Pvt. Ltd. | 136/2, Bhadgaon Road, Tal- Pachora, Dist- Jalgaon. 424 201. | 1584 KW/ 982 KVA           | 19/09/2018     | Tariff Difference of ₹3,47,53,891/- from Ag. - Others to Ind. from Sept. 2018 to Feb. 2024 (about 5½ years) |

(ii) **Preamble:**


The Appellant stated that under the Maharashtra Biotechnology Policy, 2001, considering the incentives offered, Nirmal Seeds Pvt. Ltd. established an Agricultural Biotechnology Unit within its company premises.

**Key Provisions of Maharashtra Biotechnology Policy, 2001:**

- **Definition:** Biotechnology involves the use of living organisms, cells, or enzymes to develop or modify agricultural products.
- **Objective:** To transform agriculture, animal husbandry, health, and environmental protection through biotechnology.
- **Agricultural Benefit:** Promote climate-resilient, high-yielding, and stress-tolerant crop varieties and bio-inputs for sustainable farming.
- **Industry Classification:** Agro-biotechnology companies to be treated as **agro-based industries**.
- **Financial Incentive:** Power supply to agricultural biotechnology industries to be charged at **agricultural tariff rates**, with exemption from statutory power cuts.

**Accordingly, the Government of Maharashtra Policy (29.01.2002) under Clause 4.13 and 4.21 provides that agricultural biotechnology industries shall receive power at agriculture rates and be treated as agriculture-based industries.**

- (iii) The Appellant is a Private Limited Company registered under the provisions of the Companies Act, 1956 at Gat No. 136/2, Bhadgaon Road, Tal. Pachora, Dist. Jalgaon. The Appellant Company has developed a Mycorrhiza Hi-Tech Laboratory for the process of mass multiplication by using Carrot Roots through the Root Organ Culture (ROC) technique. The Root Organ Culture process is a part of tissue culture technology.

  
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The Appellant referred to Standard Operating Procedures for Accredited Test Laboratory of National Certification System for Tissue Culture Raised Plants (NCS-TCP), Department of Biotechnology, Government of India where plant tissue culture is defined below:

*Plant Tissue Culture: Plant Tissue Culture is a technique for culturing plant cells, tissues, or organs under artificial, controlled, and aseptic conditions, covering micro-propagation, organogenesis, and somatic embryogenesis.*

The Appellant Company is recognized as a Research Institute by the Department of Scientific and Industrial Research (DSIR). A copy of the letter dated 25<sup>th</sup> February 2021, regarding renewal of recognition of its in-house R&D Unit is placed on record. The Company is also ISO 9001:2015 certified. The Appellant is regular in payment of energy bills.

(iv) As per GoM Policy and various Circulars of MSEDCL, the Appellant was billed under Agriculture- Others Tariff Category correctly from the date of release of electric connection. However, the tariff was later changed to Industrial.

(v) **Sequence of Inspections:**


(A) On 20.07.2023, a Flying Squad from the Vigilance Department, MSEDCL, Kalyan, visited the Appellant's premises without any prior notice or intimation and conducted an inspection.


Subsequently, on 06.09.2023, another team of MSEDCL officials again visited the premises without prior intimation, conducted an inspection without consulting or questioning any of the Appellant's officers, and left without serving any report, panchanama, or show-cause notice.

These visits and inspections were unilateral actions by MSEDCL, conducted in violation of the principles of natural justice. No notice, panchanama, or show-cause notice was served to the Appellant at the time of inspection.

The details of both these inspections are summarized as below:

Table 2:

  
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|   | Date of Inspection | MSEDCL Authority                         | Inspection Report   | Appellant's Submissions  |
|---|--------------------|--|---|--|
| 1 | 20.07. 2023        | Security and Enforcement, MSEDCL, Kalyan | Supply is utilized for the Tatyasaheb R.O.Patil Biotechnology Laboratory which deals with Research & development production of various bio-organic input like plant growth vitalizers, bio soil, enrichers and organic manures power by using bio technological engineering and Industrial process. | It is a general report based on the visualization of the company premises without understanding the process and activities which are going on inside it. Prepared the inspection without informing their concerned superior/senior officer or technical person and they have prepared the report by their own view without understanding the technicality from concerned expert staff. |
| 2 | 06.09.2023         | MSEDCL, Jalgaon                          | In above Laboratory Mycorrhiza (Bacteria) is produced under Tissue culture Technology by using Rizhamica product.   | They also observed Tissue culture activity.  |

