BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 224 OF 2019

In the matter of change of tariff category

Rizwan Ice and Cold Storage..…… Appellant

V/s

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

Appearances

For Appellant : 1. Siraj Dosani, Partner
2. Faraaz Dosani, Partner
3. Santosh Bagade, Admn. Manager
4. Tulshiram Mane, Representative

For Respondent : 1. Ajay Chafale, Executive Engineer
2. Pranay Chakraborty, Dy. Executive Engineer
3. P. B. Bhoyar, Dy. Executive Engineer
4. G. A. Mali, Assistant Law Officer

Coram: Deepak Lad

Date of Order: - 6th March 2020

ORDER

This Representation is filed on 24th December 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 31st October 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).

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2. The Forum, by its Order dated 31.10.2019 has dismissed the grievance application in Case No. 268/2019.

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -

(i) The Appellant is a 22 KV HT Consumer (No.000079012513) from 02.11.1990 currently having Contract Demand (CD) of 575 KVA and sanctioned load of 575 KW at D-336, TTC Industrial Area, Turbhe, Navi Mumbai.

(ii) The Appellant made application for change of tariff category from Industrial to Agricultural on 05.02.2018 for its pre-cooling plant and cold storage for processing of fish and shrimps, the agricultural products. The Respondent inspected the premises pursuant to its application. Subsequently, an agreement for Agricultural tariff category was executed on 24.05.2018 as per format of the Respondent and the tariff was changed to Agricultural Tariff from May 2018. However, without prior notice, the Appellant received the bill for the month of November 2018 with HT Industrial tariff category without due verification or inspection. The Appellant was billed at Agricultural tariff for the period from May 2018 to October 2018 only.

(iii) Since the Respondent did not clarify as to why it was billed under Industrial tariff category, the Appellant filed the grievance with the Internal Grievance Redressal Cell (IGRC). The Appellant was given threat of disconnection hence the Appellant then approached the Forum with his grievance along with interim relief on 26.12.2018. The Forum, by its Order dated 31.10. 2019 has dismissed the grievance application. The Section 62(3) of the Electricity Act, 2003 (the Act) provides that

> "*the tariff shall be determined on basis of consumer's load factor, power factor, voltage, total consumptions of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and* ***the purpose for which the supply is required****"* ***(emphasis added).***

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The Forum has failed to appreciate the fact that the Appellant is a Cold Storage Activity for Agricultural Produce and does not constitute any Industrial activity as such.

(iv) In Tariff Order dated 03.11.2016 of the Commission in Case No. 48 of 2016 allowed HT Agriculture Tariff for pre-cooling plants and cold storage units for Agriculture Products and processed or otherwise. The same is quoted below: -

"HT V(B): HT – Agriculture Others
Applicability: This tariff category is applicable for use of electricity / power supply at High Voltage for:

a) Pre-cooling plants and cold storage units for Agricultural Products – processed or otherwise"

From the above, it is clear, that the activity of the Appellant falls under Agricultural tariff category.

(v) The Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 defined Pisciculture (Fish & Other aquatic products) as "Agricultural Produce" under schedule at item no. XIV / page no. (80).

a. **The Agricultural Produce Act 1926 (2004)** defined **"Agriculture Produce"** as,

"Agricultural produce" shall mean any of the kinds of produce mentioned in the First or Fourth Schedule of First any of the kinds of livestock or fish mentioned in the Fifth Schedule; under section (2) page no. (3). Also, Fifth Schedule on page no. (39) listed Livestock & Fish."

Hence the Livestock (Fish) can be termed as "Agricultural Produce" with reference to Government Statutes mentioned above.

(vi) The various activities taking place at Appellant's cold storage facility includes cleaning, drying, grading, sorting, packaging etc. in order to make raw material / produce suitable and neat for storage and preservation purpose i.e. raw fish to storable commodity for preservation purpose. These are allied activities which are part of Cold Storage Activity itself.

(vii) With reference to Order dated 06.12.2016 of the Commission in Case No. 114 & 119 of 2015, which rules that, *allied activities (cleaning, drying, sorting, packaging) which are part and parcel of and are essentially required to support*

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the core activity, the Commission allowed the consumption of such activities in industrial premises to be treated at par with the power consumption for the core industrial activity.

