

**CONSUMER GRIEVANCE REDRESSAL FORUM**  
(Established under the section 42 (5) of the Electricity Act, 2003)  
**MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.**  
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**Consumer Grievance Redressal Forum**  
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**Room N. 115-118**  
**Dwarka, NASHIK 422011**

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No. / CGRF /Nashik/Nagar Circle /Sangamner Dn./591/67-2016-17/

Date: 17/03/2017

**(BY R.P.A.D.)**

**In the matter of**

**Change of Tariff Category from retrospective effect and refund of the difference**

**Date of Submission of the case :30/01/2017**

**Date of Decision : 17/03/2017**

To.

1 M/s .Daulat Agro (I) Pvt. Ltd.,  
At Khandarmalwadi Post Ghargaon ,  
Pune-Nashik Highway,  
Tal. Sangamner,  
Dist. Ahmednagar 422620  
(Con.No. 155919009560)

Complainant

2 Nodal Officer ,  
Maharashtra State Electricity Distribution Com. Ltd.,  
Circle office, Ahmednagar,  
3 Executive Engineer,  
Maharashtra State Electricity Distribution Com. Ltd.  
Sangamner Divn. Office  
Dist. Ahmednagar.

Distribution Company

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**DECISION**

M/s. .Daulat Agro (I) Pvt. Ltd., (hereafter referred as the Complainant ). Sangamner is the industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has the grievance regarding application of wrong tariff by the Distribution Company from August 2013 till May 2015 and claimed the refund of tariff difference. The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee on 09/09/2016. But as the IGRC did not provide any remedy within 2 months, the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No. 24 of 2017 on 30 /01/2017.

The Forum in its meeting on 31/01/2017, decided to admit this case for hearing on 22/02/2017 (later shifted to 22/02/2017 because of holiday due to Municipal Elections) at 12.30 Pm in the office of the forum . A notice dated 31/01/2017 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Circle Office Ahmednagar for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri .J.S.Chavan , Nodal Officer represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

**Consumers Representation in brief :**

1. MSEDCL has sanctioned the HT Power Supply connection on date 09/04/2011 and released on date 09/08/2013 of 950 KVA with Connected Load of 1190 KW under tariff category of HT I Industrial

- for the purpose of "Processing of Fruits & Vegetables and Dehydrated Powders & Flakes, Fruits pulp & ready to serve juices" comes under tariff of Pre Cooling and cold storage for Agriculture produce.
2. Hon'ble MERC passed an order on 17<sup>th</sup> August 2009 in Case No.116 of 2008 applying Agriculture tariff from 1<sup>st</sup> August 2009 to Pre cooling and cold storage Agriculture produce.
  3. As per Hon'ble Commission by its order dated 21/12/2009 passed an Errata and Corrigendum order and as per order, MSEDCL by its commercial circular No.107 dated 31/12/2009 informed to all to implement the order of Hon'ble MERC.
  4. Again, order dated 16/08/2012 in case no.19 of 2012 Tariff order for FY 2012-13, MERC has clarified the same on the proposal of MSEDCL petition for changes in tariff applicability.
  5. As per tariff order dated 16<sup>th</sup> August 2012, as per commission's directions, MSEDCL has duty to apply tariff code as Agriculture for Pre Cooling and Cold storage agriculture produce units.
  6. With reference to regulation 13 of supply code, 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 consumers. Thus, to classify or reclassify the consumer into a particular Tariff category is the primary duty of licensee.
  7. But in our Case, MSEDCL has not applied the correct tariff code and charged with Industrial tariff.
  8. The complainant believed that the MSEDCL, being a Government undertaking, would be charging as per rules and regulation approved by MERC.
  9. The complainant is not able to pay the huge amount of bills which was based on wrong tariff code.
  10. When the complainant saw that MSEDCL has not taken action on our application for applicability of correct tariff, the complainant approached to GoM and GoM has given necessary instruction to MSEDCL.
  11. After instruction from Minister Level, MSEDCL has corrected the tariff code from industrial to Agriculture from the billing month of June 2015 and revise the bills up to Feb.2016.
  12. With reference to Electricity Act,2003 Part-VII Section 62 (6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."
  13. By various correspondences, after change of tariff code, the complainant had requested as per Electricity Act 2003 Section 62(6) for refund of excess collected amount from the August 2013 to May 2015 and interest on the excess amount collected from August 2013 to Feb.2016 with revision of bills on corrected tariff B-80 adjustment with withdrawal of DPC and interest charged, as per dept. circular No.202. MSEDCL has not allowed DPC and interest, if bill has revised.
  14. The complainant has filed the writ petition to High Court Aurangabad for this matter.
  15. If, decide the matter with reference to Electricity Act and as per our presentation, and satisfaction, we can withdraw the same petition from high court.
  16. Electricity Ombudsman has given the order in Rep. No. 105 of 2016, allowed the representation with direction to withdraw the Petition.