- (vi) In the monthly bill of March 2024, the Appellant suddenly received a bill showing a change of tariff category from HT V (B)–HT Agriculture Others to HT I(A)–Industry, without any prior intimation or formal order from MSEDCL. The Respondent issued a supplementary bill towards tariff difference amounting to ₹ 3,47,53,891/- for the period from Sept. 2018 to Feb. 2024 (5 years, 5 months) on 21.06.2024.
- (vii) The Appellant filed a grievance application before the Forum on 21.05.2024, seeking withdrawal of the change in tariff category from Agriculture Others to Industry. A subsequent application dated 01.07.2024 was filed in the Forum for withdrawal of retrospective recovery of tariff difference amounting to ₹ 3,47,53,891/- for the period from Sept. 2018 to Feb. 2024.
- (viii) The Forum conducted a hearing on 12.07.2024 and directed the Respondent to re-inspect the premises. In compliance, MSEDCL carried out a re-inspection on 30.07.2024, wherein it was clearly stated that the Appellant's activity comprises Tissue Culture Activity and R&D Department recognized by DSIR. The inspection report is charted below:-

Table 3:

| S.N. | Date       | Authority                         | Report   | Appellant's Submission   |
|------|------------|-----------------------------------|--|--|
| 1    | 30.07.2024 | MSEDCL (As per Forum's direction) | Electricity used for Tissue Culture Laboratory for agricultural purpose, specifically for mass multiplication of carrot roots. | Inspection carried out in presence of technical staff confirming hi-tech agricultural activity. Findings not duly considered by the Forum. |

- (ix) The Forum heard both grievances together. The Forum, by its order dated 07.01.2025, partly allowed the grievance applications. The operative portion of the order is reproduced in the

  
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first para. The Forum failed to appreciate that the Appellant's activities are not industrial in nature, and overlooked the documentary evidence placed on record, which clearly establishes that the Appellant is engaged in hi-tech agricultural activities. The Forum did not properly consider the following facts that substantiate the Appellant's claim:

**Supporting Facts and Submissions:**

- (a) As per Commercial Circular No. 341 issued by MSEDCL on 28.04.2023, based on the MERC Mid-Term Review Tariff Order dated 31.03.2023 in Case No. 226 of 2022, the applicable tariff for HT consumers includes: HT V(B): HT Agriculture – High-Technology Agriculture (e.g., Tissue Culture, etc.).
  - (b) A certification dated 08.07.2024 from Dr. Pravin Puranik, Professor, Department of Biotechnology, School of Life Sciences, Kavayitri Bahinabai Chaudhari North Maharashtra University, confirms the existence of hi-tech agricultural infrastructure and activities at the Appellant's premises.
  - (c) A certification dated 09.07.2024 issued by the District Superintending Agriculture Officer, Jalgaon confirms that Nirmal Seeds Pvt. Ltd. possesses state-of-the-art hi-tech agricultural facilities, where agriculture biotechnology research and the manufacture of various bio-organic inputs are carried out as an integral part of hi-tech agriculture.
  - (d) A confirmation/certification (undated) from an Eminent Professor, Biotechnology Laboratory, Mahatma Krishi Vidyapeeth, Rahuri, certifies that Root Organ Culture (ROC)—a methodology used for Mycorrhiza mass multiplication—is a recognized form of Tissue Culture.
  - (e) The re-verification report dated 30.07.2024 specifically records that the Appellant's operations include Cold Storage and a Research & Development Department recognized by the Department of Scientific and Industrial Research (DSIR) Unit, thereby substantiating the hi-tech agricultural nature of the Appellant's activities.
- (x) The Appellant and Respondent carried out another Joint Inspection on 01.08.2025 as per the Electricity Ombudsman's directions. The summary of load profile is as below:

**Table 4:**

  
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| Sr. No. | Activity   | Running Load (KW) | Running Load (%) | Applicable Tariff              |
|---------|--|-------------------|------------------|--------------------------------|
| 1       | Tissue Culture of Carrot   | 787               | 90%              | HT V(B):HT Agriculture- Others |
| 2       | Research on another Culture Technology for climate - resilient crops (Brinjal, Chilli, Rice, etc.) | 87                | 10%              | 0                              |
|         | Total Load   | 873               | 100%             |                                |

The Appellant submitted “Details of Load Profile” which is kept on record and “Process of Mycorrhiza flow chart” which is enclosed with this order.

