# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 28 OF 2020

In the matter of change of tariff category

Allana Cold Storage Pvt. Ltd.....…… …… Appellant

V/s

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

Appearances

For Appellant : 1. Rushikesh Karandikar
2. S. S. Jahagirdar
3. Angesh Kumar

For Respondent : 1. Pranay Chakraborty, Executive Engineer Incharge
2. P.W. Bhoyar, Deputy Executive Engineer

**Coram: Deepak Lad**

Date of Hearing: 17th June 2020

Date of Order: - 1st July 2020

ORDER

This Representation is filed on 14th February 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 17th December 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).

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2. The Forum, by its Order dated 17.12.2019 has dismissed the grievance application in Case No. 33/2019.

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. 000299004775) from 02.10.1973 having current Contract Demand of 2500 KVA and sanctioned load of 2812 KW at D-38, M.I.D.C. Industrial Area, T.T.C., Thane-Belapur Road, Turbhe, Navi Mumbai.

(ii) The Appellant carries a business for providing cold storage facility exclusively for storage of fruit pulp, buffalo meat and storage of other agricultural products. The precooling plant and cold storage are used only for storage of agricultural product.

(iii) The Appellant applied on 19.5.2018 for change of tariff category from HT 1: HT Industry to HT-V(B) -Agricultural Others. This is as per actual use for its pre-cooling plant and cold storage units for agricultural products and pursuant to Respondent's Commercial Circular No. 302 dated 31.3.2018.

(iv) The Appellant submitted documents vide its letter dated 14.06.2018 indicating product details, Agricultural and Processed Food Products Development Authority (APEDA) Certificate, Food Safety & Standards Authority of India (FSSAI) Certificate vide its letter dated 29.11.2017 to the Respondent which are required for completion of process of revision of tariff from HT-I to HT-V(B).

(v) The Respondent, Executive Engineer, Vashi inspected the premises and sent inspection report to Superintending Engineer vide letter dated 01.10.2020 pursuant to its application. After the inspection of the Appellant's premises, the MSEDCL issued a "Firm Quotation/Demand Note – Change of Tariff" to the Appellant informing the Appellant of the processing fee, Cost of Stamp for Agreement e and the GST amount.

(vi) The Respondent vide its letter dated 19.10.2018 has informed the change of tariff from HT-I Industrial to HT-V(B) Agricultural Others and requested to pay the statutory charges of Cost of Stamp for Agreement, processing fee, agreement fee

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and the GST amount. The Appellant paid the same on 20.10.2018. Subsequently, an Agreement for HT-V (B) -Agricultural Others tariff category was executed as per format of the Respondent on 25.10.2018.

(vii) After execution of the said agreement, MSEDCL issued final sanctioned letter dated 29.10.2018.for change of tariff category from HT-I Industrial to HT-V(B) Agricultural Others prospectively. The Respondent started issuing electricity bills to the Appellant in accordance with the revised tariff structure, i.e. HT V (B) - Agriculture Others for the billing month from November2018 till March 2019 The Appellant continued to make timely payment of each monthly bill and there has been no bill pending on the part of the Appellant.

(viii) However, without prior notice, the Appellant received the bill for the month of April 2019 with HT Industrial tariff category. The Appellant paid the bill under protest. The Appellant was billed at HT V (B) - Agriculture Others tariff for the billing period from November 2018 to March 2019 only.

(ix) The Appellant received a letter dated 17.5.2019 addressed by the Respondent, Superintending Engineer, Vashi Circle inter alia stating therein that the Agreement dated 25.10.2018 between MSEDCL and the Appellant "stands cancelled".

(x) Being aggrieved by the high-handed action on the part of MSEDCL, the Appellant addressed a letter dated 27.05.2019 requesting MSEDCL to continue supply of electricity to the Appellant by applying HT V (B) - Agriculture Others tariff category. The Appellant has not received any reply to the said letter dated 27.05.2019.

(xi) Despite the pendency of the complaint, the Respondent issued a supplementary bill of Rs. 68,42,361/- (Rupees Sixty Eight Lakhs Forty two Thousand Three Hundred Sixty One Only) vide letter dated 06.06.2019 towards tariff difference due to change in category from November 2018 to March 2019, within a period of 15 days failing which the same would be recovered from the Appellant from subsequent bills.