**Arguments from the Distribution Company:**

The Distribution Company submitted a letter dated 21/02/2016 from the Nodal Officer Ahmednagar Circle. MSEDCL, and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

1. At the outset it here humbly submitted that, Writ Petition No. 5205 of 2016 filed at the instance of the consumer is pending before Hon'ble High Court, Bench at Aurangabad.
2. Issue raised by the consumer in WP No. 5205 of 2016 is substantially & squarely same as it is in the present grievance. Present grievance is filed for "Tariff Categorization" it is the contention of the consumer that, from Aug. 2013 to June 2015 he should have been categorized under Agricultural Tariff Category, whereas before Hon'bel High Court consumer is claiming same relief.
3. Further, it is submitted that, Representation No. 35 of 2016 before Hon'ble Electricity Ombudsman was filed by the consumer against order dt. 18/03/2016 of Hon'ble CGRF Nashik rejecting claim of refund of augmentation charges & compensation for indirect, consequential & incidental losses allegedly caused due to curtailment of supply.
4. Hon'ble Electricity Ombudsman is pleased to reject the claim of consumer. However, although issue of tariff categorization was not there in said Representation, Hon'ble Electricity ombudsman ordered MSEDCL to categorize the consumer from Aug. 2013 to June 2015 under non-continuous

- Tariff Category instead of continuous Tariff Category. Further, request of MSEDCL to review the order to the extent of Tariff Categorization was not granted in Representation No. 96 of 2016.
5. Therefore, MSEDCL has challenged the Order of Hon'ble Electricity Ombudsman in Representation No. 35 & 96 of 2016 by filing WP No. 527 of 2017. Hon'ble High Court is pleased to grant interim relief in the matter & effect operation of Order in Representation No. 35 & 96 is stayed.
  6. Thus, issue of Tariff Categorization for period Aug. 2013 to June 2015 is pending before Hon'ble High Court in two Writ Petitions i.e. WP No. 5205 of 2016 & WP No. 527 of 2017.
  7. Regulation 6.7(d) of CGRF & EO Regulations creates express bar to entertain the grievance where subject matter is pending in any proceedings before the Court. Regulation thus takes care of avoiding multiplicity of the proceedings & conflicting orders of Judicial Forum. Said Regulation clearly mandates that consumer have to choose the single Forum for adjudication of the grievance. In this view of the matter it is here submitted that grievance of the consumer may kindly be not entertained in present situation OR be kept in abeyance until disposal of the both Writ Petitions before Hon'ble High Court, Bench at Aurangabad. Without prejudice to the aforesaid submissions respondent herewith proceed to set out factual matrix of the case & stand of the respondent Office in the present matter.
  8. Supply to the consumer was released on 09/08/2013. At the beginning of the grievance itself consumer has specified the purpose for which supply is used i.e. "Processing of fruits & vegetables and Dehydrated powders and flakes, fruit pulps & ready to serve juices". This version of the consumer is more than sufficient to demonstrate that activity is nothing but industrial.
  9. Further, various documents submitted along with Form A-1 for new service connection, such as, list of machinery, various Govt. Permissions, Project at Glance and Memorandum of Association of company etc. Crystal clearly shows that, nature of activity is processing of fruits and vegetable dehydrated powder, pulp and ready to serve juices, which comes under Industrial Tariff Category. Thus, Connection was applied for industrial purpose and even permission from various Govt, Departments were obtained for same purpose, To be specific list of machinery required for electricity load, under heading at 'B' i.e. De-hydration processing line for leafy and fruit vegetables and 'C' i.e. Equipment for pulp and processing clearly demonstrates that activity is fruit and vegetable processing. Therefore, it can be easily gathered that the nature of activity even today is mixed i.e. Industrial as well as cold storage. Obviously cold storage units are used to store not agricultural produce but processed agricultural products.
  10. Approved Tariff schedule w.e.f. 1<sup>st</sup> August, 2012 was in existence at relevant time and respondent MSEDCL has correctly categorized connection under HT-I industry, as per the Tariff Order. Relevant extract of Tariff Order Aug. 2012 is reproduced below.

**HT V:HT-Agricultural :**

**Applicability :**

Applicable for Electricity/Power supply at High Tension for pumping of water exclusively for the purpose of agricultural/cultivation of crops including HT Lift Irrigation Schemes(LIS) irrespective of ownership and also for.

- i. For Pre-cooling plants & cold storage units for Agricultural Produce irrespective of whether pre-cooling plants and cold storage units for Agricultural Produce are being used by farmers or traders, and irrespective of the ownership of such plants/units.
- ii. For Poultry exclusively undertaking Layer & Broiler activities, including Hatcheries:
- 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 Consumer for purpose directly connected with crop cultivation process and further provided that the power is not utilized for any engineering or industrial process.
- iv. For floriculture, Horticulture, Nurseries, Plantations, but shall not be applicable for Aquaculture, Sericulture, Fisheries etc.

It would be worthwhile to mention here that, MERC has expressly clarified issue in respect of ownership of cold storage and even cold storages owned by traders are made eligible for this category. It has to be noticed that, such concession of subsidized tariff is not allowed to Tissue Culture & Green House. Further inspite of various suggestions/objections & MSEDCL proposal at public hearing in respect of cold storage plants. MERC has not extended this concession of

subsidized tariff to cold storage units used to store processed Agricultural products and in its own wisdom has remained silent in respect of ' Material to be storage ' in cold storage plant, Rather it has prescribed that; it is exclusively for Agricultural produce.