**Judgments/Orders referred to by the Appellant:**

- (xi) The Appellant cited the Judgment dated 04.12.2023 of the Hon’ble High Court, Mumbai (Nagpur Bench) in Writ Petition No. 2054/2017 in the case of *Ankur Seeds Pvt. Ltd. v. MSEDCL*, which held that activities involving Research and Development in Hi-Tech Agriculture qualify for the HT Agriculture Tariff. The Court observed that the activities carried out by the petitioner were in the nature of High-Tech Agricultural Research & Development, and therefore, the applicable tariff category would be HT Agriculture.
- (xii) The Appellant referred to the Order of the Electricity Ombudsman, Mumbai in Case No. 60/2019, dated 02.04.2019 in the matter of *College of Engineering Pune Students Hostel v. MSEDCL*. The Ombudsman held that retrospective recovery is permissible only from the date of inspection and not prior. The said order was challenged by MSEDCL before the Hon’ble Bombay High Court in Writ Petition No. 10536/2019, which was dismissed on 09.06.2020. MSEDCL thereafter filed a Special Leave Petition (SLP No. 1952–1953/2021) before the Hon’ble Supreme Court, which was also dismissed on 11.07.2022.
- (xiii) The Respondent cited the Judgment dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in the case of *M/s. Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd.* However, the ratio of this judgment is not applicable to the present case, as it pertains to issues of default in payment and billing error/mistake, and not to tariff reclassification.

  
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- (xiv) The Appellant submitted that **any recovery due to abrupt consumer reclassification should be prospective and not retrospective**. In support, the Appellant relied upon the following precedent:


The Order of the MERC in Case No. 24 of 2001, dated 11.02.2003, wherein the Commission held:

*"No retrospective recovery of arrear can be done on the basis of any abrupt re-classification of a consumer even though the same might have been pointed out by the Auditor. Any re-classification must follow a definite process of natural justice, and the recovery if any should be prospective only, as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively"*

- (xv) From the above, it is evident that the Appellant's activities are hi-tech agricultural in nature, and the applicable tariff should be HT-V (B): Agricultural (Others).
- (xvi) In view of the foregoing facts and submissions, the Appellant prays that the Respondent be directed to
- (a) Set aside the supplementary bill of ₹ 3,47,53,891/- towards tariff difference from HT V (B)–HT Agriculture Others to HT I(A)–Industry from Sept. 2018 to Feb. 2024.
  - (b) Restore the applicable tariff category to HT–V (B): Agricultural-Others from March 2024 onwards.
  - (c) Restrict MSEDCL from initiating recovery proceedings and ensure that electricity supply remains uninterrupted until final disposal of this representation.

4. The Respondent MSEDCL filed its reply by email dated 23/06/2025. Its submissions and arguments are as below.

- (i) Initially the Appellant was billed under Agricultural -Others tariff category, as per his original application.
- (ii) **Flying Squad Inspection and Observations:**

  
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On 20.07.2023, the Flying Squad Unit under the Security & Enforcement Department inspected the premises of Nirmal Seeds Pvt. Ltd., when it was observed that the Appellant was wrongly billed under Agriculture-Others Tariff Category, as **the activity was found to be biotechnological engineering and Industrial process.**

The exact wordings of the observations are produced below:

***“Discrepancy Observed: Power Supply exclusively utilized for Tatyasaheb R.O.Patil Biotechnology Laboratory which deals with Research & Development Production of various bio- organic inputs like plant growth vitalizers, bio soil, enrichers and organic manures power by using biotechnological engineering and Industrial process.”***

***Action proposed: Tariff Change: HT V (B) to HT-I (A) as per activity observed in consumer premises.***

The Respondent, being the Licensee, is duly empowered under the Electricity Act, 2003 and the MERC Regulations to conduct such inspections. The authority concerned was duly informed on-site. Hence, the allegation of unauthorized inspection is without merit.

- (iii) **Tariff Categorization as per MERC Orders: As per the Tariff Order dated 26<sup>th</sup> June 2015 of MERC in Case No. 121 of 2014, Bio-Technology Industries are categorized under Industrial Tariff.** Corporate Office of MSEDCL issued Commercial Circular No. 243 dated 3<sup>rd</sup> July 2015 based on the above Tariff Order. The relevant clause reads:


*HT I: HT- Industry*

*Applicability*

.....

