

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 1 OF 2023

In the matter of change of tariff category and retrospective recovery

Sanfoods and Cold Storage Pvt. Ltd.Appellant

V/s

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

Appearances:

Appellant : 1. Hemant Sualy, General Manager
2. Tulshiram Mane, Representative

Respondent : 1. R.B. Mane, Superintending Engineer, Vashi
2. G.A. Mali, Asst. Law Officer
3. V.V. Jadhav, UDC

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing : 16th February 2023


Date of Order : 9th March 2023

ORDER

This Representation was filed on 4th January 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 24th November 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).

2. The Forum, by its order dated 24.11.2022 partly allowed the Grievance Application No.76/2021-

22. The operative part of the order is as below: -


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- “2. The supplementary bill issued against tariff difference between HT- Industrial and Agricultural tariff for the period from April 2018 to January 2021 amounting to Rs. 52,89,087/- is to be set aside.
3. The Respondent is directed to issue a fresh supplementary bill to the consumer for the period of 24 months preceding the date of inspection. i.e. 29.01.2021.
4. The Respondent utility is directed that, not to recover any Interest, DPC & any Penalty from the consumer for the revised bill.”

3. Aggrieved by the order of the Forum, the Appellant filed this representation. A physical hearing was held on 16.02.2023 where both the parties were heard at length. The Appellant’s written submission and arguments in brief are stated as below: -

A. Brief History and Facts:

- (i) The Appellant is a HT Consumer (No.000119026110) from 20.12.2002 having Sanctioned Load (SL) of 273 KW and Contract Demand (CD) of 182 KVA at Plot No. A-79, MIDC, TTC Industrial Area, Thane Belapur Road, Kopar Khairane, Navi Mumbai. The Appellant is a **cold storage service provider** for storage of temperature-sensitive goods that require temperature and humidity control to maintain quality and shelf-life of products.
- (ii) The Maharashtra Electricity Regulatory Commission (the Commission) has created a new tariff category as “HT V (B): HT – Agriculture-Others” vide its Tariff Order dated 03.11.2016 in Case No. 48 of 2016. Subsequently, the Appellant applied for “Agriculture-Others” tariff category, however the same was not extended. A spot Inspection Report of the premises was also carried out in the year 2016. After continuous follow up by the Appellant, CE (Commercial), Corporate Office of the Respondent issued a specific letter to SE Vashi Circle on 08.03.2018 and directed for verification of activity and action as per guidelines dated 05.03.2018. Only after receipt of this letter from Corporate Office, did the Circle office change the tariff category from Industrial (HT-IA) to Agriculture-Others HT-V(B) with effect from April 2018, and an Undertaking on stamp paper was given by the Appellant on 25.04.2018 as desired by the Respondent. The important contents of the Undertaking are reproduced below:

“1. We hereby undertake that we will be always storing the material for pre cooling &


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



preservation of agriculture produces and dairy products.


2. Further we hereby undertake, if any activity other than covered under HT-V tariff (pre-cooling & cold Storage activity for preservation of Agriculture produce) if found during periodically inspection then we shall be liable to pay tariff as applicable to produce other than agriculture produce **on pro rata basis** as per M.S.E.D.C. L., rules read with Electricity Act, 2003. The same will be on the basis of records produced before you.” **(Emphasis added)**

Pro-rata basis means that higher industrial tariff will be payable only on that particular quantity or value of non-agricultural products stored, and not on the entire produce stored.

(iii) Since then (April 2018) the Appellant never used the cold storage for any other purpose except for Agriculture Produce (Raw or processed). Various Spot Inspection Reports dated 28.07.2020, 09.12.2020 and 29.01.2021 confirm that the cold storage was/is used for storage of Agriculture produce only. Due to frequent Inspections done by the Respondent, the Appellant was getting disturbed by the way the Respondent dealt with the case, and its bad effect on reputation with client/customers. So, the Appellant decided to apply for “Industrial” tariff category once and for all, and to store items other than agriculture produce. The Appellant applied for change of tariff from Agriculture-Others to Industrial on 02.02.2021 which was duly accepted by the Respondent from Feb.2021 onwards. As per the frequent inspection reports, other than Agricultural produce, dairy products storage was a meagre 0.0075% up to Jan. 2021. The minor quantity of dairy products storage was done due to Covid -19 Pandemic situation.

