

CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
KOLHAPUR ZONE, TARABAI PARK, KOLHAPUR

Con.Comp. No. 207, 208, 209,210, 211, 212, 213 -2010/

Date :

JUDGMENT

- | | |
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| 1) Guruganga Cold Storage Pvt. Ltd. (Case No.207/10)
Plot No. 4/3/A, MIDC, Kupwad,
Tal : Miraj, Dist. Sangli | Appellant |
| 2) Varad Cold storage Pvt. Ltd. (Case No. 208/10)
A/P Kavathe Ekand, Tal :Tasgaon,
Dist.. Sangli | |
| 3) Gomtesh Cold Storage, (Case No. 209/10)
Plot No. G/3/D, MIDC, Kupwad,
Dist. Sangli | |
| 4) Bafna Cold Storage, (Case No. 210/10)
Plot No. G/3/C, MIDC,
Kupwad, Tal: Miraj, Dist. Sangli | |
| 5) Chand Fruit Co. Pvt. Ltd. (Case No. 211/10)
Gat No. 228, Takali Road, Miraj,
Dist. Sangli | |
| 6) Chand Fruit Co. Pvt. Ltd. (Case No. 212/10)
Gat No. 154/2/A/2/B, Bagwan Mala,
Takali Road, Miraj, Dist. Sangli | |
| 7) Vardhaman Cold Storage (Case No. 213/10)
Plot No. J/57, 58, MIDC
Kupwad, Sangli | |

V/s

- | | |
|--|------------|
| 1) Executive Engineer (Office) & Nodal Officer,
M.S.E.D.C.L. Circle Office, Sangli | Respondent |
| 2) Executive Engineer,
MSEDCL, Urban Division, Sangli | |
| 3) Executive Engineer,
MSEDCL, Rural Division,. Sangli | |

- Corum -**
- 1) Shri B.G. Pawar, Chairperson
 - 2) “ G. B. Pankar, Member Secretary
 - 3) “ G.C. Lele, Member

Judgement by Shri B.G. Pawar, Chairperson of C.G.R.F. Kolhapur Date :

These seven grievances are disposed by a common Judgement and Order, since point involved is identical and prayer against MSEDCL are similar.

(1) Case No. 207 –Guruganga Cold Storage, Kupwad, Dist.Sangli

Shri A.G. Magdum filed grievance in Form Schedule A on behalf of Guruganga Cold Storage Pvt. Ltd. Plot No. 4/3/A, MIDC, Kupwad, Dist. Sangli its Consumer number is 279249006090 and category HT industrial. A grievance has been filed for refund of amount recovered from 1st August 2009 classifying as HT agricultural. The consumer contended that Hon'ble MERC Mumbai passed an order on 17th August 2009 in Petition No. 116/ 2008 applying L.T.- Ag. tariff from 1st August 2009 to the L.T. pre-cooling and Cold Storage. Secondly, Hon'ble Commission by its Order dated 21.12.2009 passed an Errata and Corrigendum Order and as per the said Order H.T. pre-cooling and Cold Storage consumers are classified as HT-Ag. and accordingly tariff applied to them HT-Ag.

It is further, contended by consumer that MSEDCL by its Commercial Circular No. 107 dated 31.12.2009 informed to all to implement the Order of Hon'ble MERC. The consumer prays for billing as per HT-Ag. and refund of the amount recovered at higher rate i.e. H.T. Industrial from 1st Aug. 2009 by adjusting it in the energy bills. The consumer repeatedly requested MSEDCL to continue the billing as per HT-Ag. but MSEDCL is still charging as per HT-Ind. Tariff. So Initially, the consumer approached I.G.R.C. Sangli. But I.G.R.C. has rejected the consumers claim on wrong point.

