

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 37 OF 2025

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

Nirmal Organo Bio Tech Pvt. Ltd.Appellant
(Con. No. 122519002220)

V/s.

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

Appearances:

Appellant : 1. Suresh Patil, G.M. (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 (Retd. IAS)

Date of hearing: 10th July 2025 &
29th Sept. 2025

Date of Order: 11th December 2025

ORDER

This Representation was filed on 30th 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 7th May 2025 passed by the Consumer Grievance Redressal Forum, MSEDCL, Nashik Zone (the Forum) in


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Case No. 210 & 222 of 2024. The Forum by its order dated 07.05.2025 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: -

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. (20.07.2021 to 20.07.2023) (observation point no. 09)*
3. *No interest, DPC & Penalty should be charged to consumers.*
4. *After Recalculation of bill, excess payment if any 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. *Installments 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 as below:

- (i) The Appellant is HT Consumer (No. 122519002220) of the Respondent since 24.11.2004 as per Govt. of Maharashtra Biotechnology Policy, 2001 dated 29.01.2002. The connection details are tabulated below:



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Table 1

Name of Consumer	Address	San. Load/ Contract Demand	Date of Supply	Date of Inspection	Supplementary bill towards tariff difference
Nirmal Organo Bio-Tech Pvt. Ltd.	86/4B, Bamrud, Tal-Pachora, Dist-Jalgaon. 424 201	331 KW/260 KVA	24.11.2004	20.07.2023 (Flying Squad Unit Kalyan)	Tariff Difference of ₹ 2,07,71,302/- from Ag. -Others to Ind. from June 2015 to Feb. 2024 (about 8 3/4 years)

(ii) **Preamble:**


The Appellant stated that under the Maharashtra Biotechnology Policy, 2001, and considering the incentives offered, Nirmal Organo Bio-Tech 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:** Agri-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. The Company has established its High-Tech Bio Agri Unit at Gat


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No. 86/4B, Bamrud Road, Taluka Pachora, District Jalgaon from 2004 where Research and Development (R&D) activities are undertaken along with cold storage.

The Appellant Company is recognized as a Research Institute by the Department of Scientific Industrial Research (DISR). A copy of the letter dated 25th February 2021, regarding renewal of recognition of its in-house R&D Unit, is placed on record. *[Note: The letter is addressed to Nirmal Seeds Pvt. Ltd. certifying its in-house R&D unit(s) at various locations, amongst which this unit at Gat No. 86 is certified as Bio Input Laboratory. This certificate is valid up to 31.03.2024]*

The Company is also ISO 9001:2015 certified. The Appellant is regular in payment of energy bills.

The Cold Storage Unit of the Appellant is used for the storage of agricultural products, specifically seeds, as defined under the APMC Act, 1963, for maintaining seed germination, viability, and vigour for long term.

- (iv) As per Govt. 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, Panchnama, or show-cause notice.

These visits and inspections were unilateral actions by MSEDCL, conducted in violation of the principles of natural justice. No notice, Panchnama, 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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Sr. No.	Date of Inspection	MSEDCL Authority	Inspection Report	Appellant's Submissions
1	20.07.2023	Security and Enforcement, MSEDCL from Kalyan	Power supply is exclusively utilized for the Bio input Division, which is ultra-modern manufacturing facility which deal with R&D, production and marketing of various bio-organic inputs like Bip Pesticides, Bio Fertilizers and insecticides 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 an concerned expert staff.
2	06.09.2023	MSEDCL Jalgaon	The power supply is utilized for Bio-Technology Division Unit manufacturing of Bio-Pesticides & bio Fertilizer is carried out. Also valuable seeds are stored in cold storage.	Report was mainly based upon the first verification of Security and Enforcement, Kalyan dated 20.7.2023

- (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 ₹ 2,07,71,302/- for the period from June 2015 to Feb. 2024 (8 years 9 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 ₹ 2,07,71,302/- for the period from June 2015 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 Cold Storage and R&D Department recognized by DISR. The inspection report is charted below:-

Table 3:


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S. N.	Date	Authority	Inspection Report	Appellant's Submissions
1	30.07.2024	MSEDCL (as per Forum's direction)	Cold Storage and R&D Department recognized by DISR (Research activities, bio-Agri division is involved in the research of inputs and cold storage being used for agriculture products storage of seeds).	Inspection carried out in presence of technical staff. 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 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) The Cold Storage Unit is utilized solely for the storage of agricultural products (seeds), as defined under the APMC Act, 1963.



