

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 51 OF 2024

In the matter of refund of tariff difference

Krushiraj Cold Storage LLP. Appellant
(Consumer No173259056430)

V/s.

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

Appearances:

Appellant : 1. Tanay Gugale, Representative
2. Suresh Sancheti, Representative

Respondent : 1. Chandrashekhar Patil, Superintending Engineer, Baramati
2. M.S. Misal, Executive Engineer (Adm.), Baramati

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 3rd April 2024

Date of Order : 19th April 2024

ORDER

This Representation was filed on 26th February 2024 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 28th December 2023 in Case No. 46 of 2022 passed by the Consumer Grievance Redressal Forum,

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MSEDCL, Baramati (the Forum). The Forum by its order (in Marathi language) partly allowed the grievance application. The operative part of the order is as below:

“2 &3. The tariff category of the consumer be considered as HT-V (B) HT Agricultural Others from 02.01.2022. The Respondent has to refund the tariff difference amount (Industrial to Agricultural Others) in the consumer’s bill.”

The Electricity Ombudsman’s observations and comments are recorded under ‘Notes’ in brackets where needed.

[Note: This Forum’s order has still not been complied with by the Respondent, apparently on the grounds that meanwhile this representation was filed.]

2. The Appellant has filed this representation against the order of the Forum as he has requested to apply the HT Agricultural Others tariff from 04.03.2021. The Respondent filed its written reply on 01.04.2024. A hearing was held on 03.04.2024 through video conference. Both the parties were heard at length. For easy understanding, the Respondent’s submissions and arguments are stated first as follows:

- (i) The Appellant had applied on 26.08.2020 for a new HT connection under Industrial Tariff Category for Connected Load of 205 KW and Contract Demand of 256 KVA at Gat No. 230 Yawat, Taluka - Daund for the purpose of “Cold Storage”.
- (ii) Accordingly, the Respondent carried out an inspection of the premises for checking technical and commercial feasibility. The technical estimate was sanctioned on 10.12.2020. The Appellant made payments of the statutory charges on 21.12.2020. The construction work of 22 KV HT line, metering etc., was completed by the Appellant as per the standards of MSEDCL.
- (iii) After testing the metering equipment, the Respondent, Superintending Engineer issued a “Release Order” for Krushiraj Cold Storage LLP. (Consumer No.173259056430) vide

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its letter dated 24.02.2021 to the Dy. Executive Engineer, Kedgaon Sub-Dn.& Concerned MSEDCL Authorities of Testing and Billing, with the following conditions:

- Complete the point raised by Testing Division if any.

And specifically to the Appellant which is reproduced as below:

- *“Please note that HT V (B) tariff will be applied only after receipt of an undertaking from you for using cold storage only to store Agriculture Goods before release of load, otherwise HT I (A) tariff will be applied.”*

- (iv) The HT connection was released on 04.03.2021 under Industrial Tariff Category, as the Appellant failed to submit the required undertaking and GOM certificate.
- (v) The Respondent referred to the Tariff Order of the Commission in Case of 322 of 2019 dated 30.03.2020 for FY 2020-21 to FY 2024-25. The relevant portion of the Tariff Order is reproduced as below:

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

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

b. Pre-cooling plants and cold storage units for Agriculture Products as defined under APMC Act 1963 – processed or otherwise;

c. to e ” (Emphasis Provided)

- (vi) This tariff category is applicable for use of power supply for cold storage units for storing Agriculture Products as defined under Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (APMC Act). This is a concessional tariff; hence authentication of the concerned Government Authority is required. The consumer was asked to submit FSSAI Form-C certificate for deciding the tariff category of the consumer as HT Agricultural Others. However, the Appellant did not submit the above Form C certificate.

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Hence, the consumer connection was released with Industrial HT-IA tariff category on 04.03.2021 as per the condition of the release order dated 24.02.2021.