Hence, allied activities like cleaning, drying, sorting, packaging, etc. cannot be termed as industrial activity as allied activities like cleaning, drying, sorting and packaging with some limit in terms of percentage of total consumption, are essentially required to support the core activity of Cold Storage.

(viii) Revision of tariff from HT Industrial to HT Agriculture was accorded by utility in May 2018 after following due procedure and verification of consumer premises and confirmation of activity by the Respondent. However, no discrepancies were reported and subsequently revision of tariff to HT Agriculture was effected.

(ix) However, in November 2018 MSEDCL has again revised the tariff applicable to consumer's cold storage facility to HT Industrial without due verification or inspection.

(x) In view of the above, the Appellant prays that:

a) HT V(B) – Agriculture Others tariff category shall be made applicable to its cold storage plant.

b) It has been regularly paying the bills as per HT V(B) – Agriculture Others, so no coercive action be taken for recovery of disputed outstanding dues, interests, penalties, etc. (difference between HT Industrial and HTV(B) – Agriculture others Tariff) by MSEDCL.

c) Representation for this case was duly filed with the Forum on 26.12.2018, however, the order was passed only on 31.10.2019 (extraordinary delay of 10 months) hence, request not to levy interest and penalties during this period of dispute as per principle of natural justice.

d) It has been charged retrospective dues including interests and penalties for the period of May 2018 to October 2018 (Before the agreement for HT V(B) – Agriculture Others tariff category was unilaterally cancelled by the Respondent with no notice or reason given to the Appellant) in November 2018 bill. The Appellant requests to waive of these retrospective dues including interest and penalties charged in an unjust manner.

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4. The Appellant had specifically sought some time for additional submissions. In pursuance of the permission to submit additional written submission, the Appellant submitted its additional written submission on 06.02.2020 wherein its main thrust is against the submission of the Respondent in applying seafood exporters case decided by the Commission to this representation. It further submits that each case is totally distinct and has to be decided on the coordinates of that specific case. Therefore, the decision of the Commission on seafood exporters case cannot be blindly applied. The bearing of the case is mainly on purpose of the process undertaken by the Appellant. It has also cited ATE Judgment in Mumbai International Airport Pvt. Ltd. V/s. MERC in Appeal No. 106 of 2008. This is the main contention of the Appellant in its additional submission amongst other things which are already covered in the main submission.

5. The Respondent MSEDCL has filed its reply dated 22.01.2020 stating in brief as under:-

(i) The Appellant is a 22 KV HT Consumer (No. 000079012513) from 02.11.1990 currently having Contract Demand (CD) of 575 KVA and sanctioned load of 575 KW at D-336, TTC Industrial Area, Turbhe, Navi Mumbai.

(ii) Initially, the Appellant was billed under HT Industrial tariff category. The Appellant vide its letter dated 05.02.2018 had applied for change of tariff category from HT-I Industrial to HT-Agricultural (Others) claiming to have Cold Storage unit for agricultural produce.

(iii) The Respondent carried out inspection of the premises on 18.05.2018 for confirming cold storage use. After inspection, the Appellant had submitted an undertaking that it would carry only the activity of storing agriculture produce. Accordingly, the power supply agreement was executed on 24.05.2018 with tariff HT V (B): HT Agriculture Others. The same was conveyed to the Appellant vide letter dated 25.05.2018.

(iv) The Respondent meanwhile came to know about the order of the Commission dated 13.05.2016 in Case No. 42 of 2015 filed by Seafood Exporters Association of India (SEAOI) V/s MSEDCL. The SEAOI stated in Para 3 that

(o) Most of the factories of Members of the Petitioner Association are admittedly situated in an Industrial Area, namely the MIDC Industrial Area at Taloja which are, in fact, notified industrial premises. The term 'Industrial Area' is defined under Maharashtra Industrial Development Act, 1961 as under:-

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"2. (g) "Industrial area" means any area declared to be an industrial area by the State Government by notification in the Official Gazette, which is to be developed and where industries are to be accommodated;"

(v) The Respondent has ignored the fact that the SEAOI Members are taking 3- phase electricity supply at high voltage for industrial purpose. This aspect has not been disputed by the Appellant. The activities undertaken by them at their Units in the Industrial Areas involve various machines and include various processes like thawing, washing, blanching, cooking, marinating, flash frying, manufacturing ice for cooling, retorting, drying, cold storage and testing. The list of machinery used in the process is also vital and are not disputed by both the parties. The SEAOI and its members are functioning in industrial premises and carrying out industrial activity in their factory premises wherein the raw material is fish. An industry which uses Fish as Raw material and subjects the fish to various processes and utilizes different machines for that activity cannot by any stretch of imagination be considered as being "Fisheries".