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The consumer contended that I.G.R.C. Order dated 1.9.2010 is illegal, wrong and against the provisions of Electricity Act 2003 and Orders of Hon'ble MERC. I.G.R.C. has passed its order on the basis of judgement of Supreme Court dated 19.1.1996. It is contended that the judgement of the Supreme Court is regarding Income Tax assessment and not relating to electricity tariff and classification. The consumer has made a reference of Hon'ble MERC Tariff Order dated 17.8.2009 wherein Hon'ble Commission has made it clear on page 200 and 201 the Tariff Philosophy. The consumer further contended that under Section 62(4) of Electricity Act, the classification is done on the basis of nature and purpose and not on the basis of ownership. So agricultural produce is either in the hands of agriculturist or businessman has no relation with energy assessment. The consumer also criticised and challenged explanation given by Executive Director, MSEDCL Pune Region, Pune which is against and inconstance with Orders of Hon'ble Commission. The local MSEDCL Officers insisted the consumer to file affidavit in respect of ownership of agricultural produce and accordingly the same has been filed. Still then the Company has not charged as per agricultural tariff. The complainant referred a decision of Nasik Zone Office wherein for the Cold Storages, the assessment of energy charges has been done as per agricultural tariff. The copy of the bill has been produced. Hence prayed to direct the MSEDCL to charge as per HT_Ag in pursuance of the Order of MERC and Circular of MSEDCL. The consumers has also prayed to award 12% as per Section 62(6) of Electricity Act over the amount ordered to be refunded, which is charged as per HT Industrial, from 1st August 2009 and the same should be adjusted in future bills.

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A brief note has been attached with Schedule A form and requested the Forum should note that activity of Cold Storage is merged in HT-Ag. by the Hon'ble Commission in Jan. 2002. Only the words regarding ownership i.e. "of farmers co-op. societies" are deleted by the Errata and Corrigendum Order dated 21.12.2009. Hon'ble Commission has merged the various tariff categories on the basis of purpose of use in its various orders. In respect of issue raised by MSEDCL that agricultural produce is not defined in the Tariff Order, which has been precisely discussed by the Hon'ble Commission in Chapter 5.4 of its Tariff Order dated 17.8.2009. Finally, it is contended that MSEDCL itself had proposed in its APR Petition of Financial Year 2008-09 that MSEDCL proposes a separate category covering the consumers of LT Flour Mills, LT Powerloom and LT Cold Storage (Agriculture Produce). Copies of case No. 116 of 2008 page No. 200 and 201 are attached along with Brief Note dated 14.9.2010.

(2) MSEDCL through its Executive Engineer (Adm) IGRC Cell Sangli by its Say dated 4.11.2010 mainly relied upon Civil Appeal No.1196/1992 filed by Madhya Pradesh Rajya Sahakari Bank, Bhopal against Commissioner of Income Tax, Jabalpur in the Supreme Court. It is observed and held by Hon'ble Supreme Court Case Law reported in SCC 1996 (2), Page No. 541) that the agricultural produce, produced by the agriculturist can legitimately be called agricultural produce in his hands, but in the hands of traders, it would be appropriate to call it agricultural commodities. Secondly, it is contended that clarification was obtained from the higher authority i.e. Executive Director (II), MSEDCL Pune Region, Pune.

In this letter, it is mentioned that the HT-V tariff is not tenable looking into decision dated 19.1.1996 of Hon'ble Supreme Court of India in Civil Appeal No. 1196/1992 filed by Madhya Pradesh Rajya Sahakari Bank, Bhopal. The consumer has submitted factory license and Registration Certification at the time of taking new connection. This proves that the premises of this consumer is Industry. It is contended that in the consumer's factory, processed dry grapes/Kismis/Bedana are stored. When an agricultural produce is processed, it becomes industrial commodity. A reference is made to Mumbai Association of Cold Storage Owners stated that their business activity is clearly termed as "Industry". Hence, prayed to dismiss the consumer's grievance, requesting to apply Industrial Tariff. Copy of the Judgement of Hon'ble Supreme Court has been filed with Say along with letter of Executive Director(II) Pune Region dated 8.3.2010 and copy of Registration under Company's Act "Industry", Registration under S.S.I. dated 17.3.2009.