- (vii) The consumer had originally applied for industrial tariff for the purpose of cold storage. There was no storage of any materials initially at the time of release of power supply. In addition, the Appellant agreed with the categorization of his connection as HT 'Industrial' at the time of release. (This fact was also accepted by the consumer during the hearing before the Forum).
- (viii) **The Appellant submitted the required declaration of storing only agricultural products for the first time only on 12.05.2021, as per release order at Circle Office Baramati (Inward No. 443/2021).**
- (ix) **Subsequently, the Appellant applied for change of Tariff Category from HT-IA (Industrial) to HT Agricultural Others (Cold Storage) on 20.05.2021 in writing rather than applying online through Web Self Service (WSS) Portal, that too with an incomplete application without FSSAI Form C -Certificate.** Hence, it was advised to the Appellant verbally to apply on the WSS portal with a complete application along with FSSAI certificate.
- (x) **The First Joint Site Inspection was carried out by the Executive Engineer Testing Division and the Executive Engineer O& M Division Kedgaon on 31.08.2021 when it was found that the supply was being used for cold storage of agricultural products.**
- (xi) The Appellant received a FSSAI certificate on 02.01.2022. *[Note: Validity from 19.09.2021 to 18.09.2026]*
- (xii) **The Appellant finally submitted an online application for change of Tariff Category from HT-I A (Industrial) to HT Agricultural Others (Cold Storage) on 20.05.2022 along with FSSAI certificate.**


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- (xiii) The premises was again inspected on 01.09.2022, when it was observed that there was no use of the premises (for storage) except minor lighting, due to water leakage of the factory shed. Hence the “Agricultural Others” tariff category was not applied.
- (xiv) The Appellant filed a grievance application in the Forum on 23.12.2022 vide case No. 46/2022. Meanwhile, the said connection was permanently disconnected in March 2023 as per the consumer’s request. The Consumer was made live again in Aug. 2023.
- (xv) The Forum by its order (in Marathi language) partly allowed the grievance for the change of tariff category to Agricultural Others from the date of FSSAI certificate. i.e., from 02.01.2022.
- (xvi) The Appellant referred to the order of the Appellate Tribunal for Electricity (ATE) in Appeal No. 337 of 2016. [Note: This order mentions that the FSSAI certificate is not necessary.] However, the ratio of this order is not applicable in the instant case, as the tariff applicability for Agricultural - Others tariff is decided as per the guidelines of APMC Act, 1963. The certificate is issued subject to compliance of the Terms & Conditions mentioned in the certificate, including maintaining a certain temperature for various Agricultural Goods. This is a concessional tariff, hence the certificate from a Government Authority is essential and it cannot be compared with IT/ITES policy.
- (xvii) The Respondent argued during the hearing that the Appellant never submitted any undertaking along with its new application as required in the release order dated 24.02.2021.
- (xviii) The Forum has rightly analyzed the case. The order of the Forum is balanced and just.
- (xix) In view of the above, the Respondent prays that the representation of the Appellant be rejected.

3. The Appellant’s written submissions and arguments in brief are as below:


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- (i) The Appellant applied for a new HT connection as stated in Para 2 (i) for the purpose of cold storage for preserving Agricultural products on 26.08.2020. *[Note: We have verified that the original application dated 26.08.2020 was for an industrial connection. There is a separate A1 form for agricultural connections. However, the Appellant filled the form which is meant for industrial connections. During the hearing, the Appellant clarified that his contractor filled in the wrong form by mistake.]*
- (ii) The release order (dated 24.02.2021) was issued with the following directions to the Appellant:-
“Please note that HT V (B) tariff will be applied only after receipt of undertaking from you for using cold storage only to storage Agriculture Goods before release of load, otherwise HT I (A) tariff will be applied.”
- It was well-known that the Appellant’s application was basically for cold storage for Agriculture Goods, hence, in the first place, the Appellant should have been billed under HT V (B): HT – Agriculture Others right from the beginning as per the purpose of the Appellant. However, the Respondent wrongly billed him under HT I (A): HT - Industry – General without any communication with the Appellant.
- (iii) The Appellant submitted the required undertaking for the proposed use of Agricultural products storage on 24.02.2021. *[Note: The Respondent denied receiving this undertaking]*
- (iv) The Appellant applied for FSSAI certificate on 19.09.2021, and subsequently with a minor modification on 02.01.2022. The FSSAI Authority issued the certificate on 02.01.2022 with retrospective effect from 19.09.2021. The certificate was valid up to 18.09.2026.
- (v) The Appellant filed his grievance application in the Forum on 23.12.2022. The Forum by its order dated 28.12.2023 partly allowed the grievance application, and applied