(vi) The para 5 of the Commission's order in the Case No. 42 of 2015 states that *Seafood manufacturing units cannot be categorized under the HT-II Commercial category on any ground because such units undertake various processing and manufacturing activities, Seafood products Units are not engaged in any rearing and breeding activities. However, there is big difference between the raw material i.e. Fish and the final products, i.e. edible and cook able fish / seafood products. The raw fish in the latter case goes through various industrial and engineering processes.*

(vii) Owing to above submission of Seafood manufacturing units, the Commission re-categorized them as Industrial in order dated 13.05.2016 in Case No. 42 of 2015.

(viii) Therefore, on the basis of this clarificatory order of the Commission, the Respondent has applied the HT-1 Industrial tariff to the Appellant from November 2018 and informed the Appellant regarding the change of tariff from HT-Agriculture Others to HT- Industrial and also informed that the difference of tariff will be recovered in subsequent bills.

(ix) Reply on Merits: -

(a) The Commission itself ruled in Case No. 42 of 2015 that the seafood processing activities would attract relevant HT or LT industrial tariff, then accordingly the tariff of Appellant was changed to HT-Industrial**.**

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(b) Applicability of tariff category. As per the Commission's tariff order in case No. 195 of 2017, HT-I Industrial tariff applicability states as below.

HT I: HT – Industry
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.
…… …… …… ……
…… …… …… …. ….
l) Food (including Seafood) Processing units.

HT V (B): HT – Agriculture Others
Applicability:
This tariff category is applicable for use of electricity / power supply at High Voltage for:
a) Pre-cooling plants and cold storage units for Agricultural Products – processed or otherwise;
b) Poultries exclusively undertaking layer and broiler activities, including Hatcheries;
c) High-Technology Agriculture (i.e. Tissue Culture, Green House, Mushroom cultivation activities), provided the power supply is exclusively utilized for purposes directly concerned with the crop cultivation process, and not for any engineering or industrial process.
d) Floriculture, Horticulture, Nurseries, Plantations, Aquaculture, Sericulture, Cattle Breeding Farms, etc;

(c) Applicability of Tariff HT-V-(B) in present case may be argued on existence of Aquaculture, in the list mentioned in submission

Where as per Merriam Webstar Law dictionary

Aquaculture: - "the cultivation of aquatic organisms (such as fish or shellfish) especially for food."

The present activity of consumer is defiantly not an Aquaculture.

(d) As referred to the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 "Agricultural produce" means all produce (Whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture, [Fisheries] and forest specified in the Schedule mentioned in submission.

Where as per Merriam Webster dictionary

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Fisheries is defined as :

1: The occupation, industry, or season of taking fish or other sea animals (such as sponges, shrimp, or seals) : FISHING

2: a place for catching fish or taking other sea animals

3: a fishing establishment also : its fishermen

4: the legal right to take fish at a particular place or in particular waters

5: the technology of fishery —usually used in plural

Pisciculture is defined as "the cultivation of fish"

Hence, the Respondent submits that, the term "Agriculture Produce" as defined in the Maharashtra Agricultural Produce Marketing (Development And Regulation) Act, 1963 mentions of agriculture, horticulture, **animal husbandry**, apiculture, **pisciculture,** [Fisheries] and forest. The term animal husbandry, pisciculture and Aquaculture are associated only with rearing and breeding /cultivation of animals and fish. Therefore, the Appellant is rightly categorised in Industrial activity.

(e) The Respondent submits that, the Commission in Case No. 114 and 119 of 2015, decided on 06.12.2016 noted as

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

(f) The Forum has rightly decided the matter by considering the usage of supply by the Appellant for Industrial activity. As the Forum has passed the reasoned order by considering the order of the Commission in Case No. 42 of 2015 and without overlooking the provisions of statutes and other provisions.

(g) The activity that is carried out by the Appellant is of cold storage and that cannot be treated as an agricultural activity, but it is an industrial one.