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(xii) The Appellant filed the grievance with the Internal Grievance Redressal Cell (IGRC) on 17.06.2019. The IGRC, by its order dated 26.06.2019 has dismissed the grievance.

(xiii) Being aggrieved and dissatisfied by the Order of IGRC dated 26.06.2019, the Appellant then approached the Forum with his grievance along with interim relief on 18.07.2019. The Forum, by its Order dated 17.12. 2019 has also dismissed the grievance application. The Forum failed to recognize the Cold Storage Activity for Agricultural Produce. The Appellant constrained to approach this Hon'ble authority on following grounds: -

a. That the Impugned Orders i.e. IGRC and the Forum are bad in law, misconceived and violates the settled principles of equity, fairness and natural justice, and illegal on the face of it;

b. That the Forum has failed to consider that the agreement dated 25.10.2018 has been terminated by the MSEDCL without following the mandatory procedure and pre-conditions for termination as contemplated in Clauses 9 and 11 thereof;

c. That the Forum has failed to consider that the tariff category of the Appellant was altered and changed from HT-I to HT-V(B) by the Respondent itself, after carrying out scrutiny and physical inspection of the cold storage facility of the Appellant and in view thereof, the transition from HT-V(B) to HT-I tariff structure which was communicated to the Appellant vide letter dated 17.5.2019 amounts to an abrupt reclassification of tariff structure and for that reason alone, the same is illegal;

d. That the Forum has failed to consider that the Appellant has not committed any breach of the conditions stipulated in the Agreement dated 25.10.2018 and even otherwise, there has arisen no occasion for the Respondent to unilaterally cancel and terminate the Agreement dated 25.10.2018;

e. That the Impugned Order passed by the IGRC proceeds on the erroneous application of the ratio of the Order passed by the Maharashtra Electricity Regulatory Commission (the Commission) in Case No.42/2015 in so far as the

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issue in question in Case No.42/2015 was conversion of tariff from HT-I (Industry) to HT-II (Commercial) and therefore, the ratio and findings in the Order passed by the Commission in Case No.42/2015 are inapplicable in Appellant's case and the view taken by the IGRC has been incorrectly upheld by the Forum.

f. That the IGRC has failed to consider that in its Orders passed in Case No. 114/2015 and 119/2015, the Commission has categorically laid down that the test for determining whether a particular business relates to an agricultural activity must be decided depending on the core activity of the business and this has also been disregarded by the Forum in the Impugned Order dated 17.12.2019;

g. That the Forum has failed to consider that in Order passed in Case No.114/2015 and 119/2015, the Commission has laid down that a distribution licensee is required to interpret the terms used in the applicability clause of the tariff orders depending on the context and therefore, it is clear that in the present case, the distribution licensee, i.e. MSEDCL ought to have applied its mind to the facts and circumstances surrounding to the present case and consider the business carried on by the Appellant;

h. That the Impugned Order proceeds on the application of the ratio and findings of the Commission in cases where the Appellant is not even a party and the case of the Appellant ought to have been considered on its own merit and the facts applicable to the Appellant's case ought to have been considered before deciding the issue of whether the business activity of the Appellant was falling within the criteria applicable to HT-V(B) tariff structure.

i. That the Impugned Order proceeds on the erroneous assumption that the premises located in the MIDC area are mostly termed as industrial premises and therefore, HT-V(B) tariff category was not applicable to the Appellant;

j. That the Forum has erred in placing reliance on letter dated 08.04.2019 issued by Chief Engineer (Commercial);