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- (e) Under Commercial Circular 341, the applicable tariff for such use is HT–V(B): HT Agriculture (Others), covering pre-cooling plants and cold storage units for agricultural products (processed or otherwise).
- (f) 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:

Sr. No.	Activities	Running Load in KW	Percent-wise Load on activities	Utilities
1	Cold Storage-1	120	36.35%	For Seed preservation to maintain viability and germination
2	Cold Storage-2	24	7.27%	
	Subtotal (1+2)	144	43.62%	
3	Research Unit (Hi-tech Bio-Agri unit)	100.69	30.50%	Research activities for new biological product Development
4	Production unit (plant growth vitalizers, bio fertilizers, Bio soil enrichers and Organic manures)	59.1	17.90%	Production activities of various products
5	EPN bio-pesticide production Lab	23.04	6.98%	Production activity of Entomopathogenic nematodes (EPN)
6	Poly House Activity for Tissue Culture Plants	2.55	0.77%	Poly house for the growth of tissue culture plants
	Total	329.38	100%	


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Judgments/Orders Referred 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.
- (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


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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 Rs. Rs. 2,07,71,302/- dated 21.06.2024 towards tariff difference from Ag- Others to Industrial from June 2015 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:**

On 20.07.2023, the team of the Security & Enforcement Department, Kalyan inspected the premises of Appellant (Nirmal Organo Bio-tech Pvt. Ltd). when it was observed that the Appellant was wrongly billed under Agriculture-Others Tariff Category, as **the activity was found to be Bio Input Division engaged in Research & Development, production and marketing of various bio-organic inputs like Bio pesticides, Bio fertilizers, and insecticides.** The exact wordings of the observations are produced below:

Discrepancy Observed: *Power supply is exclusively utilized for the Bio input Division, which is ultra-modern manufacturing facility which deal with R&D, production and*


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marketing of various bio-organic inputs like Bio Pesticides, Bio Fertilizers and insecticides by using Bio Technological 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 26th 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 3rd July 2015 based on the above Tariff Order. The relevant clause reads:


HT I: HT- Industry

Applicability

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


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- (iv) The Asst. Director (S&E) has informed MSEDCL Circle Office, Jalgaon about the discrepancies mentioned above as per letter mentioned in reference No. 3. As per the Spot Verification Report of Flying Squad Team and letter mentioned in Reference No. 3 the consumer is utilizing power supply for Bio Input Division which is Ultra-Modern manufacturing facility which deals with Research and Development, Production and Marketing of various bio-organic inputs like Bio-Pesticides, Bio-Fertilizers and insecticides which is not exclusively for High Technology Agriculture but also for Bio-Technological Engineering and industrial process hence for the said mentioned activity HT-I A is proper applicable tariff as per Asst. Director (S&E), Zonal S&E unit, Kalyan and Commercial Circular No. 243 dated 3rd July 2015.
- (v) Accordingly, the MSEDCL Jalgaon Circle Office constituted a committee to verify the nature of activities at the consumer's premises. The Committee confirmed that the electricity supply is being utilized for the Bio-Technology Division, Bio-Fertilizer Production, and Cold Storage activities.
- (vi) As per the Spot Verification Report of the Vigilance Team, Nirmal Organo Bio-Tech Pvt. Ltd. is exclusively utilizing the power supply for its Bio-Input Division, which is an ultra-modern manufacturing facility engaged in Research and Development, production, and marketing of bio-organic inputs such as Bio-Pesticides, Bio-Fertilizers, and Insecticides using Bio-Technological Engineering and industrial processes. Therefore, as per the Assistant Director (S&E), Zonal S&E Unit, Kalyan and Commercial Circular No. 243 dated 03.07.2015, the applicable tariff category is HT-I (A) Industrial.
- (vii) However, the consumer was incorrectly billed under HT-V (B) – Agricultural Others tariff from June 2015 to February 2024, instead of the applicable HT-I (A) Industrial tariff.
- (viii) The Forum, in its order, directed that only plain recovery towards tariff difference for a period of two years prior to the inspection date (i.e., 20.07.2023) be recalculated and billed to the consumer after adjusting the payments already made for the said period (20.07.2021 to 20.07.2023).