11. First time in its tariff dated 26/06/2015 in case No. 121/2014, after considering various suggestions/objections and reply of MSEDCL in public hearing Hon'ble MERC besides Agricultural Produce included Agriculture Products: processed or otherwise under Agriculture category. Observation of Hon'ble MERC are reproduced here for ready reference.

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

Along with the same, the applicability of HT-V Agriculture Tariff categorization w.e.f. 01/06/2015 relevant extract of Tariff Order June 2015 is reproduced here for ready reference.

**Applicability:**

- i) Pre-cooling plants and cold storage units for agriculture Products - Processed or otherwise:
- ii) ----

Thus not only agriculture produce but Agriculture Products: processed or otherwise were included in Tariff Order w.e.f. 1<sup>st</sup> June 2015. Thus, it would be clear that, no error is committed in applying HT-Industrial Tariff to the consumer for period 09/08/2013 to 01/06/2015.

12. The power to determine the tariff vests with Hon'ble MERC in view of Section 61 & 62 of the Electricity Act. 2003. Hon'ble MERC after taking into consideration submission made by MSEDCL, suggestions and objections of the public, and responses of MSEDCL thereto, issues rose during the public hearing, gives it reasoned ruling on each issue.
13. Once Tariffs are determined after this due process MSEDCL strictly and exhaustively implements the Tariff order, it has not direction as such in this process. Form the tariff schedule w.e.f. 1<sup>st</sup> June, 2015, it could be seen that, Tariff orders issued by the commission while determining the Tariff and its categorization, amongst various factors also considers the actual situation existing at certain point of time.

In order to illustrate this, we can understand that the June 2015 tariff schedule expressly allows Agriculture Tariff to cold storage for Agricultural products: processed or otherwise. However, activity of milk chilling although inseparable from Agriculture finds its place under category of ' Industry '. Similarly, activity such as aquaculture, sericulture, fisheries and cattle breeding farm, which are now included in Agriculture, in previous Tariff order, were categorized under Commercial Tariff. Again we can see that, concession of Agriculture Tariff, which is highly subsidized, as of now is not extended to Tissue Culture and Green Houses owned by traders. In ensuing Tariff orders as per developments, activities presently included in Agricultural category may or may not be included under Agriculture Tariff Category. As in duty, bound MSEDCL strictly and exhaustively implements the Tariff Order.

With all this submission, it is humbly submitted that Industrial Tariff applied to the consumer from 09/08/2013 to 01/06/2015 was correctly applied, it is as per his nature of activity, purpose & usage of electricity and it was applied in accordance with the prevailing Tariff order.

Thus apart from technical aspects even on merits grievance of the consumer is not sustainable & deserves to be dismissed.

**Observations by the Forum:**

1. The complainant is the HT consumer with date of supply as 09/08/2013 given for industrial unit carrying activity of "Processing of Fruits & Vegetables and Dehydrated Powders & Flakes, Fruits pulp & ready to serve juices".
2. The complainant has applied as the industrial consumer and tariff category of HT I was applied as per prevailing tariff order. As reported by the Distribution Company the tariff category is later

changed to HT V –Agriculture in view of the MERC Tariff order 26/06/2015 with effect from 01/06/2015.

3. The complainant however has demanded the HT V –Agriculture category to be applied since beginning i.e. August 2013 and demanded the refund of the difference on account of tariff category for the period Aug 2013 to May 2013. .
4. But it is reported by both the complainant and the Distribution Company that a Writ Petition on the same subject has been filed with the Hon'ble Aurangabad Bench of Bombay High Court by the complainant which is registered under no. WP 5205 of 2016 and is pending with the Hon'ble court. Also a petition by the Distribution Company under number WP 527 of 2017 is filed with the Hon'ble Aurangabad Bench of Bombay High Court on the subject of tariff categorization and is pending.
5. As per the regulation 6.7 (d) of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, the Forum shall not entertain a grievance :

*“where a representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.”*

6. The complainant has stated in the application that if, the Forum decides the matter with reference to Electricity Act and as per their presentation, and satisfaction, they can withdraw the petition from High Court. But the withdrawal can not be conditional. Pending the proceeding of the High Court, the Forum can not decide the case
7. In view of above, the Forum can not entertain the grievance at this stage and do not go into the merits or demerits of the grievance.

After considering the representation submitted by the complainant, arguments by the Distribution Licensee, all other records available, the following order is passed by the Forum :

#### **ORDER**

1. The Forum can not entertain the grievance
2. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

**(Rajan S. Kulkarni)**  
Member

**( Sandeep D. Darwade )**  
Member-Secretary  
& Executive Engineer

**(Suresh P.Wagh)**  
Chairman

#### **Consumer Grievance Redressal Forum Nashik Zone**

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 ( For P.R.O )
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , Circle office, Ahmednagar .