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Agricultural-Others tariff retrospectively from 02.01.2022 onwards. The Forum's order was based on the FSSAI Certificate dated 02.01.2022. However this certificate is effective from 19.09.2021.

- (vi) The Forum did not understand that the tariff category is decided as per the purpose of the plant, and not by any authentication by a third party. The Forum has erred in not considering the Commercial Circular No. 323 dated 03.04.2020 at para no. 7 (b) which has clarified as follows:

“7. Tariff Categorization:

a)

b) IT and ITeS Units: Under existing tariff structure, IT and ITeS units having registration certificate under GoM's IT and ITeS Policy are categorised under Industrial Category. The APTEL in its Judgment dated 12 February, 2020 in Appeal No. 337 of 2016 & Others has ruled that tariff categorisation cannot be based on any certification under Policy and it should be based on criteria specified under Section 62 (3) of the Act. Accordingly, the Commission has removed the requirement of having certification under GoM Policy for claiming Industrial Tariff for IT and ITeS Units “

- (vii) The above situation also applies to all kind of tariff categorization and hence, the Appellant becomes eligible for Agricultural-Others tariff category from the date of release of the connection, i.e. from 04.03.2021 onwards. Thus, the bill issued by the Respondent under industrial tariff category is void ab initio.
- (viii) The supply of the Appellant was permanently disconnected from Mar.2023 to Aug.2023. The supply was reconnected in Aug. / Sep. 2023.
- (ix) The Appellant originally applied for change of tariff category on 20.05.2021, but was forced to apply online through WSS Portal on 20.05.2022. In fact, this was not a

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“change of tariff” application, but an application for “correction in tariff category”, as there was no specific field in the WSS portal for correction in Tariff Category.

- (x) The Appellant prays that the Respondent be directed to revise the retrospective bills by considering “Agriculture-Others” tariff category from the date of release of the connection i.e., 04.03.2021, and the tariff difference between industrial and Agriculture-Others tariff category be refunded for Demand & Energy Charges along with accrued interest as per the Electricity Act, 2003.

Analysis and Ruling

4. We have tabulated the progression of events for ease of understanding which is as follows:

S.N.	Date	Event
1	03.04.2020	Circular No. 323 as per the MERC Order in Case No. 322 of 2019 was issued that a certificate is not required in case of ITES units.
2	26.08.2020	Application under Industrial tariff category.
3	24.02.2021	Release Order mentioning that the Appellant’s undertaking or declaration is required, mentioning that only Agricultural goods will be stored.
4	24.02.2021	Appellant claims to have submitted the required declaration. However, there is no Inward No. of the Respondent on this undertaking.
5	04.03.2021	Connection released under Industrial category.
6	18.09.2021	Validity of FSSAI certificate starts, though it was issued on 02.01.2022.
7	12.05.2021	Appellant submitted the required declaration of storing only agricultural products.
8	20.05.2021	Appellant applied for change of tariff category in writing (not online) without the FSSAI certificate.
9	31.08.2021	Respondent’s site inspection confirmed that the cold storage was for agricultural products.
10	20.05.2022	Appellant finally submitted online application for change of tariff category along with FSSAI certificate.
11	01.09.2022	Respondent’s second site inspection when it was found that the premises were under renovation due to water leakage.