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- (ix) The Bio-Input Division of Nirmal Organo Bio-Tech Pvt. Ltd., Consumer No. 122519002220, consists of a Culture Bank Room, Shaker Room, Fermenter, Autoclave Room, Storage Room, Inoculation Room, Quality Control Room, Packaging Room, and Warehouse.
- (x) At the premises located at Gat No. 86/4-B, Bhamrud Shivar, Pachora, the power supply is exclusively used for the aforementioned Bio-Input Division activities, which constitute industrial processes involving R&D, production, formulation, and marketing of Bio-Pesticides, Bio-Fertilizers, and Bio-Stimulants. Hence, HT-I (A) Industrial tariff is the correct and applicable category.
- (xi) The Jalgaon Circle Office relies upon the Flying Squad Report dated 20.07.2023. Further spot inspection was carried out on 01.08.2025, as per directions of the Hon'ble Electricity Ombudsman. The inspection revealed:
- (a) No change in activity since the date of connection.
 - (b) Ongoing production of Bio-Fertilizers, Bio-Pesticides, and Bio-Stimulants.
 - (c) Formulation of Bio-Fertilizers, Bio-Pesticides, and Bio-Stimulants.
 - (d) Cold storage facility being used for storage of various seeds.
 - (e) No separate boundary segmentation inside premises.
 - (f) Multiple industrial activities (production; cold storage; research laboratory; and storage) operating under a single connection.
- (xii) Photographic evidence has been submitted clearly establishing that the Appellant is engaged in industrial activities, including R&D operations and seed storage.
- (xiii) The Respondent referred Tariff Order dated 03.11.2016 in Case of 48 of 2026. As per the said Tariff Order in Case No. 48 of 2016, Research & Development activity and Biotechnology Industries covered under the Government of Maharashtra's Biotechnology Policy fall under the Industrial tariff category. In addition, seed storage being an integral component of the seed manufacturing process is also treated as an industrial activity. The Appellant's sanctioned load of 329.38 kW, comprising Cold Storage Units (144 kW), Hi-Tech Bio-Agro R&D Unit (100.69 kW), Production Unit (59.1 kW), EPN Bio-Pesticide Lab (23.04 kW) and Polyhouse Unit (2.55 kW), clearly demonstrates that the predominant operations involve manufacturing, processing and


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R&D, and therefore squarely fall under the HT-Industry tariff category, not Agriculture–Others. Seed storage functions such as segregation, controlled temperature/humidity preservation, pest management and viability maintenance constitute a post-harvest industrial process integral to seed manufacturing, and do not qualify as “pre-cooling plants and cold storage for agricultural products” under HT-V(B), nor fall within the scope of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963.

- (xiv) Since there has been no change in activity from the date of connection, the tariff difference charged from June 2015 is justified and in accordance with statutory provisions. MSEDCL does not agree with the Forum’s order referred above and reserves its right to challenge the same upon the decision of the Hon’ble Electricity Ombudsman.
- (xv) 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.
- (xvi) In view of the above facts and findings, the Respondent prays that the representation of the Appellant be rejected.