(h) The Respondent is entitled for the recovery of retrospective dues of tariff difference, including interest and penalties for the period May 2018 to October

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2018 as per the Section 56(2) of the Act. The Respondent has not caused any loss to the Appellant, hence the question of payment of any monetary loss to the Appellant will not arise.

(i) In view of the above, it is, therefore, prayed that the Representation of the Appellant be dismissed.

6. The hearing was first held on 24.01.2020 at Mumbai and the second one was held on 25.02.2020 at Vashi, Navi Mumbai. The Appellant and the Respondent reiterated its argument in line with their written submissions. The Appellant argued that it was being billed at Industrial tariff prior to May 2018. However, post inspection, the Respondent changed the tariff category from Industrial to HT V (B): HT – Agriculture Others. The Respondent again reverted to Industrial tariff from November 2018 onwards. The Appellant sought explanation on this account, but the Respondent did not respond. The Appellant's activity clearly falls within the bracket which entitles it to be billed at HT V (B): HT – Agriculture Others tariff. Even the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 defined Fish as Food Products. Therefore, the Respondent erred in appreciating the process undertaken by the Appellant and applied Industrial tariff wrongly.

7. The Respondent, on the other hand, cited the Commission's order dated 13.05.2016 in Case No. 42 of 2015 which envisages Industrial tariff for the consumers undertaking business like the present Appellant. Therefore, the Respondent has rightly applied the Industrial tariff to the Appellant however, applicability of HT – Agricultural tariff is out of misunderstanding and wrong interpretation. The mistake has been corrected from November 2018 onwards and recovery for May 2018 to October 2018 was necessary which is done as per Section 56 (2) of the Act. From November 2018 onwards, the Appellant has been billed under HT – Industrial tariff category. The Commission's order in Case No. 42 of 2015 and even in Case No. 195 of 2017 substantiates the submission of the Respondent. The activity of the Appellant falls under Industrial activity as it is a process industry like seafood industries and therefore, Industrial tariff is applied.

Analysis and Ruling

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8. Heard both the parties and perused the documents on record. The Appellant was billed by the Respondent under Industrial tariff category prior to May 2018. There was no issue whatsoever from the Appellant. However, the Appellant raised the issue through its application dated 05.02.2018 to the Respondent for change of tariff in pursuance of the Respondent's Chief Engineer (Commercial) letter No. 4759 dated 05.03.2018 which happens to be the internal correspondence of the Respondent. The Respondent carried out the inspection and changed the tariff category to HT V (B): HT – Agriculture Others. However, the Respondent again switched over to HT Industrial tariff to the Appellant. This switchover as per the submission of the Respondent, is an error in judgment assessing the processes of the Appellant. In this case, the Appellant was billed HT V (B): HT – Agriculture Others for a brief period of May 2018 to October 2018 i.e. only for six months. The Appellant argued that its core activity is pre-cooling and cold storage used for storing fish which undergoes various activities like cleaning, drying, grading, sorting, packaging etc. in order to make raw material / produce suitable and neat for storage and preservation purpose. All these activities are not at all Industrial activity. Therefore, it is its right to have been billed at HT V (B): HT – Agriculture Others tariff. Applicability of Industrial tariff as per order in Case No. 42 of 2015 is with respect to petition filed by Seafood Export Association of India. The Appellant's main argument is that its core activity is pre-cooling and cold storage and it is requesting applicability of HT V (B) Agricultural tariff prospectively. It does not want any back recovery. I specifically noted that the Appellant is silent on applicability of Industrial tariff prior to May 2018 since the applicability of tariff order i.e. from November 2016.

9. The Commission in its various tariff orders / orders as regards to cold storage and food processing units has reasoned out the tariff issues. Extracts from such orders are as below: -

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

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

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HT V: HT – Agricultural

Applicability:

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

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

(ii) …… ……

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

(iv) …… …… ……

(v) …… …… ……

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

Commission's Analysis and Ruling

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

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

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

Applicability

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

……

"HT II: HT- Commercial

Applicability

HT II (A): EXPRESS FEEDERS

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

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Commercial tariff category, such rearing, breeding and associated activities would generally not be undertaken in industrial premises.

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

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

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

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

……..