***J. Biotech Industries, as covered under the Biotechnology Policy of Government of Maharashtra;***


Subsequent Tariff Orders — Case Nos. 48 of 2016 (03.11.2016), 195 of 2017 (12.09.2018), 322 of 2019 (30.03.2020) and 226 of 2022 (30.03.2023) — reaffirm this classification. Despite this, the consumer continued to be billed under HT–V(B): Agriculture–Others from September 2018 to February 2024 due to oversight. As per MSEDCL Commercial Circulars Nos. 275, 284, 323, and 341(Circulars are based on various Tariff Orders of the Commission), **the tariff category HT-V (B): HT Agriculture – Others applies only to High-Technology Agriculture activities such as Tissue Culture, Green House, or Mushroom Cultivation,**

  
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**provided the power supply is exclusively utilized for crop cultivation processes and not for engineering or industrial activities.**

- (iv) The Assistant Director (S&E), vide letter dated 26.07.2023, reported these discrepancies to the Jalgaon Circle Office. Based on the Flying Squad Report and subsequent verification, it was confirmed that the power supply was utilized for biotechnological R&D and industrial activities related to the manufacture of bio-organic inputs.
- (v) The Jalgaon Circle Office constituted a committee to further examine the consumer's operations. The committee's inspection report dated 06.09.2023 confirmed that the electricity supply was used for laboratory and research-based activities, consistent with the Flying Squad findings. Accordingly, the Respondent issued a supplementary bill towards tariff difference of ₹ 3,47,53,891/- for the period from Sept. 2018 to Feb. 2024 on 21.06.2024 as shown in Table 1.
- (vi) The supply of the Appellant is exclusively used at Tatyasaheb R.O. Patil Bio-Technology Laboratory of Nirmal Seeds Pvt. Ltd., which is engaged in R&D and production of bio-organic inputs such as plant growth vitalizers, bio-soil enrichers, and organic manures. The laboratory undertakes research in Molecular Biology, Genetic Engineering, and Plant Tissue Culture, encompassing three major branches of biotechnology. The facility comprises two functional divisions:
- **Molecular Biotechnology Laboratory**, a dedicated R&D unit with sections including BMS (Control Room), Autoclave, Gel, Chemical, Store, Mass-I & II, Inoculation, Growth, and Di-haploid Labs.
  - **Mycorrhiza Production Laboratory**, a bio-fertilizer production unit with sections such as Entry, Bottle Washing, Media Preparation, Autoclave, Storage, Inoculation, Growth, and Organic Manure Powder Rooms.
- (vii) The MERC Orders and corresponding MSEDCL Circulars collectively establish that **Independent R&D Units fall under the Industrial Category, while HT Agriculture–Others applies only to crop-related high-tech agriculture.** Accordingly, the activity of Nirmal Seeds Pvt. Ltd. qualifies for the HT–I (A): Industrial category. The activity remained same from date of connection.

  
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(viii) **Grievance before the Forum:** The Appellant filed a grievance challenging (a) the tariff reclassification and (b) the retrospective recovery of **₹3,47,53,891/-** for the period **September 2018 to February 2024**. The Forum, by its order dated 09.05.2025, partly allowed the grievance. However, the limitation of two years for the recovery period is not applicable, in view of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 (M/s Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd., decided on 05.10.2021).

**(ix) Joint Inspection and Findings:**


Pursuant to the directions of the Hon'ble Electricity Ombudsman in the hearing on 10.07.2025, a spot inspection was again carried out on 1<sup>st</sup> August 2025. The inspection reflects the situation on that date, during which the consumer might have made certain changes. The following observations were recorded:

1. Electricity supply is utilized at Tatyasaheb R.O. Patil Bio-Technology Laboratory for R&D on multiplication of carrot roots and Mycorrhiza development. The premises consist of a Molecular Biotechnology Laboratory.
2. The premises also include a Mycorrhiza Production Laboratory.
3. Mycorrhiza developed with carrot roots is supplied to various agro-biotech companies.
4. The consumer was requested to provide laboratory certifications, equipment lists, and process documentation.
5. No polyhouse was observed for sale or cultivation of plants.
6. There has been no change in the activity or purpose of electricity use since the date of connection.
7. Photographs enclosed depict the production activities, including the Molecular Biotechnology Laboratory and Mycorrhiza Production Laboratory, showing areas such as BMS (Control Room), Autoclave Room, Gel Room, Chemical Room, Store Room, Mass-I & Mass-II Rooms, Inoculation Room, Growth Room, Di-haploid Laboratory, Bottle Washing Room, Media Preparation Room, and Organic Manure Powder Production Room.

A copy of the Spot Inspection Report has been duly provided to the consumer and kept on record.

(x) The Appellant has also submitted a list of carrot root procurement vendors, namely:

- i. Translational Research and Innovation Pvt. Ltd.

  
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- ii. Tanay Agronics
- iii. PRAL Agro Solution
- iv. Genext Biotech Pvt. Ltd.
- v. Anand Agro Care Pvt. Ltd.