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k. That the Forum has failed to consider that the business activity of the Appellant falls squarely within the applicability of HT V (B) - Agriculture Others tariff structure, and more particularly, clause (a) thereof, which clearly indicates that the HT V (B) - Agriculture Others category is applicable to pre-cooling plants and cold storage units for agricultural products, processed or otherwise;

l. That the Forum has failed to consider that the business activity of the Appellant does not involve any processing or manufacture and therefore, the HT-I tariff category is absolutely inapplicable to the Appellant;

m. That the Forum has erred in considering only Clause (c) of the applicability of HT V (B) - Agriculture Others tariff structure and has completely overlooked Clause (a), by which the business of the Appellant is squarely covered;

n. That the Forum has failed to consider that the question whether a particular industry involves an agricultural process must be ascertained based on the facts and circumstances of each case;

o. That the Forum has completely failed to consider the findings of the Commission in paragraph 16 of the Order passed in Case No. 42/2015 wherein the Commission has reiterated its finding in Case No.24/2001 that as far as retrospective application of different tariff category is concerned, no retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer and it was further held that reclassification must involve a definite process;

p. That the Forum has failed to consider that the term "agricultural produce" defined in Section 2(1)(a) of the Maharashtra Agricultural Produce Marketing (Development & Regulation) Act, 1963 means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture, (fisheries) and forests specified in the Schedule, and Entry IX of the Schedule, more particularly sub-entry 3 thereof, includes the word "cattle" and in view thereof, the business of the Appellant falls squarely within the definition of agricultural produce and the Appellant is therefore entitled to supply of electricity at the HT-V(B) category tariff;

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q. That the Forum has failed to consider that the interpretation of the words "agricultural produce" in the case of Solapur Bakar Khathik Association v. Solapur APMC (1978 MhLJ 837) where it has been held that the Act deals with agricultural produce and not for produce for agriculture. It is the produce itself that is subject matter of the Act and not the produce in relation to a possible use to which it will be made or put that is covered by the Act and that the thing used as an agricultural produce is entirely irrelevant while determining whether a particular produce is in fact agricultural produce and governed by the provisions of the Act;

r. That the Forum has failed to consider the explanation of the term "agricultural produce" in the case of Park Leather Industry (P) Ltd. v. State of U.P & Ors. (2001) 3 SCC 135 where the Hon'ble Supreme Court has held that an agricultural produce is a product which is specified in the schedule or one which is an admixture of two or more items and would also include any such item in a processed form and that it makes no difference that the item concerned is a different commodity from the one which is included in the schedule. The Supreme Court has further reiterated that it is possible that by virtue of such admixture of two or more items or by virtue of processing, a different commodity entirely may come into existence, however, even though a different commodity may come into existence, it will still be an agricultural produce. Therefore, the Forum ought to have observed that the business of the Appellant constitutes an agricultural activity and accordingly the HT-V(B) tariff structure ought to be applied to the Appellant.

s. That the Forum has failed to consider that the letter dated 01.10.2018 addressed by the MSEDCL clearly records that the energy tariff of the Appellant was being revised to HT V (B) - Agriculture Others for the purpose of pre-cooling and cold storage facility for agricultural produce and that the said observations were made by the MSEDCL after carrying out actual physical inspection of the Appellant's factory and that, thereafter, the MSEDCL has produced any documents or report indicating that the Appellant has undergone a change of

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purpose or utilisation of the power supply. And in view thereof, the MSEDCL ought not to have changed the tariff structure of the Appellant from HT-V(B) to HT-I;

t. That the Forum has failed to consider that the MSEDCL is "State" or "instrumentality of State" within the meaning of Article 12 of the Constitution of India and therefore such an action on the part of the MSEDCL of unilaterally terminating the said Agreement and making a demand of retrospective arrears pursuant to an abrupt reclassification of the tariff category of the Appellant is bad in law and not maintainable and that the State is enjoined to ensure that no action of the State or its Authorities or Officers should be vitiated by breach or violation of principles of natural justice;

u. That the Forum has failed to consider that the MSEDCL has failed to place on record any documents leading to the finding that the business of the Appellant does not fall within the purview of agricultural and other activities and therefore the HT V (B) - Agriculture Others tariff category is not applicable to the Appellant;

v. That the Forum ought to have directed the MSEDCL to produce on record the documents which the MSEDCL has relied on while coming to the conclusion that the Appellant's business does not fall within the explanation attributed to the HT V (B) - Agriculture Others tariff category;

w. That the Forum has erred in recording a finding that the "agreement is subsequent to the act, tariff schedule and condition supply" and that the "Agreement cannot supersede tariff order" which in effect means that the agreements executed by the MSEDCL, which is an instrumentality of the State, are rendered meaningless;

x. The Tariff category of HT-V(B) namely *"*Agricultural uses and others*"* will have to be given a purposive meaning. Once the concerned material / articles/ goods which are being stored are agricultural commodities, which is already conclusively held in the case of Solapur Bakar Khathik Association v. Solapur APMC (1978 MhLJ 837) And once it is shown that no activity of producing