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

HT V(B): HT – Agriculture Others

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

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

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d) Floriculture, Horticulture, Nurseries, Plantations, Aquaculture, Sericulture, Cattle Breeding Farms, etc;

(d) Commission's order dated 06.12.2016 in Case No. 114 and 119 of 2015

Commission's Analysis and Ruling

8. ……

9. As mentioned by the Petitioners during the hearing, their prayer for correction in the applicability of the HT-Agriculture tariff category to include 'agriculture products – processed or otherwise', as in the case of the corresponding LT category, has been addressed by the Commission in its Order dated 29 January, 2016 in Case No. 121 of 2015 as follows:

"the Commission finds a similar and unintended discrepancy between another entry in the Tariff applicability of HT V: HT-Agriculture category and the corresponding LT category in the Approved Tariff Schedule regarding precooling and cold storage units. Para. 6.1.7 of the impugned Order states that

"…the Commission has decided to broaden the existing tariff treatment of cold storages and to consider them in two categories, namely (a) Cold Storages for Agriculture Products; processed or otherwise and (b) Cold Storages for other purposes. While the tariff of Agriculture – Others (Metered) category shall be applicable for Cold Storages for Agriculture Products, the latter would be covered under the Industry instead of the Commercial category as at present."

This is correctly reflected in the applicability of the LT IV (C): LT – Agriculture Metered – Others category in the Approved Schedule, but not in the corresponding HT category. The relevant entry in the HT V: HT-Agriculture category is accordingly corrected to read as follows:

"i) For pre-cooling plants & cold storage units for Agriculture Products – processed or otherwise;…"

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

……

11. ……

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

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10. All above orders are to be read harmoniously to give fruitful meaning to the basic issues in the instant representation. It could be seen from the submissions of the Appellant that it does not simply store fish and other aquatic products which it purchases from the market. On the contrary, it has specifically mentioned that it undertakes processes like deboning, cutting, cleaning, drying, grading, sorting, packaging, in order to make raw material i.e. fish and aquatic products suitable and neat for storage and preservation purpose. These processes are supportive of the core activities of cold storage without which the stored products would not become saleable or marketable. Therefore, these activities and storage put together constitutes the activity to be termed as an Industrial one. By no stretch of imagination, it can be classified as an Agricultural activity. Moreover, the argument of the Appellant that the Agricultural Produce Act 1926 (2004) also defines Agriculture Produce as any of the kinds of produce of livestock or fish. Appellant contend that neither the Commission nor MSEDCL had listed any scheduled list for "Agricultural Produce or Products". Hence, the Fish/Livestock be taken as "Agricultural Produce" with reference to Government Statutes mentioned above and agricultural tariff needs to be applied. It would be appropriate to refer to the Commission's tariff orders dated 03.11.2016 in Case No. 48 of 2016 and dated 12.09.2018 in Case No. 195 of 2017 which were then in force for the disputed period from May 2018 to October 2018 and then onwards. The relevant portions of the said orders are quoted below:-

Commission's tariff orders dated 03.11.2016 in Case No. 48 of 2016

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

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

HT V(B): HT – Agriculture Others
Applicability: This tariff category is applicable for use of electricity / power supply at High Voltage for:

a) Pre-cooling plants and cold storage units for Agricultural Products – processed or otherwise.
b) Poultries exclusively undertaking layer and broiler activities, including Hatcheries;
c) High-Technology Agriculture (i.e. Tissue Culture, Green House, Mushroom cultivation activities), provided the power supply is exclusively utilized for purposes

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directly concerned with the crop cultivation process, and not for any engineering or industrial process.
d) Floriculture, Horticulture, Nurseries, Plantations, Aquaculture, Sericulture, Cattle Breeding Farms, etc.;

Commission's tariff order dated 12.09.2018 in Case No. 195 of 2017

HT I: HT – Industry

HT I (A): Industry – General

Applicability:

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

l) Food (including Seafood) Processing units.

11. Commission in its order dated 26.06.2015 in Case No. 121 of 2014 has for the first time introduced "LT-IV (C): LT-Agriculture Metered – Others" tariff category which was applicable for use of electricity / power supply at Low / Medium Voltage for:

"i. Pre-cooling plants and cold storage units for Agriculture Products – processed or otherwise;
ii. Poultries exclusively undertaking Layer & Broiler activities, including Hatcheries;
iii. High-Tech Agriculture (i.e. Tissue Culture, Green House, Mushroom activities), provided the power supply is exclusively utilized by such Hi-Tech Agriculture consumers for purposes directly concerned with the crop cultivation process, and that the power is not utilized for any engineering or industrial process;
iv. Floriculture, Horticulture, Nurseries, Plantations, stand-alone Aquaculture, Sericulture, Cattle Breeding Farms, etc.
v. Cane crusher and/or fodder cutter for self-use for agricultural processing purpose, but shall not be applicable for operating a flour mill, oil mill or expeller in the same premises, either operated by a separate motor or change of belt drive."