Analysis & 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 operates a DSIR-recognized R&D Unit and a


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Cold Storage for agricultural seeds at Gat No. 86/4B, Pachora, since 2004. Activities include research, bio-inputs, and scientific seed storage squarely falling under Hi-Tech Agriculture. MSEDCL accordingly billed the Appellant under HT Agriculture–Others since connection release. However, without any notice, MSEDCL conducted two inspections (20.07.2023 and 06.09.2023) and later changed the tariff to HT–Industrial in March 2024. A supplementary retrospective bill of ₹2,07,71,302/- (June 2015 to Feb. 2024) was issued without following due process. The Appellant’s total load of 329.38 kW comprises Cold Storage -1 (120 kW, 36.35%) and Cold Storage-2 (24 kW, 7.27%), together 43.62%, used exclusively for seed preservation to maintain viability and germination; a Hi-Tech Bio-Agro Research Unit (100.69 kW, 30.50%) for development of new biological products; a Production Unit (59.1 kW, 17.90%) for plant growth vitalizers, bio-fertilizers, bio-soil enrichers, an EPN Bio-pesticide Lab (23.04 kW, 6.98%) for production of entomopathogenic nematodes; and a Poly House Unit (2.55 kW, 0.77%) for tissue culture plant growth. All activities falling under HT V (B): HT Agricultural–Others. Additional certifications from (i) North Maharashtra University (08.07.2024) and (ii) District Superintending Agriculture Officer, Jalgaon (09.07.2024), further verified that the Appellant’s infrastructure and activities are purely agricultural biotechnology.

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**.
- **Ankur Seeds Pvt. Ltd. v. MSEDCL (2023)** – High-Tech Agro R&D attracts Agriculture tariff.
- **Ombudsman Case No. 60/2019** (upheld by Bombay High Court & Supreme Court) – Retrospective recovery allowed only from inspection date.
- **MERC Case No. 24/2001** – No retrospective recovery on abrupt reclassification; changes must be prospective.

The Respondent’s reliance on **Prem Cottex** is misplaced as it concerns billing errors, not tariff reclassification. The Appellant contends that its activities are Hi-Tech Agricultural in nature, the


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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 the Flying Squad inspection on 20.07.2023 found the Appellant wrongly billed under Agriculture–Others, as the premises were used exclusively for an advanced Bio-Input Division involved in R&D, production and marketing of bio-pesticides, bio-fertilizers and related biotechnological products. MERC Tariff Orders and Commercial Circular 243 classify such Biotechnology Industries under HT-I Industrial Tariff, while HT-V (B) applies only to high-tech crop-cultivation activities. Subsequent inspections, including the Ombudsman-directed visit on 01.08.2025, confirmed unchanged industrial activity comprising production units, R&D labs and seed cold storage, supported by photographic evidence. The facility includes multiple industrial sections such as Culture Bank, Fermenter, Autoclave, QC Lab, Packaging and Warehouse. Seed storage and viability-maintenance processes are post-harvest industrial functions, not agricultural cold-storage activities under HT-V (B) or the APMC Act. As such, HT-I (A) is the correct tariff, and billing under HT-V (B) since 2015 constituted under-billing. The Respondent therefore claims retrospective recovery from June 2015, relying on *Prem Cottex Judgment of Supreme Court* (05.10.2021). The Respondent disputes the Forum’s two-year limitation, and seeks rejection of the Appellant’s representation.

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


A review has been undertaken of the tariff provisions applicable to *HT–Industry* and *HT–Agriculture (Others)* as issued by the Maharashtra Electricity Regulatory Commission (MERC) from 2012 onwards. The relevant extracts are summarized below:


➤ **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


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- (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;*

➤ **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;

HT V: HT – Agricultural

Applicability:

- (ii) *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;*


➤ **Tariff Order of the Commission in Case No. 48 of 2016 dated 03.11.2016: The relevant quote is reproduced as below:**

HT I (A): Industry – General

Applicability:

This tariff category is applicable for electricity for Industrial use at High Voltage for purposes of manufacturing and processing, including electricity used within such premises for general lighting, heating/cooling, etc.