(3) Case No. 208/2010 - Varad Cold Storage Pvt.Ltd., Dist. Sangli

Shri Ajaykumar Ramrao Patil filed grievance through representatives Shri Pratap Hogade and Javed Momin in Schedule A on behalf Varad Cold Storage Pvt.Ltd., At Kavathe Ekand, Tal : Tasgaon, Dist. Sangli having consumer No. 281599004370 classified as H.T. Industrial approached I.G.R.C. Sangli on 12.7.2010 has made similar prayer as mentioned in Para I in case No. 207/2010. The prayer is made to direct MSEDCL to assess bills of cold storage as per HT-Ag. tariff in pursuance of Order of Hon'ble Commission and Circular of MSEDCL and to adjust the refund amount from 1.8.2009 in ensuing energy bills along with interest at the rate of 12% over the amount as per Section 62 (6) of Electricity Act 2003.

The details of the MSEDCL reply dated 4.11.2010 is similar as mentioned above in paragraph II in Case No. 207/2010.

Case No. 209/2010 - Gomtesh Cold Storage, MIDC Kupwad, Dist. Sangli

Shri Anil Parisa Suganawar filed grievance through representatives Shri Pratap Hogade and Javed Momin in Schedule A on behalf of Gomtesh Cold Storage, MIDC Kupwad Sangli having consumer No. 279249004840 classified as H.T. Industrial approached I.G.R.C. Sangli on 12.7.2010 has made similar prayer as mentioned in Para I in case No. 207/2010. The prayer is made to direct MSEDCL to charge the bills of cold storage as per HT-Ag. tariff in pursuance of Order of Hon'ble Commission and Circular of MSEDCL and to adjust the refund amount from 1.8.2009 in ensuing energy bills along with interest at the rate of 12% over the amount as per Section 62 (6) of Electricity Act 2003. The defence of MSEDCL filed on record dated 4.11.2010 is similar cyclostyled copy as quoted above in paragraph II in Case No. 207/2010. Opposing the prayer of consumer it is contended that consumer's prayer to apply HT-Ag. tariff can not be considered.

(4) Case No. 210/2010 - Bafna Cold Storage, MIDC Kupwad, Dist. Sangli

Shri Vinit Ashok Bafna filed grievance through representatives Shri Pratap Hogade and Javed Momin in Schedule A on behalf of - Bafna Cold Storage, MIDC Kupwad Dist. Sangli having consumer No. 279249004870 classified as H.T. Industrial. He approached I.G.R.C. Sangli on 12.7.2010 has made similar prayer as mentioned in Para I in case No. 207/2010. The prayer is made to direct MSEDCL to charge the bills of cold storage as per HT-Ag. tariff in pursuance of Order of Hon'ble Commission and Circular of MSEDCL and to adjust the refund amount from 1.8.2009 in ensuing energy bills along with

interest at the rate of 12% over the amount as per Section 62 (6) of Electricity Act 2003. The defence of MSEDCL filed on record dated 4.11.2010 is similar cyclostyled copy as quoted above in paragraph II in Case No. 207/2010. Opposing the prayer of consumer it is contended that consumer's prayer to apply HT-Ag. tariff can not be considered. It is contended that when agricultural produce is processed, it becomes industrial commodity.

(5) Case No. 211/2010 - Chand Fruit Co.Pvt.Ltd., Gat No. 228, Takali Rd. Miraj

Shri Mahamadshafi Hajichand Bagwan filed grievance through representatives Shri Pratap Hogade and Javed Momin in Schedule A on behalf of Chand Fruit Co.Pvt.Ltd., Gat No. 228, Takali Rd. Miraj, Dist. Sangli_having consumer No. 279249004870 classified as H.T. Industrial approached I.G.R.C. Sangli on 12.7.2010 has made similar prayer as mentioned in Para I in case No. 207/2010. The prayer is made to direct MSEDCL to charge the bills of cold storage as per HT-Ag. tariff in pursuance of Order of Hon'ble Commission and Circular of MSEDCL and to adjust the refund amount from 1.8.2009 in ensuing energy bills along with interest at the rate of 12% over the amount as per Section 62 (6) of Electricity Act 2003. The Respondent Company through its Executive Engineer / Nodal Officer filed on record copy of letter dated 4.11.2010 opposing the prayer in the grievance of the complainant to apply HT-Ag. tariff, can not be considered since when agricultural produce is processed, it becomes industrial commodity. A reference has been made for clarification from Executive Director (II) Pune Region, relied upon Civil Appeal in Supreme Court case No. 116/1992 decided on 19.1.1996.