B. The Respondent issued a supplementary bill of Rs.52,89,087/- (Rs. Fifty-Two Lakhs Eighty-Nine Thousand Eighty-Seven only) on 02.06.2021 towards tariff difference from industrial to agriculture-others for the period from April 2018 to Jan.2021, on the basis of Spot Inspection Report dated 29.01.2021, and wrong interpretation of the undertaking dated 25.04.2018.

C. The Appellant pointed out that in the Joint Inspection Report dated 29.01.2021 (and also earlier reports dated 28.07.2020 and 09.12.2020), the signatures of MSEDCL personnel on inspection reports were missing, and the signature was done by the Appellant only when the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




copy of the report was submitted to this authority. Further, in the inspection report dated 29.01.2021, there was no mention that 100-120 boxes of cooking cream were stored, as alleged by the Respondent in its reply to the Forum. The mention of cooking cream in the said report was only that of 15 boxes on the first floor and 10 boxes on the 2nd floor of the premises. **This quantity of 25 boxes is meagre, and cannot be interpreted as use other than Agricultural Products (only 0.0075% of total storage available at a given time).**

- D. The Appellant filed a grievance application before the Forum on 20.08.2021 and requested for interim relief to avoid disconnection. As per directions of the Forum, the Appellant paid Rs.10,00,000/- (Rs. Ten Lakh only) on 20.08.2021 to avoid disconnection. The Forum, by its order dated 24.11.2022 partly allowed the grievance application, restricting the tariff difference recovery to 24 months. The Forum failed to understand that the Appellant did not violate any condition of the Undertaking which was given on Stamp paper. The Forum failed to understand the core meaning of the inspection reports on record. The observations and reasons given by the Forum are biased and not based on the factual position. There were 25 boxes of cooking cream, as mentioned in the Spot Inspection Report dated 29.01.2021; however, the Forum mentioned 100 to 120 boxes of cooking cream.

These 25 cooking cream boxes (total 300 kg, 12 kg in one box) contribute only 0.0075% of total storage of 4000 MT which is negligible. On this basis, tariff cannot be charged other than HT-V. The Forum has wrongly interpreted the Undertaking of the Appellant dated 25.04.2018.

- E. The Spot Inspection Report dated 29.01.2022 was without signature of any MSEDCL officer/ employee and witness, so it should be treated as invalid. On the basis of this report, the issue of the supplementary bill by the Respondent to the Appellant is not valid, and is also unfair and unlawful. The basic motto seems to be to harass the Appellant. This supplementary bill needs to be withdrawn in toto. The DPC and interest charges levied on future bills due to nonpayment of this supplementary bill would then automatically be withdrawn, which is creating fictitious arrears in the billing records of the Respondent.
- F. The Appellant by its email dated 14.02.2023 has pointed out that while filing the grievance with the Forum, the attachment of various inspection reports was without signature of the Respondent. However, while filing documents with this Authority, the Respondent had made


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




changes in the inspection report dated 29.01.2021 by adding remark “Plain tariff recovery proposed”. Secondly, the signature of Superintending Engineer, Vashi was added. Other reports were also changed a little bit. Hence, it is requested to check the malafide intention of the Respondent behind this. This issue was also strongly argued during the hearing by the Appellant.

- G. In view of the above, the Appellant prays that the Respondent be directed
- to withdraw the supplementary bill of Rs.52,89,087/- issued on 02.06.2021 along with delayed payment charges and interest levied.
 - to refund the amount deposited of Rs.10,00,000/- on 20.08.2021 as per directives of the Forum along with interest as per RBI rates.
 - not to disconnect the power supply till decision of the Hon’ble Ombudsman on this appeal.
 - to direct MSEDCL to pay Rs. Five lakhs compensation to the Appellant towards undue harassment, damages for mental agony, and damages towards loss of reputation, etc.

4. The Respondent, by its letter dated 18.01.2023 submitted its written reply. The written submission along with its arguments are stated in brief as below: -


Brief History and Facts:

- The Appellant is a HT Consumer (No. 000119026110) from 20.12.2002 having SL of 273 KW and CD of 182 KVA at Plot No. A-79, MIDC, TTC Industrial Area, Thane Belapur Road, Kopar Khairane, Navi Mumbai. The activity of the Appellant is cold storage, located at the Vashi wholesale APMC market.
- The tariff of the said consumer was revised from HT Industrial to HT Agriculture-Others in the month of April 2018 on the basis of guidelines issued by Corporate Office regarding tariff applicability to cold storage consumers vide letter no. CE(Comm.)/Tariff/Cold Storage/4759, dt. 05.03.2018. This consumer has given an undertaking on Rs.100/- Stamp paper while effecting this tariff change which is quoted in Para 3(ii).