- (xi) The Respondent cited the Judgment dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in the case of M/s. Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd. As per the Hon'ble High Court's order dated 5th October 2021, MSEDCL is authorized to assess and recover charges from consumers for the period 2006 to 2021. In the present case, the consumer was incorrectly billed under HT-V (B): Ag-Others from September 2018 to February 2024, whereas the correct applicable tariff is HT-I (Industrial) for the same period. This is a case of escaped billing, and the Licensee is permitted to recover the same. Electricity being a scarce and valuable public resource, its proper classification and billing are essential. Since the Appellant utilized the supply for biotechnology and industrial processes, retrospective recovery is fully justified.
- (xii) In view of the above facts and findings, the Respondent prays that the representation of the Appellant be rejected.

## Analysis and Ruling

5. The Appellant contended that under the Maharashtra Biotechnology Policy, 2001 (GoM dated 29.01.2002, Clauses 4.13 & 4.21), agro-biotech industries are classified as agro-based and are eligible for agricultural tariff for power supply. The Appellant has developed a Mycorrhiza Hi-Tech Laboratory using the Root Organ Culture (ROC) technique, a recognized form of Tissue Culture, and had been correctly billed under the HT-Agriculture-Others tariff category since the release of supply. However, in March 2024, MSEDCL unilaterally changed the tariff category from HT V (B)-HT Agriculture Others to HT I(A)-Industry and issued a supplementary bill of ₹3.47 crores for the period September 2018 to February 2024 after an inspection of the Flying Squad on 20.07.2023. The Appellant produced expert certifications from Prof. Pravin Puranik (NMU), the District Agriculture Officer (Jalgaon), and MPKV, Rahuri, confirming that *Root Organ Culture* is a recognized *Tissue Culture* process and that the activities fall under Hi-Tech Agriculture. A Joint Inspection (01.08.2025)

  
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recorded that carrot root multiplication is carried out, though Mycorrhiza bio-fertilizer production was not in progress at that time. The total connected (running) load of the Appellant is 873 kW, comprising 90% for Tissue Culture of Carrot, which attracts the HT–V(B): Agriculture – Others tariff, and 10% for Research on another Culture Technology for Climate-Resilient Crops such as Brinjal, Chili, and Rice.


The Appellant relied upon judicial precedents, including:

- *Ankur Seeds Pvt. Ltd. v. MSEDCL* (HC Nagpur Bench, 04.12.2023) – holding that R&D in Hi-Tech Agriculture qualifies for Agricultural Tariff;
- *MERC Case No. 24/2001 (11.02.2003)* and *ATE Appeal No. 131/2013 (07.08.2014)* – directing that tariff reclassification recovery must be **prospective**.

The Appellant contends that its activities are Hi-Tech Agricultural in nature, the applicable tariff is HT–V (B): Agricultural - Others, and seeks restoration of this tariff category along with withdrawal of the retrospective recovery.

6. The Respondent contended that on 20.07.2023, the Flying Squad Unit inspected the premises of the Appellant and observed that the consumer was incorrectly billed under HT–Agriculture–Others, as the activities involved biotechnological engineering and industrial processes. The inspection noted that power supply was used exclusively for Biotechnology Laboratory, engaged in R&D and production of bio-organic inputs such as plant growth vitalizers, bio-soil enrichers, and organic manures. Accordingly, tariff reclassification from HT–V (B): Agriculture–Others to HT–I (A): Industrial was proposed.

**As per MERC Tariff Order dated 26.06.2015 (Case No. 121 of 2014) and subsequent orders, Biotechnology Industries fall under the Industrial category**, reaffirmed in later Tariff Orders (Cases No. 48/2016, 195/2017, 322/2019, and 226/2022). Despite this, the Appellant continued to be billed under Agriculture–Others due to oversight. MSEDCL Circulars Nos. 275, 284, 323, and 341 clarify that HT–V(B) applies only to high-tech agricultural activities such as tissue culture, greenhouse, or mushroom cultivation directly related to crop production, not to industrial or engineering processes. Based on these inspection reports, MSEDCL corrected the tariff to HT–I (Industrial) in March 2024 and issued a supplementary bill of ₹3,47,53,891/- for the period September 2018 to February 2024. The Appellant’s supply is used exclusively for biotechnology research in the

  
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Molecular Biotechnology Laboratory and Mycorrhiza Production Laboratory, both involved in R&D and bio-organic input production. No polyhouse or plant cultivation activity was found. A joint inspection on 01.08.2025 confirmed continuation of the same activities since connection and documented detailed laboratory setups and equipment. The Respondent relies on the Supreme Court judgment in *M/s Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd.* (05.10.2021), the retrospective recovery is justified as it constitutes “escaped billing” due to misclassification from the date of connection i.e. 19/09/2018.