(6) Case No. 212/2010 - Chand Fruit Co.Pvt.Ltd., Takali Rd. Miraj

Shri Mahamadshafi Hajichand Bagwan filed grievance through representatives Shri Pratap Hogade and Javed Momin in Schedule "A" on behalf of Chand Fruit Co.Pvt.Ltd., Gat No. 154/2/A/2/B, Bagwan Mala, Takali Road, Miraj, Dist. Sangli_ having consumer No. 2709019004840 classified as H.T. Industrial approached I.G.R.C. Sangli on 12.7.2010 has made similar prayer as mentioned in Para I in case No. 207/2010. The prayer is made to direct MSEDCL to charge the bills of cold storage as per HT-Ag. tariff in pursuance of Order of Hon'ble Commission and Circular of MSEDCL and to adjust the refund amount from 1.8.2009 in ensuing energy bills along with interest at the rate of 12% over the amount as per Section 62 (6) of Electricity Act 2003. The Respondent Company through its Executive Engineer / Nodal Officer filed on record copy of letter dated 4.11.2010 opposing the prayer in the grievance of the complainant to apply HT-Ag. tariff, can not be considered since when agricultural produce is processed, it becomes industrial commodity. A reference has been made for clarification from Executive Director (II) Pune Region, relied upon Civil Appeal in Supreme Court case No. 116/1992 decided on 19.1.1996.

(7) Case No. 213/2010 - Vardhaman Cold Storage, MIDC Kupwad, Tal :Miraj

Shri Sushil Raoso Chougule filed grievance through representatives Shri Pratap Hogade and Javed Momin in Schedule A on behalf of Vardhaman Cold Storage, MIDC Kupwad Tal: Miraj, Dist. Sangli having consumer No. 279249004480 classified as H.T. Industrial approached I.G.R.C. Sangli on 12.7.2010 has made similar prayer as mentioned in Para I in case No. 207/2010.

The prayer is made to direct MSEDCL to charge the bills of cold storage as per HT-Ag. tariff in pursuance of Order of Hon'ble Commission and Circular of MSEDCL and to adjust the refund amount from 1.8.2009 in ensuing energy bills along with interest at the rate of 12% over the amount as per Section 62 (6) of Electricity Act 2003. A reference is made to Mumbai Association of Cold Storage Owners stated that their business activity is clearly termed as " Industry ". The Respondent Company through its Executive Engineer / Nodal Officer filed on record Say dated 4.11.2010 opposing the prayer in the grievance of the complainant to apply HT-Ag. tariff, since when agricultural product grapes/ Kismis/ Bedana is processed, it becomes industrial commodity.

(8) The matter was heard on 9.11.2010. Shri Hogade present on behalf of all the consumers and on behalf of Respondent Company Shri Kshirsagar, Nodal Officer was present. Shri Hogade submitted that MSEDCL in its petition filed in 2009 at page 15, 112, 113 proposed to modify existing applicability of HT Industrial to H.T.-Ag. He also relied upon the bill issued to Cold Storage in the month of April 2010 at Nasik Division as per Order of Hon'ble Commission at HT- Ag. rates. He also submitted Hon'ble Commission on 10.1.2002 passed Order (page 07) SP I, SP II, HTP- VIII all three categories. termed in as HTP-VII including precooling and cold storage. He also placed and relied upon Hon'ble Commission Order dated 17.8.2009 more particularly page 193, 195, 198 of 249 wherein Hon'ble Commission has observed classification as per other statues of Laws is not applicable to classify the consumer and to charge or assess the consumption.

He also placed and relied upon Order of Hon'ble Commission dated 12.9.2010 more particular page No. 201, 205, 215, 245, 246, 256 wherein MSEDCL has asked for clarification before Hon'ble Commission and Hon'ble Commission issued it stating HT-Ag. tariff is applicable to all precooling and cold storage consumers. Copies of these statements are produced before the Forum after arguments are concluded on 15.11.2010. The MSEDCL issued Circular No. 107 dated 31.12.2009 in the light of Hon'ble Commission's Order. He also submitted as per Section 62 sub section 3 of Electricity Act, nature of supply and purpose for which supply is required is important. Judgement of the Supreme Court is not applicable to the classification of consumers as HT-Ag., It is for the purpose of Income-Tax. Hence prayed to allow the grievance and direct the MSEDCL to charge the bills as per HT-Ag. and to refund excess amount recovered from 1.8.2009 as per HT-Industry with 12% interest on it.