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5. We have examined in detail the reasoning submitted by the Respondent for delaying applying Agricultural tariff. We find this reasoning to be unsatisfactory. In fact, we find that even after the Forum's order to apply agricultural tariff from 02.01.2022, the Respondent has still not complied with this order, and continues to levy Industrial tariff. The apparent reason for this non-compliance is that meanwhile the Appellant filed this representation, and the Respondent deemed it fit to wait for our final order before applying agricultural - others tariff. This reasoning is unjustified. It seems that the Respondent is deliberately delaying the application of agriculture – others tariff. There was no reason not to refund the tariff difference from 02.01.2022. Had this office granted any further relief, the additional refund could easily have been made later.

6. We find that the following issues have not been properly clarified or justified by the Respondent:

- (i) The original release order of the Respondent dated 24.02.2021 addressed to the Appellant states as follows:

“Please note that HT V (B) tariff will be applied only after receipt of an undertaking from you for using cold storage only to store Agriculture Goods before release of load, otherwise HT I (A) tariff will be applied.”

- **This letter asks only for an undertaking, and does not ask for FSSAI certificate.** If the FSSAI certificate was indeed necessary, it could have been mentioned in this letter. The Respondent is expected to guide its consumers properly for complying with all the requirements needed to grant a new connection in the interest of transparency. We find that the Respondent has acted in a non-transparent and unjust manner by raising the issue of FSSAI certificate later, and not originally after receiving the application.



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- So far as this undertaking is concerned, the Appellant claims that he had submitted this undertaking on 24.02.2021. We have checked the record and verified that though such a letter was apparently issued, there is no Inward Number of the Respondent on this letter. The Respondent also denies receiving this undertaking. But even if this undertaking is discounted, **the Appellant did submit the required declaration again on 12.05.2021 which bears the Inward No. 443 / 2021 of the Respondent.** Therefore, there was no reason not to consider this declaration or undertaking by the Respondent, and to apply agricultural tariff category from this date.
 - We have also noted that in this initial release order dated 24.02.2021 and the letter issued to the Appellant, there was no mention that an online application is a must for change of tariff category to agricultural - others tariff category or that compliance of the provisions under APMC Act would be required. Once again, we find that proper guidance was not given to the Appellant by the Respondent at this initial stage, which is a major lapse.
- (ii) There is no dispute that during the site inspection on 31.08.2021, the Respondent found storage of agricultural products, as admitted in its own submission. There was no reason why this date could not be considered for applying agricultural – others tariff. The reasoning submitted by the Respondent is that FSSAI certificate had still not been submitted and the compliance of APMC Act 1963 had not been done. Both these points should have been raised at the initial stage itself, i.e. in August / September 2020 when the original application was made, or at least at the time of the release order in February 2021. Raising fresh points of compliance at a later date amount to harassment and unfair practice.
- (iii) The Appellant finally submitted the FSSAI certificate dated 02.01.2022 but this was valid retrospectively with effect from 19.09.2021. There was no reason not to



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give the benefit of agricultural - others tariff from this retrospective date of 19.09.2021. We find that the Forum has also erred in not considering this retrospective date. In fact, there is a difference of only a few days between the site inspection dated 31.08.2021 when storage of agricultural products was confirmed, and the retrospective date of the FSSAI certificate i.e. 19.09.2021. Considering both these facts, the benefit of agricultural – others tariff should have been given at least from September 2021.

The Appellant has argued that the FSSAI certificate was not necessary in the first place, in view of the ATE order in Appeal No. 337 of 2016. However, the ratio of this case is not applicable in the instant case, as the ATE order was applicable only to IT / ITES units.

7. In view of the above observations, we hold that agricultural - others tariff should be applied from 31.08.2021 which is the date of the site inspection which confirmed that only agricultural products were being stored at the premises. This was subsequently confirmed by the FSSAI certificate.
8. The Forum's order is modified as below.
9. The Respondent is directed:
 - a) To change the tariff category to HT-V (B) HT Agricultural Others from May 2024 onwards.
 - b) To pay the tariff difference between HT I A Industrial and HT-V (B) HT Agricultural Others from 31.08.2021 till April 2024.
 - c) The other prayers of the Appellant are rejected.


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10. The Representation is disposed of accordingly.

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

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