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

13. Then this issue was addressed and tariff category for "Agriculture Others" for HT was created by the Commission in its order dated 03.11.2016 in Case No. 48 of 2016

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14. On plain and harmonious reading of all these orders of the Commission, it is clear that "HT -Agricultural Others" tariff category is for the pre-cooling plants and cold storage units for Agricultural Products - processed or otherwise.

15. Appellant's prayer is not tenable in view of the observations of the Commission in its order dated 06.12.2016 in Case No. 114 and 119 of 2015. The doctrine of applicability of Industrial tariff in respect of seafood and its further processing, squarely applies in the instant representation. It is also interesting to note that the processing activities could be as a matter of fact, its main activities which help process the raw materials, in this case, the fish, to make it marketable, by storing it in cold storage so that it will not lose its food value / quality, etc. In course of time, it could be the case of some other raw material which needs to be processed on similar lines to preserve its food value and quality. Therefore, it cannot be construed that the process undertaken by the Appellant is primarily pre-cooling and cold storage. Therefore, the argument of the Appellant does not fit into the applicability of HT – Agricultural Others tariff category as the process undertaken by the Appellant is purely Industrial one. Merely, drawing parallel between fish and food under some provisions of the Act does not automatically entitle the case of the Appellant to be billed at HT V (B) Agricultural (Others). In fact, the Commission in its order dated 13.05.2016 in Case No. 42 of 2015 has said that while different statutes are enacted for different purposes, and the meaning ascribed to a term may differ from one statute to another. The Commission also noted that the IDR Act, 1951 and the MSME Act, 2006, for instance, both include food processing as an industrial activity. The various integrated processing activities said to be undertaken by the Appellant does not entitle it to claim for applicability of HT V (B) Agriculture (Others). The Respondent during the hearing argued that pre-cooling and cold storage is part and parcel of the entire industrial process of the Appellant and therefore, it cannot be said to be other than any industrial activity. Therefore, the entire process put together adopted by the Appellant in making fish a marketable and almost ready to eat product is nothing but industrial. The Appellant in its rejoinder has also stressed that the purpose is the deciding criteria in application of tariff. While this is true, it is not a straight jacket formula, because the tariff is with respect to the purpose for which the electricity is used and purpose cannot be superficially looked into as it has multiple layers of various processes which need to be considered in detail, before the final product is made. I therefore do not have any doubt that the process of the Appellant is Industrial one.

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16. Therefore, I am of the considered view that the Appellant needs to be billed at an appropriate Industrial tariff. The Appellant has argued that recovery for the period from May 2018 to October 2018 cannot be done. The Respondent submitted that it is entitled to recover the differential amount of tariff between Industry and Agriculture as it is within the provision of Section 56 (2) of the Act. I agree with the contention of the Respondent with respect to the retrospective recovery.

17. Moreover, the fact cannot be ignored that the Appellant was paying bills as per Industrial tariff prior to May 2018 without any issue. It is only after misdemeanour on the part of the Respondent that the dispute has arisen. Therefore, the Respondent is directed to be vigilant before taking any action and due diligence need to be done by the officials of the Respondent. Had the Respondent taken due care, the litigation could have been avoided.

18. In view of the above, I pass the following order:

(a) The Appellant to be billed at appropriate Industrial tariff as per the order of the Commission as may be applicable.

(b) DPC and interest, if any, for the supplementary bill towards the differential amount issued by the Respondent for the period from May 2018 to October 2018 is waived of till the date of this order.

(c) The Respondent may consider recovery of the arrears amount in suitable instalments, if the Appellant so desires.

(d) The Representation is disposed of accordingly.

(e) Compliance to be submitted by the Respondent within two months from the date of issue of this order.

19. The Secretariat of this office is directed to refund an amount of Rs.25000/- deposited by the Appellant immediately.

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

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

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