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takes place, the only activity undertaken is storage of agricultural goods and merely because the storage is done by the use of electrical energy, that by itself cannot be termed to be an industrial activity. Both the authorities below have completely overlooked this aspect.

y. The real test which ought to have been applied by the authorities below was the user test and not merely the test of location of the unit of consumer or the test of the end product which is stored. Merely because the storage of non-agricultural commodities would qualify for HT-V(B) category; it would not be proper to refuse to apply the said tariff category to a cold storage used purely for storing agricultural produce;

z. It is stated that on the analogy applied by IGRC and Forum, every agriculturist who may use any warehouse or godown, including one situated on his own agricultural land, or a private cold storage of any agriculturist would also be liable to be charged for electricity under category HT-I which will render HT-V(B) tariff category otiose;

(xiv) The Appellant humbly submits that in view of the above, the Impugned Order of the Forum is required to be quashed and set aside.

(xv) The Appellant submits that the Appellant has been carrying on business at the subject premises since 1973, and if coercive and precipitative action is taken in furtherance of the Impugned Order pending hearing and final disposal of this Appeal, the business activities of the Appellant will come to a standstill and will result in grave loss being occasioned to the Appellant. The business activity of the Appellant is heavily reliant on electricity supplied by the MSEDCL. Therefore, the Appellant is entitled to the interim reliefs prayed for in the present Appeal.

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

a. HT V(B) – Agriculture Others tariff category shall be made applicable to its cold storage plant in accordance with the Agreement dated 25.10.2018 executed between the Appellant and MSEDCL.

b. the demand of Rs.68,42,361/- (Rupees Sixty Eight Lakhs Forty two Thousand Three Hundred Sixty One Only) towards tariff difference due to change in

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tariff category of the Appellant be held to be illegal and contrary to the contract and consequentially the amount of Rs.68,42,361/- recovered from Appellant may be directed to be refunded with interest @ 18% per annum on quarterly rests.

c. pending the hearing and final disposal of this Appeal, the MSEDCL be directed to provide to the Appellant continuous and uninterrupted supply of electricity as per the HT-V(B) category;

d. the MSEDCL be directed not to take any coercive action in furtherance of the Respondent's letter dated 17.5.2019.

4. 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. 000299004775) from 02.10.1973 having current Contract Demand of 2500 KVA and sanctioned load of 2812 KW at D-38, M.I.D.C. Industrial Area, T.T.C., Thane-Belapur Road, Turbhe, Navi Mumbai.

(ii) Initially, the Appellant was billed under HT Industrial tariff category. The Appellant vide its letter dated 19.05.2018 had applied for change of tariff category from HT-I Industrial to HT-V (B) Agricultural Others claiming to have Cold Storage unit for agricultural produce.

(iii) The Appellant submitted documents vide its letter dated 14.06.2018 specifying product details, District Industries Centre (DIC) certificate, license of FSSAI Certificate, stored item which falls in the list of agricultural produce as per Amendment Ordinance dated 05.07.2016 to Maharashtra Agricultural Produce Marketing Act 1963, which are required for completion of process of revision of tariff from HT-I to HT-V (B).

(iv) The Respondent carried out spot inspection of the premises as per report dated 01.10.2018 for confirming cold storage use. After inspection, the Appellant had submitted an undertaking that it would carry only the activity of storing agriculture produce. The Respondent approved change of tariff category vide its letter dated

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19.10.2018. After payment of statuary charges, the power supply agreement was executed on 25.10.2018 with tariff HT V (B): HT – Agriculture Others. The Respondent vide its letter dated 29.10.2018 informed the Appellant vide letter dated 29.10.2018 for final approval for change of tariff category from HT 1: HT Industry to HT-V(B) -Agricultural Others tariff made effective from billing month November 2018.