## **7. Review of Tariff Orders of the Commission (2012 onwards)**

The abstracts of tariff provisions pertaining to HT – Industry and HT – Agriculture (Others) in various Tariff Orders of the Maharashtra Electricity Regulatory Commission (MERC) from 2012 onwards have been reviewed as under:

### **1. Tariff Order in Case No. 19 of 2012 dated 16 August 2012**

#### ***HT V: HT – Agricultural***

##### **Applicability:**

*Applicable for Electricity / Power Supply at High Tension for pumping of water exclusively for the purpose of agricultural / cultivation of crops including HT Lift Irrigation Schemes (LIS) irrespective of ownership and also for*


- (i) 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;***

### **2. Tariff Order in Case No. 121 of 2014 dated 26 June 2015**

#### ***HT I: HT- Industry***

##### **Applicability**

***J. Biotech Industries, as covered under the Biotechnology Policy of Government of Maharashtra;***

  
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### ***HT V: HT – Agricultural***

#### ***Applicability:***

- (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;***


Various subsequent tariff orders have been examined, and all of them repeat the above provisions. Basically, the Commission has clarified that in order to be eligible for the exemption from applicability of industrial tariff under clause “Agricultural (iii)”, the High Tech Agricultural activity must be directly concerned with crop cultivation, and not an industrial process. An industrial process can be interpreted to include any production process, such as the production of inputs into a bio-fertilizer. In this case, the Appellant is involved in the production of Mycorrhiza, which is indeed an input into the production of bio-fertilizers.

#### **Indicative Tariff Schedule (FY 2024–25)**

The indicative tariff schedule for the following categories for the period 1 April 2024 to 31 March 2025 is reproduced below:

| <b>HT I (A): Industry – General</b>                    |                                 |                             | <b>HT V (B): HT Agriculture Others</b>                 |                                 |                             |
|--|---------------------------------|-----------------------------|--|---------------------------------|-----------------------------|
| Tariff w.e.f. 1 April, 2024 to 31 March, 2025          |                                 |                             | Tariff w.e.f. 1 April, 2024 to 31 March, 2025          |                                 |                             |
| Supply Voltage Level                                   |                                 | Wheeling Charges (Rs. /kWh) | Supply Voltage Level                                   |                                 | Wheeling Charges (Rs. /kWh) |
| EHV  |                                 | 0                           | EHV  |                                 | 0                           |
| HT   |                                 | 0.6                         | HT   |                                 | 0.6                         |
| PLUS   |                                 |                             | PLUS   |                                 |                             |
| Demand/Fixed Charge and Energy Charge (for all Supply) |                                 |                             | Demand/Fixed Charge and Energy Charge (for all Supply) |                                 |                             |
| Consumer Category                                      | Demand Charges (Rs. /kVA/month) | Energy Charges (Rs. /kVAh)  | Consumer Category                                      | Demand Charges (Rs. /kVA/month) | Energy Charges (Rs. /kVAh)  |
| HT I: HT – Industry                                    |                                 |                             | HT V: HT Agriculture                                   |                                 |                             |
| HT I(A): HT - Industry - General                       | 549                             | 8.36                        | HT V (B): HT Agriculture Others                        | 97                              | 7.99                        |

#### **8. The following 2 main issues are under consideration:-**

  
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**Issue 1:** Whether the activity carried out by the Appellant is classifiable under the **Industrial Tariff Category** or under **Agriculture – Others**?

**Issue 2:** Whether the Respondent is justified in retrospective recovery, and if so for what period?


Both parties agree that the Appellant's activity is covered under Biotech Industry, and involves tissue culture. The difference of opinion relates to the following points:-

- (i) The Appellant claims that the Government's Biotech Policy, 2001 should primarily determine the case. This policy provides that agricultural biotech industries shall receive power at agriculture rates. The Respondent on the other hand claims that all MERC tariff orders state that "Biotech industries, as covered under the Biotech Policy of GoM" are eligible for industrial tariff.
- (ii) The Respondent claims that the Appellant's unit does not utilize power "directly for crop cultivation process", but for "production" of bio-organic "inputs" such as plant growth vitalisers, bio-soil enrichers and organic manures. These are not "plants" which are sold directly / indirectly to farmers. During the hearing, the Respondent clarified that, had the Appellant been producing saplings for sale to farmers, this would have been considered as an agro-related activity and subject to Agricultural tariff. As it is, they produce Mycorrhiza, which is an input into the final plant, and hence an industrial activity.