(9) As against, Shri Kshirsagar, Nodal Officer, Sangli submitted that Executive Director (II) Pune Region informed to Sangli Circle on its application seeking clarification that HT-VI is not tenable under the decision of Hon'ble Supreme Court in Appeal No.. 1196/92. The consumers have produced License, S.S.I. Registration which proves premises of these consumers are ' industry '. In this factory processed agricultural produce like grapes, kismis, Bedana are stored which becomes industrial commodity. Hence prayed to reject / dismiss the grievance of consumers.

On 25.11.2010 at the time of dictation of this judgement, this Forum has received a fax of Commercial Circular No. 124/ 14.10.2010 issued by MSEDCL regarding ' revision in tariff and implementation thereof ' as per Hon'ble Commission's Tariff Order dated 12.9.2010, which reads -

Applicability of Agricultural Tariff category to pre-cooling and cold storage on HT an LT voltage level : (Page 5 - Point No. 11)

HT or LT Agricultural Tariff category shall be applicable for pre-cooling and cold storage for agricultural produce irrespective of whether pre-cooling and cold storage are being used by farmers or traders, and irrespective of the ownership pattern in respect of supply on HT or LT side. In this case, care should be taken that this applicability is extended only to the Cold Storage of unprocessed agricultural produce only and not to any other Cold Storage and Ice Cream Parlors, Ice Factory etc.

Following points arise for determination.

- 1) Whether pre-cooling and cold storage presently on H.T.Industrial Tariff should be allowed under HT-Ag. tariff ?

Answer : Yes

- 2) Are the claimants entitled to refund all the excess amount charged as per H.T. industrial tariff from 1st Aug. 2009 with 12% interest as prayed ?

Answer : Yes

What Order ?

Reasons

Admittedly the MSEDCL issued Commercial Circular No. 107 dated 31.12.2009 on the basis of Judgement and Order of Hon'ble M.E.R.C. Mumbai in Petition No. 116/2008 dated 17.8.2009 and Errata and Corrigendum Order dated 21.12.2009 directing to give effect to to its Order from 1st Aug. 2009.

Since the Tariff Order in case of pre-cooling and cold storage seems to be classified in HT-Ag. for which all the consumers approached to IGRC Sangli requesting to refund excess amount through ensuing bills recovered as per HT-Industrial tariff by applying Circular issued by H.O. of the MSEDCL. However, I.G.R.C. Sangli rejected the prayer.

I.G.R.C. mainly based upon the decision of Hon'ble Supreme Court dated 19.1.1996 in Civil Appeal No. 1196/92 filed by Madhya Pradesh Rajya Sahakari Bank, Bhopal against Commissioner of Income Tax, Jabalpur in the Supreme Court. It is observed and held by Hon'ble Supreme Court 9 Case Law reported in SCC 1996 (2), Page No. 541) and laid down that the agricultural produce, produced by the agriculturist can legitimately be called agricultural produce in his hands, but in the hands of traders, it would be appropriate to call it agricultural commodities. It seems the concerned authority at Sangli Circle moved to its higher authority by letter No. 3267 dated 5.3.2010 whether rasin is agriculture produce or not ? Whether farmers store agriculture produce for certain period can be billed as per HT-V or otherwise ? However, Commercial Circlar No. 124 dated 14.10.2010 has been faxed by Suptdg.Engineer, MSEDCL, Sangli to the Secretary of the Forum, wherein on page 5 para 11 under the heading –

(10) Applicability of Agricultural Tariff category to pre-cooling and cold storage on HT an LT voltage level :

HT or LT Agricultural Tariff category shall be applicable for pre-cooling and cold storage for agricultural produce irrespective of whether pre-cooling and cold storage are being used by farmers or traders,

and irrespective of the ownership pattern in respect of supply on HT or LT side. In this case, care should be taken that this applicability is extended only to the Cold Storage of unprocessed agricultural produce only and not to any other Cold Storage and Ice Cream Parlors, Ice Factory etc.