(v) The Respondent, in the meanwhile, came to know about the orders of the Commission of the same subject matter. The Commission, in its order in Case No.114 & 119 of 2015 dated 06.12.2016 in petition of Maharashtra Cold Storage Association and Navi Mumbai Cold Storage Owners Association has also clarified the concept of processing units and storing units. Further, the Commission, in its said Order in Case 114 &119 of 2015 dated 06.12.2016 ruled that;

*"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."*

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

(a) Applicability of tariff category. As per MERC tariff order in case on 195 of 2017 HT-I Industrial tariff applicability states as below.

***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.*

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***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;*

(b) 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.

(c) The Respondent in support of its say has referred the order dated 06.12.2016 of the Commission in Case No. 114 and 119 of 2015.

(vii) As per applicability clause of tariff order of the Commission, in its all three conditions intended to provide the benefit of agricultural tariff to products related to agricultural produce. Pre-cooling plants and cold storage units for agricultural products, is intended for agricultural produce only and not for any engineering and industrial processes undertaken for making the raw agricultural produce in a finished marketable product.

(viii) The Respondent, Head Office, Mumbai, in line with the directions of the Commission issued clear guidelines to all field offices vide its letter No. 09552 dated 08.04.2019. It also informed that representations from the consumers to

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allow agriculture tariff for storing fish and meat items in cold storage on the basis that animal husbandry products and Pisciculture is included in the schedule of Maharashtra Agriculture produce marketing Act-(1963), is to be disallowed. It issued directives that the HT V (B) - Agricultural Others tariff category is to be applied to Cold storage with no processing units but storing fishes and cattle meat, and not to Cold Storage with processing units.

(ix) Considering the process chart of the Appellant in the factory, the activity of the Appellant is industrial and not agriculture others. The factory of the Appellant is mainly process industry and precooling and cold storage is the secondary activity. The Respondent pointed out that in the certificate issued by APEDA, submitted by the Appellant along with its application, it was specially mentioned that the Appellant is engaged in activity of Boneless Buffalo Chilled/Frozen Meat**.** The Appellant has never used for storage of fruit pulp and other agricultural product.

(x) The Tariff of the Appellant was changed to HT-1A Industrial from April 2019 and the agreement made with the Appellant stands cancelled.

(xi) The Respondent issued a supplementary bill of Rs.68,42,361/- (Rupees Sixty Eight Lakhs Forty two Thousand Three Hundred Sixty One Only) vide letter dated 06.06.2019 towards tariff difference due to change in category from November 2018 to March 2019, within a period of 15 days, failing which, the same would be recovered from the Appellant from subsequent bills.

(xii) The Respondent requested the Appellant vide its letter dated 06.06.2019 to make payment of Rs.68,42,361/- (Rupees Sixty Eight Lakhs Forty two Thousand Three Hundred Sixty One Only) being the tariff difference due to change in tariff category from Agricultural Others to Industrial from November 2018 to March 2019. If not paid, the same would be recovered in subsequent bills.

(xiii) The Forum has rightly decided the matter by considering the use of supply by the Appellant for Industrial activity. The Forum has passed the reasoned order in view of various orders of the Commission.

(xiv) The activity that is carried out by the Appellant is of process industry and therefore it is not entitled for HT V (B) - Agricultural Others tariff category.

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

5. The hearing was initially scheduled on 19.03.2020. However, the hearing could not be conducted as it was postponed at the request of the Appellant due to onset of COVID-19 epidemic. Since then the conditions were not conducive for conducting the usual hearings through physical presence, the hearing was scheduled on 18.06.2020 on e-platform after consent from the parties. During the hearing, the Appellant and the Respondent argued in line with their respective written submissions. The Appellant argued that it was being billed at Industrial tariff prior to November 2018. However, post inspection, the Respondent changed the tariff category from Industrial to Agriculture Others and executed an agreement to that effect. However, the Respondent again reverted to the Industrial tariff from April 2019 onwards. The Appellant sought explanation on this account, however there was no response from the Respondent. This action on the part of the Respondent to revert to the Industrial tariff is nothing short of high handedness of the Respondent and illegal. The Appellant's activity clearly falls within the bracket which entitles it to be billed at HT: V (B) Agricultural Others tariff. Even the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 defined Cattle, Sheep, Goat, etc. as Animal Husbandry Products under Item No. IX. The Agricultural Produce Act 1926 (2004) also defines Agriculture Produce as any of the kinds of produce of livestock/Meat. Therefore, the Forum as well as the Respondent erred in appreciating the process undertaken by the Appellant and applied Industrial tariff wrongly. The Appellant submitted its written argument through email dated 24.06.2020 which is more or less in line with its initial submission in the representation.