**Observation:**

*Nirmal Seeds Pvt. Ltd., Pachora* is engaged in the development and production of high-quality agricultural inputs. The company operates a **Biotechnology and Research Unit** focusing on **Tissue Culture, Mycorrhiza production, and bio-organic inputs** such as bio-fertilizers and plant growth promoters.

The production facility is primarily involved in Research and Development and production of bio-organic materials, including plant growth vitalizers, bio-soil enrichers, and organic manures. In simple words, Mycorrhiza is a fungi, which attaches to plant roots and helps in better absorption of nutrients from the soil. It is an input into the further production of bio or organic fertilizers. This activity (production of Mycorrhiza) amounts to an industrial production activity.

  
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As per the Tariff Order of the Commission in **Case No. 121 of 2014 dated 26 June 2015 and subsequent tariff orders**, such activities are classified under **Biotech Industries**, and are not subject to the exemption clause under “Hi-Tech Agricultural activities.”

Accordingly, since the Appellant’s major operations do not fall within the scope of **HT–V(B): HT : Agriculture-Others** which is applicable only to activities directly and exclusively related to crop cultivation processes such as **Tissue Culture, Greenhouse, or Mushroom cultivation**. The Respondent has correctly reclassified the supply under the **Industrial Tariff Category**.


Hence, this issue is answered as above.

9. So far as the second issue is concerned, it is to be determined whether the Respondent would be justified in retrospective recovery, and if so for what period.

The Section 56 (2) of the Electricity Act, 2003 is reproduced below:

*“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”*

10. The Larger Bench of Hon’ble Bombay High Court by its judgment dated 12<sup>th</sup> March 2019 in Writ Petition No. 10764 of 2011 with other Writ Petitions has also examined Section 56 (2) of the Act quoted above, and has come to the conclusion that the legal position of Section 56(2) of the Electricity Act, 2003 stands conclusively settled. The Court has categorically held that a Distribution Licensee is barred from recovering electricity charges for any period exceeding two years prior to the date of the first valid demand, (here, arising from the Flying Squad Inspection dated 20.07.2023). The principle laid down is that an amount becomes “first due” only upon issuance of a valid bill. **In the present case, the under-billing resulted solely from a lapse or deficiency in service on the part of the Licensee, such as erroneous tariff application or failure to detect the discrepancy during routine billing and inspection processes.** Consequently, by virtue of the statutory restriction imposed in Section 56(2), as interpreted by the Larger Bench, the Licensee is legally precluded from recovering charges for any period beyond twenty-four months. The assessment, therefore, must be confined to the two-year period prior to the date of the first demand, and any claim extending beyond this statutory limit is unsustainable and liable to be set aside.

  
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In accordance with this Larger Bench Judgment, the Distribution Licensee is not entitled to demand charges for electricity consumption for any period exceeding two years prior to the date of the first demand identified during the inspection conducted on 20.07.2023. Accordingly, the supplementary bill for the Tariff Difference amounting to ₹3,47,53,891/- for the period from Agricultural-Others to Industrial tariff, covering from September 2018 to February 2024, is set aside. A revised supplementary bill for the 24 months preceding February 2024 (i.e., from March 2022 to February 2024) shall be recovered.

11. The Hon'ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan Alias Rahamjulla has held that:

*“9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired. Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not, however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.”*

12. The Respondent relied upon the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in the case of M/s. Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd. to justify recovery on account of escaped billing. However, the present case cannot be treated as one of escaped billing; rather, it arose due to an error or omission on the part of the Respondent. It is pertinent to note that the Respondent took nearly five years to detect the incorrect tariff classification of the Appellant, which indicates inadequate scrutiny or lack of subject knowledge. Therefore, the Respondent bears equal responsibility for this lapse, which led to under-billing resulting from the erroneous application of the **Agriculture – Others** tariff instead of the **Industrial** tariff category as prescribed under the Commission's Tariff Orders effective from the date of connection.

  
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13. The citations relied upon by the Appellant are not applicable, as the ratio in the present case differs from those cited, particularly in view of the Larger Bench Judgment dated 12<sup>th</sup> March 2019 in Writ Petition No. 10764 of 2011 and connected petitions. Electricity being a scarce and valuable public resource, proper classification and billing are imperative. Since the Appellant utilized the supply for biotechnology and industrial purposes, retrospective recovery for 24 months is justified.