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (iii) The Executive Engineer, Vashi Division inspected the premises on 28.07.2020. During inspection, it was observed that a part of the consumer premise is being used for storage of cooking creams along with other agricultural herbal products. During the hearing, the Respondent clarified that as per the provisions of APMC Act 1963, products such as cooking cream, ice-cream, and medicines are not classified as agriculture produce and hence, cannot be stored in Agriculture Cold storages where concessional tariff was sanctioned. Hence, the Appellant was kept under observation. The Respondent carried out a spot inspection on 29.01.2021 and again confirmed these irregularities of storing of cooking cream and herbal products. The Appellant was being billed with the concessional tariff of Agriculture-Others; however, he did not follow the mutual settlement as per undertaking. The Agriculture-Others tariff is designed basically for storing raw Agricultural Produce which are normally perishable in nature like Vegetables, Fruits, Dry Fruits etc. It is not expected to keep processed food like cooking cream, ice cream, Fruit pulp etc.
- (iv) During inspection of cold storages on 29.01.2021, the following facts were observed:-
- a) There is a basement, ground with 4 floors building of the Appellant, all used for cold storage. On the ground floor, there are 6 cold rooms which are numbered from 7 to 12 in which chawali, makka, fruits such as grapes, papaya, watermelon etc. are stored.
 - b) On first floor, there are 7 cold rooms (from 13 to 19) in which pulses such as rajma, chawali, herbal products, jadibuti were stored. In Room No.13, there were approx. 25 boxes of cooking cream stored.
 - c) On the 2nd and 3rd floors, there are 6 cold rooms on each floor, where pulses like chana, moong, jawari, rajma etc. are stored. But, in the passage of 2nd and 3rd floor approx. 100-120 boxes of cooking cream were stored.
 - d) On the 4th floor, cold storages were found in which herbal products, chana, chawali etc. were stored.
- Note: Cooking cream and processed herbal products are not allowed. The Appellant is a habitual defaulter.
- (v) The Respondent referred the tariff order of the Commission dated 30.03.2020 in Case No. 322 of 2019. Only such cold storage units are to be billed under “Agriculture-Others”


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



tariff category, which keep only agriculture raw materials in cold storage as defined in APMC Act 1963. The relevant portion of the order of the Commission is reproduced 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 Agriculture Products as defined under APMC Act 1963 – processed or otherwise;*
- b. *Poulties 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;”*

- (vi) The Respondent made regular correspondence/ follow up with the Appellant, asking for submission of documents such as GST paid vouchers of inward/outward materials, in order to determine the quantity of products kept in the said premises. However, the Appellant did not furnish these documents.
- (vii) Cooking cream and processed herbal products are not included in “Agricultural Produce” as defined under APMC Act 1963. This tariff is designed as concessional for Agricultural Social Reforms. Storing any quantity of such products, even if in minor quantity, is not allowed for availing concessional tariff. The Appellant was misusing this tariff for storing commercial processed products. It is therefore liable to be billed under Industrial Tariff Category. Hence, MSEDCL issued a supplementary bill for Rs.52,89,087/- to the Appellant for tariff difference between HT-Industrial and HT –V B Agriculture - Others


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




tariff for the period April 2018 to Jan.2021, vide letter no. SE/VC/HTB-06/03079, dated 02.06.2021.

- (viii) Based on the order of the Forum, the Respondent has reduced the supplementary bill, and has requested the Appellant vide letter No. SE/VC/HTB/122 dated 09.01.2023 to pay only Rs. 27,33,338/- as tariff difference amount for the period from 30.01.2019 to Jan 2021, after adjustment of Rs. 10,00,000/- paid by the Appellant. This is a reduction from the earlier amount of Rs.52.89 lakhs.