6. 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. As per submission of Seafood manufacturing units, the Commission re-categorized them as Industrial in order dated 13.05.2016 in Case No. 42 of 2015. Therefore, on the basis of this clarificatory order of the Commission, the Appellant was billed for HT Industrial tariff category for the month of April 2019. The Appellant was billed at Agricultural

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tariff for the billing period from November 2018 to March 2019. As per order of the Commission dated 13.05.2016 in Case No. 42 of 2015, the claim of the Appellant for application of HT V(B): HT – Agriculture Others is mistaken and contradiction. Therefore, it has rightly applied the Industrial tariff to the Appellant however, applicability of HT V(B)-Agricultural Others tariff is out of misunderstanding and wrong interpretation on its part. The mistake has been corrected from April 2019 onwards and recovery for November 2018 to March 2019 was necessary which is done as per Section 56 (2) of the Electricity Act, 2003 (the Act) which has been interpreted by the Larger Bench of Bombay High Court in W.P. No. 10764 of 2011 with other Writ Petitions. From April 2019 onwards, the Appellant has been billed under HT 1– Industrial tariff category. The Commission's order in Case No. 42 of 2015 and 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 dealt in Case No.42 of 2015 and therefore, Industrial tariff is applied.

7. The Respondent submitted its written argument through email dated 29.06.2020. The important point in brief is as below: -

In present case, Appellant uses buffalo meat as a raw material and after processing it in its state of art manufacturing process, turns the meat into cook able meat which is mostly exported. Appellant holds FSSAI License No. 10012022001331 which clearly mentions at Sr.No.3 the nature of business as Manufacturer. This license comes with conditions out of which Condition No.4 is reproduced as below:

"4. *Employ at least one technical person to supervise the production process, The person supervising the production process shall possess at least a degree in science with chemistry/Bio-Chemistry. Food and nutrition/Microbiology or a degree or diploma in Food Technology/Dairy Technology/Dairy Microbioloy/Dairy Chemistry/ Dairy Engineering/Oil Technology/Veterinary science/ Hotel Management/& Catering Technology or any degree or diploma or other discipline related to the specific requirement of the business from a recognized university or institution or equivalent."*

The production process of Buffalo meat is described as below: -

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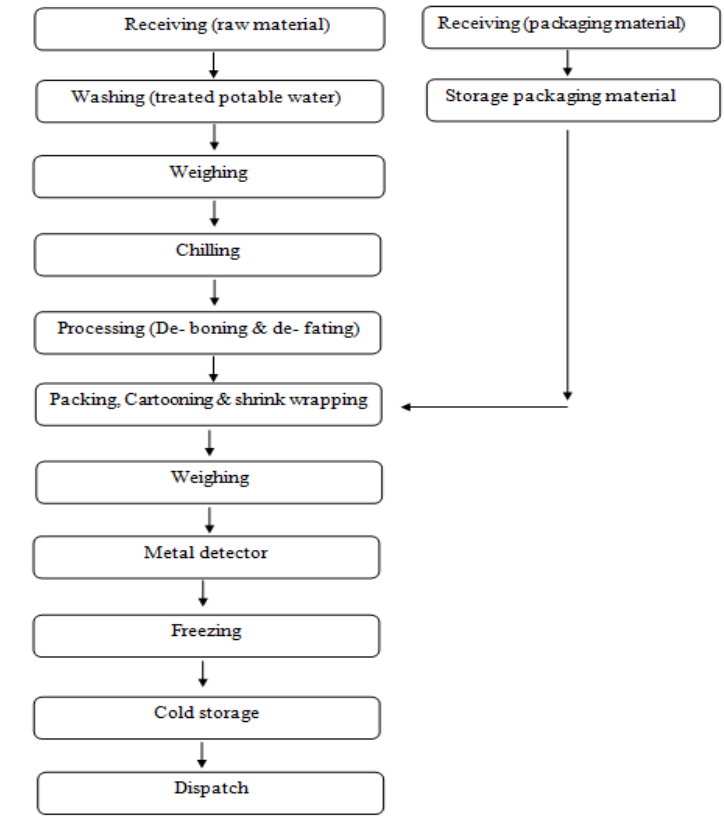