14. The Forum's order in principle is reasonable; however, it is modified to the extent indicated below. We therefore direct the Respondent as under: -

- a) To revise the supplementary bill for the Tariff Difference of ₹3,47,53,891/- from Agricultural-Others to Industrial tariff for the period from March 2022 to February 2024, withdrawing any interest and DPC levied, if any.
- b) To allow the Appellant to pay the revised bill in ten equal monthly installments. In the event of default of any installment, proportionate interest shall accrue, and the Respondent shall have liberty to take action in accordance with law.
- c) All other prayers of the Appellant are rejected.
- d) Compliance with this order shall be submitted within two months from the date of its issuance.

15. The Representation of the Appellant is disposed of accordingly.

16. The secretariat of this office is directed to refund Rs.25000/- taken as deposit with the Respondent by adjusting in the Appellant's ensuing bill.

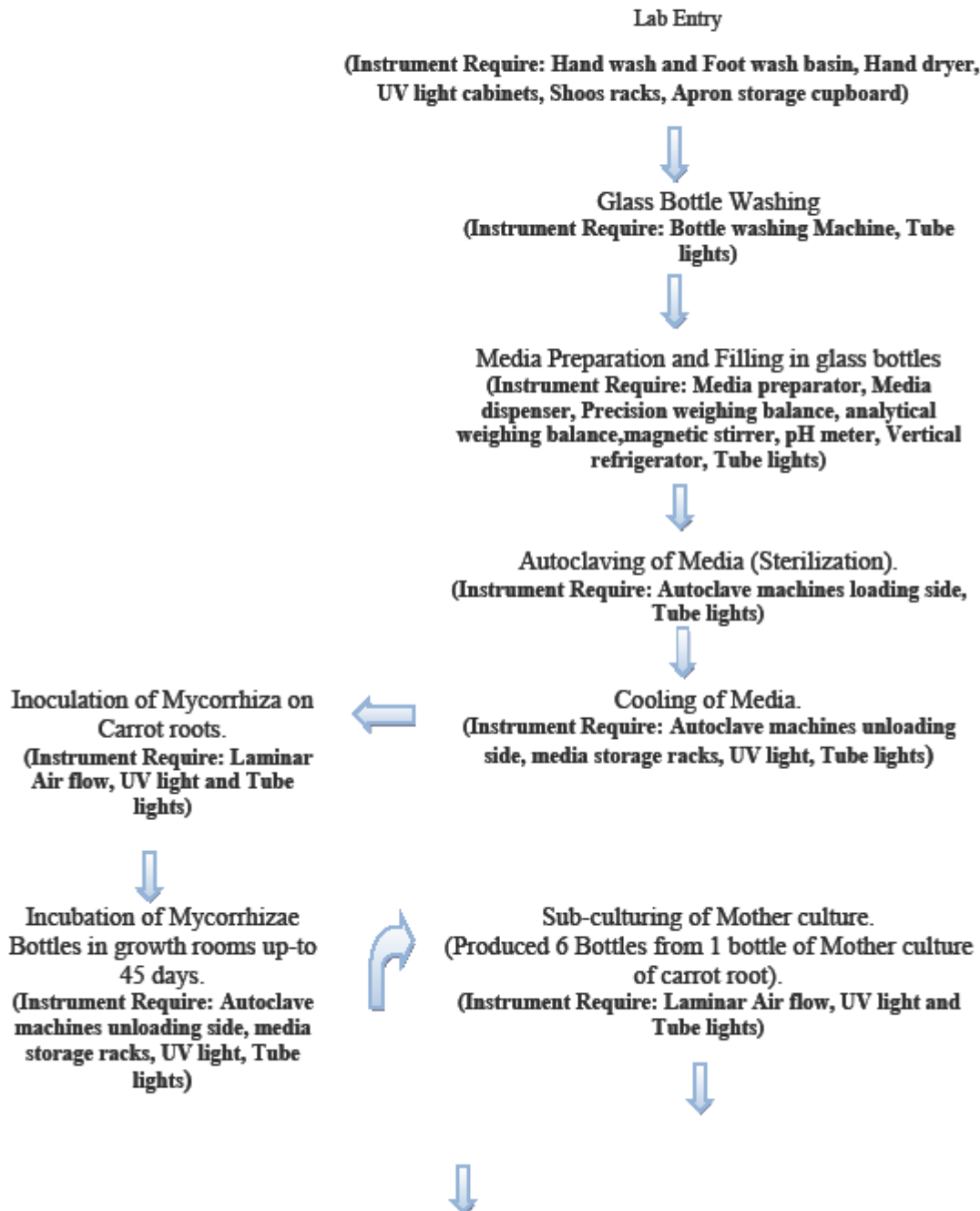
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(Vandana Krishna)  
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**Nirmal Seeds Pvt. Ltd.**

**Tissue Culture of Mycorrhiza by Root Organ Culture Technique**



  
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