Reply on Merits:-

- (ix) The statement made by the Appellant in its representation that they have never used the cold storage for any other purpose except for agriculture produce, is not true. As per the inspection reports dated 28.07.2020 and 29.01.2021 of the premises, it is crystal clear that the Appellant was partly using the cold storage premises for the storage of cooking cream, herbal products, etc. even though he had submitted an undertaking stating that, for availing the concessional tariff, the cold storage would be used only for the storage of agricultural products. To verify the period of storage of non-agricultural products, and also to verify the exact quantity of products stored prior to the inspection, the Respondent vide its letters dated 10.03.2021, 22.03.2021, 07.04.2021 and 26.04.2021 had requested for submission of documents such as GST paid vouchers and inward/outward register record etc., in order to confirm the type and quantum of products stored in its cold storage unit. But the Appellant did not respond to any of the above letters of Respondent. Hence on the basis of observations made in the spot inspection reports, the Respondent issued the supplementary bill to the Appellant.
- (x) As per the inspections dated 28.07.2020 and 29.01.2021, it is crystal clear that the Appellant was using the cold storage premises for the storage of cooking cream and processed herbal products along with agricultural products. The inspection carried out on 09.12.2020 is of the testing division, and this inspection is only for regular meter testing of the Appellant. In this inspection, the testing division does not ascertain which products are stored in the cold storage.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (xi) The Commission has passed various tariff Orders from year 2016 till date, and as per these tariff orders, it is clear that products such as cooking cream and processed herbal products do not fall under the category of “Agricultural Produce”. Hence, the HT-Agricultural - Others tariff is not applicable to such non-agricultural products.
- (xii) Accordingly, the Respondent changed the Tariff category (from HT-V Agricultural - Others to HT-I Industrial) of the Appellant from the billing month of Feb. 2021 and issued the Supplementary bill of Rs.52,89,087/- to the Appellant for the period from April 2018 to January 2021.
- (xiii) The Schedule under the APMC Act does not contain cooking cream as a separate entry. The APMC Act defines “agricultural produce” as “all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture, 3 [fisheries] and forest specified in the Schedule”. The Schedule of APMC Act not contains “cooking cream” as an agricultural product.
- (xiv) The contention of the Appellant that they are storing non-agricultural products e.g., cooking cream in very less quantity is misplaced. The quantity of stored products, whether less or more, is irrelevant. This said contention is baseless and not tenable, as electricity supply is released to this Appellant upon execution of the supply agreement only for the purpose of storing agricultural produce. As per Regulation No. 14 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulation, 2021,
“The distribution licensee may classify or reclassify a consumer into various Commission-approved tariff categories based on the purpose of usage of supply by such consumer.”
- (xv) The Appellant cannot take a stand that he is storing non-agricultural produce in very less quantity out of the total capacity of the cold storage, as the Commission prepared the tariff categories on the basis of the purpose of usage and not on the basis of percentage of non-Agricultural produce stored. Furthermore, the Appellant neither made an application to this Respondent nor informed or sought permission from the Respondent about the storage of non-agricultural products. Hence, the Appellant is liable to pay the electricity charges as per the HT Industrial tariff.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



(xvi) In view of above, the Representation of the Appellant be rejected.

Analysis and Ruling


5. Heard the parties and perused the documents on record. The Appellant is a HT Consumer (No. 000119026110) from 20.12.2002 having Sanctioned Load of 273 KW and Contract Demand of 182 KVA at Plot No. A-79, MIDC, TTC Industrial Area, Thane Belapur Road, Kopar Khairane, Navi Mumbai. The Appellant is a cold storage service provider for storage of temperature-sensitive goods which require temperature and humidity control to maintain quality and shelf-life of products.

6. The Applicant was billed under

- a. HT I- Industrial tariff category up to March 2018
- b. HT V (B): HT – Agriculture Others tariff category from April 2018 to Jan.2021
- c. HT I Industrial tariff category from Feb. 2021 onwards

7. The Respondent contended that as per the request of the Appellant, the Respondent carried out an inspection of the Appellant's premises in April 2018 and subsequently changed the tariff category from Industrial to Agriculture Others from 01.04.2018. The Appellant had given an Undertaking on stamp paper on 25.04.2018 that it would store only agriculture products as defined under APMC Act 1963.

8. After the change in tariff category to Agriculture - Others, the Respondent carried out spot inspections on 28.07.2020, 09.12.2020 and 29.01.2021 respectively. The abstract of these spot inspections are tabulated below:-