The flow chart clearly depicts the fact that process includes weighing, chilling, de-boning, de-fatting, packing, shrink wrapping, metal detecting, freezing, cold storage and dispatch. Processing activity as described above broadly in same manner is been carried out for fish processing cold storages and because of which these are categorized by the Commission under HT- Industrial tariff in Case No. 42/2015. And on the same footing the IGRC has applied the ratio of Case No. 42/2015 in this matter. Hence, the Forum has properly appreciated the facts and decided the matter.

## Analysis and Ruling

8. The Appellant was billed by the Respondent under HT-1 Industrial tariff category prior to June 2018. However, post inspection, the Respondent changed the tariff category to HT V

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(B): HT – Agriculture Others and executed an agreement with the Appellant. However, the Respondent pleaded that this action on its part is out of misunderstanding and wrong interpretation. Therefore, the tariff was again reverted to HT-1 Industrial tariff category from April 2019 onwards. The Appellant was billed HT V (B) - Agriculture Others tariff for the period from June 2018 to March 2019 i.e. only for ten months.

9. The Appellant argued that its main activity is preservation of meat through cold storage which is not an Industrial activity. This squarely falls within the meaning of HT V(B)-Agriculture Produce as per the Maharashtra Agricultural Produce Marketing (Development & Regulation) Act, 1963 Act mentioned above. The Appellant quoted 1978 Maharashtra Law Journal 837 in respect of Solapur Bakar Khathik Association V/s. Solapur APMC in which the petitioner was carrying out only storage activity and nothing else. The petitioner submitted that it is also carrying out the same activity therefore, it cannot be termed as an industrial activity. Applying the ratio of this case, it should have been billed at HT V (B) Agricultural Others tariff. However, the Respondent's case is that the Appellant's activity is not mere a cold storage activity, but certain processes are carried out on the raw material and hence, this case is not applicable.

10. The Appellant also referred the case of Park Leather Industry (P) Ltd. V/s. State of U.P. & Others (2001) 3 SCC 135 wherein the Hon. Supreme Court has held that an agricultural produce is a product which is specified in the Schedule or one which is an admixture of two or more items and would also include any such item in a processed form and that it makes no difference whether it is a different commodity and not included in schedule. The case of the Appellant is exactly different and does not draw any parallel with the case of the Apex Court. In the case of the Appellant, he is bringing all sorts of raw material termed as food and processes it in its factory in accordance with the flow chart given above thereby enriching its food value and bring out the final product in a marketable form. Therefore, this case cited by the Appellant is also not applicable.

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11. 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 argued that this case has no bearing whatever on this instant representation. I specifically noted that the Appellant is silent on applicability of Industrial tariff prior to November 2018 though HT V (B)-Agricultural Others tariff category was very much a part of the tariff order then in force prior to November 2018. However, it argued that since the agreement is executed for applicability of HT-V (B) Agricultural Others tariff category from November 2018 onwards, the same needs to be honoured.

12. The Commission, in its various tariff orders has reasoned out the tariff applicable to cold storage and food processing units. Extracts from such orders are as below: -

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

*HIGH TENSION (HT) – TARIFF*

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

***Applicability***

*This category includes consumers taking 3-phase electricity supply at High Voltage for industrial purposes of manufacturing.*

*……*

*j) Cold Storage not covered under HT – (V);*

*k) Fisheries and integrated sea-food processing units.*

***HT V: HT – Agricultural***

***Applicability:***

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

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

*(ii) …….. ……*

*(iii) For High Tech Agricultural (i.e. Tissue Culture, Green House, Mushroom activities), provided the power supply is exclusively utilized by such Hi-Tech Agriculture Consumers for purpose directly concerned with crop cultivation process*

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*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***

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*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;*

**(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."*

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*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.*

All above orders are to be read harmoniously to give fruitful meaning to the basic issues in the instant representation.