It is also applicable for use of electricity / power supply for Administrative Offices / Canteen, Recreation Hall / Sports Club or facilities / Health Club or facilities/ Gymnasium / Swimming Pool exclusively meant for employees of the industry; lifts,


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water pumps, firefighting pumps and equipment, street and common area lighting; Research and Development units, etc. –

Provided that all such facilities are situated within the same industrial premises and supplied power from the same point of supply.

.....

It shall also be applicable for use of electricity / power supply for (but not limited to) the following purposes:

j) Biotechnology Industries covered under the Biotechnology Policy of Government of Maharashtra;

k) Cold Storages not covered under HT V (B) – Agriculture (Others);

m) Seed manufacturing


&

HT V: HT – Agriculture

HT V (B): HT – Agriculture Others

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)*
- 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; ... (Emphasis provided)*


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A review of the subsequent tariff orders shows that all of them consistently reiterate the same position. The Commission has categorically clarified that eligibility for exemption from industrial tariff under the “Agricultural – Others” category requires that the High-Tech Agricultural activity must have a direct nexus with crop cultivation. Activities that amount to an industrial process are not eligible. An industrial process is interpreted broadly to include any form of production activity, Research & Development activity such as the manufacture of inputs used in bio-fertilizer production.

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:

HT I (A): Industry – General			HT V (B): HT Agriculture Others		
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:-


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

Answer:

The Appellant’s Actual Load Pattern:

According to the Appellant, the Appellant’s sanctioned load is 329.38 KW comprises the following functional divisions:


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- Cold Storage Units (1 & 2) – 144 kW (43.62%): Used for scientific seed preservation (temperature/humidity-controlled storage for viability and germination).
- Hi-Tech Bio-Agro Research Unit – 100.69 kW (30.50%): Engaged in R&D for new biological products.
- Production Unit – 59.1 kW (17.90%): Manufacturing plant growth vitalizers, bio-fertilizers, bio-soil enrichers.
- EPN Bio-Pesticide Laboratory – 23.04 kW (6.98%): Production of entomopathogenic nematode-based bio-pesticides.
- Polyhouse Unit – 2.55 kW (0.77%)

This breakup clearly demonstrates that the predominant activities involve manufacturing, processing and R&D, which fall squarely under HT–Industry, not Agriculture- Others Activity.

- Seed storage operations, grade-wise/lot-wise segregation, temperature and humidity control, pest control and viability maintenance, form an integral component of the seed manufacturing process. These activities do not fall under “pre-cooling plants and cold storage units for agricultural products” as contemplated under HT–V (B), nor do they fall within the meaning under the APMC Act. Seed storage is a post-harvest industrial operation, not an agricultural produce storage process.
- Based on a consistent reading of MERC Tariff Orders (2012 onward) and the Appellant’s actual load usage, the activities of R&D, processing, bio-input manufacturing, bio-pesticide production and controlled seed storage **constitute industrial operations**. Therefore, the Appellant is correctly classifiable under the **HT–Industrial Tariff Category**, and not under High-Tech Agriculture–Others Tariff Category. Hence, from the above load pattern the Appellant’s activity clearly covered under **Industrial Tariff Category**.

The Issue 1 is answered accordingly.


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

Answer: 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.”

9. The Larger Bench of Bombay High Court by its judgment dated 12th March 2019 in Writ Petition No. 10764 of 2011 with other Writ Petitions has also examined this issue. As per the Larger Bench Judgment of the Hon’ble Bombay High Court dated 12.03.2019 in Writ Petition No. 10764 of 2011 and connected matters, the legal position under 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, and in the absence of continuous reflection of arrears, the Licensee cannot treat past dues as recoverable. 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. The liability did not become “due and payable” before the supplementary assessment raised pursuant to the inspection. Consequently, by virtue of the statutory restriction imposed under Section 56(2), as interpreted by the Larger Bench, the Licensee is legally precluded from recovering charges for any period beyond the immediately preceding 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 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.

10. 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.”

11. 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 in force.


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12. 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 12th 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.


13. 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 ₹ 2,07,71,302/- 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.

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

15. 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.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