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Sr. No.	Date of Inspection	Details of Premises	Items Stored in Cold Storage Plant	Signature of Consumer	Name, Signature & Designation of Assessing Officer	Irregularities observed
1	28.07.2020	Basement	Harbara, Watana	Signed	Signature was not done	Not mentioned any remarks specifically
		Ground Floor	Grains, Moong, Harbara, Jawari, Maka, Chavli, Badam, Dalimb			
		1st floor	Rajgira, Chavli, Chana			
		2nd floor	Cooking cream, Harbara, Chana			
		3rd floor	Herbal Products, Chana			
		4th floor	Cooking Cream, Herbal Products			
2	09.12.2020	Details not mentioned	Details not mentioned	Signed	Signature was not done	Not mentioned any remarks specifically, claimed for regular meter testing in text.
3	29.01.2021	Basement	Harbara, Watana, Pulses	Signed	Signature was not done	Not mentioned any remarks specifically
		Ground Floor	Data not available			
		1st floor	Moong, Harbara, Grapes, Water Melon, Small Quantity of Cooking Cream: 15 boxes			
		2nd floor	Herbal, Chana, Cooking Cream :10 boxes			
		3rd floor	Herbal Raw Items			
		4th floor	Herbal Raw Items			

From the above table, it appears that the Appellant has kept some cooking cream boxes and processed herbal products in the cold storage plant; however, it was quite less in quantity at that time.


9. The Commission by its Tariff order dated 30.03.2020 in Case of 322 of 2019 has given tariff for Pre-cooling plants and cold storage units for Agriculture Products which is in force at present. The quate of the same is reproduced below:-

“HT V(B) : HT – Agriculture Others

Applicability:

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

b. Pre-cooling plants and cold storage units for Agriculture Products as defined under


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



APMC Act 1963 – processed or otherwise;

c. Poultry exclusively undertaking layer and broiler activities, including Hatcheries;

d. 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;

e. Floriculture, Horticulture, Nurseries, Plantations, Aquaculture, Sericulture, Cattle Breeding Farms, etc;”(Emphasis added).

10. Agricultural Produce is defined in the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, which is tabulated as below:-


(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963.
SCHEDULE
I. Fibres— 1. Cotton (ginned and unginned). 2. Sanhemp.
II. Cereals— 1. Wheat (husked and unhusked). 2. paddy (husked and unhusked). 3. Jowar. 4. Bajri. 5. Nagli. 6. Vari. 7. Kodra. 8. Maize. 9. Sarsav. 10. Bavto.
III. Pulses— 1. Tur. 2. Gram. 3. Udid. 4. Mung. 5. Val. 6. Chola. 7. Lang. 8. Math. 9. Peas. 10. Kulthi. 12. Masur. 13. Ghevda beans. 8 [14. Splites (Dal) of Pulses].
IV. Oilseeds— 1. Groundnut (shelled and unshelled). 2. Linseed. 3. Sesamum. 4. Safflower. 5. Ambadi. 6. Coconut. 7. Cotton seed. 8. Castor seed. 9. Khursani. 10. Nigar seed. 11. Thymol (Ajwan seed). 12. Dilseeds (Shepa). 13. Neems and Neem seed.]14. Soyabean
V. Narcotics— 1. Tobacco.
VI. Gul, Sugar and Sugarcane
VII. Fruits— 1. Mango. 2. Mosambi. 3. Santra. 4. Lemon. 9 [5. * * *] 6. Grapes. 7. Pomegranate. 8. Fig. 9. Chickoo. 10. Strawberry. 11. Melons. 12. Water Melon. 13. Papaya. 14. Guava. 15. Bor. 16. Falsa. 17. Custard Apple. 3 [18. Grapes Fruits.] 19. Apple. 20. Pineapple. 21. Jam. 22. Plum. 23. Peach. 24. Pears. 25. Leechi. 26. Almond. 27. Jack Fruit. 28. Naspati. 29. Cherry.]
VIII. Vegetables— 1. Potato. 2. Onion. 3. Tomato. 4. Suran. 1 [5. Leafy and other vegetables.] 6. Yam potatoes. 7. Sweet potatoes. 8. Kochara.
IX. Animal Husbandary Products— 1. Eggs. 2. Poultry. 3. Cattle. 4. Sheep. 5. Goat. 6. Wool. 10. Hides and skins. 11. Ghee.
XI. Grass and fodder—
XII. Cattle feeds—
XIII. Apiculture —
XIV. Pisciculture—
XV. Forest produce— 1. Hilda. 2. Gum. 4. Lac. 5. Bamboo. 8. Fire wood.
XVI. Other— Flowers.]
XVII. Wheat flour.
XVIII. Dry fruits.
XIX. Edible oils.