13. The Appellant further submits that it does not undertake activity of cutting or culling of any animals, fish deskinning or fish processing. It only preserves these products through cold storage. These products are covered under the agricultural category as per the Agricultural Produce Act 1926 (2004).

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14. However, the Respondent in its response has specifically mentioned that the activities undertaken by the Appellant is in the industrial area and uses various machines for undertaking various processes like thawing, washing, blanching, marinating, manufacturing of ice for cooling, retorting, drying, cold storage, testing, etc. 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/Meat also. The Appellant contended that neither the Commission nor MSEDCL had listed any scheduled list for "Agricultural Produce or Products". Hence, the Meat/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 November 2018 to March 2019. 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;*

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*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;*

**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.

15. 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."*

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16. 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.

17. 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

18. On plain and harmonious reading of all these orders of the Commission, it is clear that "HT -Agricultural Others" tariff category is for the precooling plants and cold storage units for Agricultural Products which may be processed or otherwise. Therefore, it cannot be allowed to be interpreted to mean that the tariff category of HT V(B) Agricultural Others is for products such as buffalo meat as claimed by the Appellant under the guise of the Agricultural Produce Act 1926 (2004) which passes through host of processes which enriches its value and gives its products shape and size to be made marketable. Therefore, the prayer of the Appellant to apply HT-V (B) – Agricultural Others tariff to its unit does not sustain.

19. Appellant's prayer is further 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, also 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 meat, 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, processes undertaken by the Appellant does not fit into the applicability of HT V (B) – Agricultural Others tariff category as it is purely Industrial one. The Respondent has pointed out that the activities undertaken by the Appellant is not mere storage but it uses various machines for undertaking various processes like thawing, washing, blanching, marinating, manufacturing of ice for cooling,

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retorting, drying, cold storage, testing, etc. All these processes at the end enrich the value of the product stored and make it marketable thereby increasing its commercial value.

20. By no stretch of imagination, all these activities clubbed together can be dubbed as mere cold storage. It is a complete industrial process the raw material undergoes. The Appellant has chosen to pick up the word 'food' in the HT V (B): HT – Agriculture Others tariff and tried to draw a parallel for application of this tariff to its unit.

21. The application of a particular tariff to a certain activity of a consumer is not a straight jacketed formula. The entire process put together for bringing out a product is the deciding criteria in application of tariff. The tariff is with respect to the purpose for which the electricity is used and purpose cannot be superficially looked in isolation, 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.

22. The Commission, in its order dated 13.05.2016 in Case No. 42 of 2015 in paragraph 14 has recorded that 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. Therefore, mere inclusion of meat etc in the food item under Agricultural Produce Act 1926 (2004) does not automatically entitle the Appellant for application of HT V (B) Agricultural Others tariff. Therefore, I am of the considered view that the Appellant needs to be billed at Industrial tariff. The Appellant has argued that recovery for the period from November 2018 to March 2019 cannot be done. The Respondent submitted that it is entitled to recover the differential amount of tariff for 10 months between HT-1 Industry and HT V (B) -Agriculture Others as it is within the provision of Section 56 (2) of the Act. The Section 56 (2) of the Act has been interpreted by the Larger Bench of Bombay High Court in W.P. No. 10764 of 2011 with other Writ Petitions. In written submission, the Appellant claimed relief under the Commission's order dated 11.02.2003 in Case No. 24 of 2001. Notwithstanding this,

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the order of the Commission is no more relevant in view of the Larger Bench Judgment of the Bombay High Court interpreting Section 56 (2) of the Act.

23. Moreover, the fact cannot be ignored that the Appellant was paying bills as per Industrial tariff prior to November 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. In view of the above, the Representation is rejected and disposed of accordingly.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)

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Secretary
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