11. The Appellant contended that the inspection report dated 29.01.2021, based on which the supplementary bill was issued, is itself invalid because there was no signature of the Respondent's official on the said report. There was a mismatch between the copies of the inspection report submitted



 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



by the Appellant and the Respondent. This issue was discussed inter alia during the hearing, and the circumstances of this mismatch came to light. It seems that immediately after the inspection was done, when the inspection team was still in the premises, the Appellant asked for the copy of the inspection report. At that point of time, unfortunately, the unsigned copy was inadvertently handed over. In fact, the Respondent clarified that after going back to office and after a period, he signed the copy since the reports were to be submitted before this authority. However, he clarified that the basic contents were the same and there was no change in them. In brief, the final record in the inspection report, which was the main point of discussion, was that about 25 boxes of cooking cream were found to be stored in the premises. This fact itself was undisputed by both the parties. Therefore, we do not find any substance in the argument of the Appellant that this inspection report should be treated as invalid or inapplicable.

12. During the hearing, the Respondent also pointed out the possibility that the Appellant might have been storing, from time to time, more quantity of cooking cream or other similar products which are not allowed in the APMC Act. In order to verify the exact quantity, the Appellant was asked to produce the GST receipts which they have not provided till date. This raises a doubt about their intention, and the possibility cannot be ruled out that they were indeed storing greater quantities of these products from time to time. We find some substance in this argument. Nothing prevented the Appellant from providing the GST receipts to clarify or substantiate their position that the quantity of stored cooking cream etc. was miniscule or negligible.

13. The Appellant has also raised the issue regarding the undertaking signed by them on 25.04.2018, basically stating that they would only store agricultural products and dairy products. However, the next part of the said undertaking as mentioned in para 3 (A) (ii) states that *“if any activity other than agricultural products is found during the periodic inspection, then we shall be liable to pay tariff as applicable to non-agricultural products on pro-rata basis, as per MSEDCL rules read with the Electricity Act 2003”*. It is not understood how this undertaking was accepted by MSEDCL if they do not agree with these terms. The Respondent has repeatedly stated that a single uniform tariff is applicable to the whole premises based on the usage or type of products, and that two different rates cannot be levied, one for the major part of the products, and the second for the minor quantity of


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




products. If this is so, it is not clear why and how this undertaking was accepted with the words “**on pro-rata basis**”.

14. There is no tariff structure on pro- rata basis in the Tariff Orders of the Commission. The Appellant is bound to store only such Agriculture Produce in the Cold Storage Plant which are tabulated in Para 10 as per Annexure of APMC Act. The Appellant’s cold storage plant is near the APMC Market. There are many cold storage plants in the vicinity of the APMC market. Some of these Cold Storage Plants are billed under “Agriculture- Others” Tariff Category while others are billed under “Industrial” tariff category. There is no case of a mixed or dual Pro Rata Tariff category. Also, it is practically difficult, if not possible, to monitor the relative quantities of agricultural and non-agricultural products stored on a day-to-day basis. Hence, there is no question of applying two different tariffs on “pro-rata basis”.

15. It is on record that three inspections were carried out in the said premises i.e., on 28.07.2020, 09.12.2020 and 29.01.2021. Thus, it seems that after the Commission created the new tariff category of “Agriculture – Others” on 03.11.2016, the Applicant was billed under HT I- Industrial tariff category up to March 2018 and HT V (B): HT – Agriculture Others tariff category from April 2018. After that, no inspection was carried out of the said premises till 28.07.2020. The Forum has allowed the application of Industrial tariff from 29.01.2019, which is the date from which the 24 months’ period starts preceding the date of inspection i.e. 29.01.2021. Thus, we find that the Forum has allowed the recovery of Industrial tariff from 29.01.2019 which is even before the first inspection dated 28.07.2020. It cannot be said with certainty what the situation would have been prior to the first inspection, i.e. whether non-agricultural products were being stored or not. It is only after the first inspection on 28.07.2020 that it can be said with certainty that non-agricultural products were being stored. Therefore, it would not be in the interest of justice to recover industrial tariff from a date prior to the first inspection.

16. In view of the above, the Respondent is directed as below:

- (a) to withdraw the supplementary bill of Rs.52,89,087/- of the Appellant and to bill the Appellant with Industrial tariff category only from 28.07.2020 till January 2021, by withdrawing interest and DPC levied, if any.
- (b) The Respondent to submit compliance report within two months from the date of this order.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (c) Other prayers of the Appellant are rejected.
- (d) The order of the Forum stands modified to the extent above.

17. The Secretariat of this office is directed to refund Rs. 25000/- by way of adjusting in the ensuing bill of the Appellant.

18. The representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