On going through these directions one thing is clear that H.T. or L.T. agriculture category is made applicable for pre-cooling and cold storage for agricultural produce irrespective of whether they are being used by farmers or traders an irrespective of its ownership in respect of supply on HT or LT side. But this facility is extended only to the Cold Storage of unprocessed agricultural produce only and not to any other Cold Storage and Ice Cream Parlors, Ice Factory. Admittedly in all these complaints consumers have filed affidavit stating that they are storing dry grapes and no other product, material is stored. So in this background, whether, judgement heavily relied by Supdg.Engineer, MSEDCL, Sangli is helpful to justify their action in respect of which grievance is raised by consumers. Shri Pratap Hogade, representative of consumers, mainly submitted before the Forum that the Judgement is not applicable to present case which relates to Income Tax Act. The Forum is required to decide applicability of tariff under special Act i.e. Electricity Act 2003. He also drawn Forum's attention to observation of Hon'ble Commission at relevant of page 194 dated 17.8.2009 in Case No. 116-/2008 in respect of Order on APR of MSEDCL for Financial Year 2008-09 and tariff determination for Financial Year 2009-10 under the head LT cold storage consumers utilising pre-cooling cold storage facility to be provided supply on LT IV Ag. category moreover similar to HT-V Ag. category.

The Hon'ble Commission has already ruled on this prayer, however, as regards MSEDCL propopsal that consumers utilising pre-cooling and cold storage facilities should be provided supply on LT-IV Ag. category in a manner similar to HT V agricultural Category, the Commission is of the view that there is merit in the suggestion, since there should be some uniformity of applicabilty between HT and LT categories, the Commission accepts this suggestion of MSEDCL Hon'ble Commission observed on page 199 " while undertaking the rationalisation of tariff categories, the Commission has borne in mind all provisions of 62 (3) of Electricity Act 2003. The criteria of " purpose " of supply has been used extensively, to differentiate between consumer categories, with categories such as residential, non-resiential/ commercial purposes, industrial purpose, agricultural purpose, street lighting purpose etc.. On page 201 while dealing with industrial categorisation, it has observed that Hon'ble Commission is receiving several representations during and after the Public Hearings, from the hotel industry, leisure and travel industry, etc. stating that they have also been classified as " Industry " for the purpose of taxation and / or other benefits being extended by the Central Government or State Government, and hence, they should also be classified as ' Industry ' for the purpose of tariff determination. In this regard, it is clarified that classification under Industry for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003, and the import of the categorisation under Industry under other specific laws can not be applied to seek relief under other statutes. Broadly, the categorisation of " Industry " is applicable to such activities, which entail ' manufacture '.

In this background, the submission of Nodal Officer Shri Kshirsagar on behalf of MSEDCL made before the Forum and strongly agitated in the written Say i.e. parawise comments, when an agricultural produce is processed, it becomes industrial commodity can not be accepted as agricultural product. The second contention of MSEDCL, clarification given by Executive Director (II) Pune Region which based upon the Judgement of Hon'ble Supreme Court has to be ingnored. Thirdly, on demand by Suptdg.Engineer, MSEDCL Sangli the consumers produced Factory License, S.S.I. Registration Certificate, which indicates the premises of these consumers as Industry. It is difficult to digest this contention because under different Acts License is required so the premises of consumers can not be termed as 'industry'. The Respondent Company has contended that in the factory of consumers processed dry grapses/Kismis/Bedana are stored. When an agricultural product is processed, it becomes industrial commodity. Admittedly, the grapes are not produced in the premises, storage so as to call as industry of the consumer or at the premises where supply is given by MSEDCL. The grapes are processed by the farmers and kept in pre-cooling cold storage as dry grapes. It is difficult to accept it becomes industrial commodity. The last contention that Mumbai Association of Cold Storage Owners stated that their business activity is clearly termed as " Industry " The admission of third party that they be treated the consumer's premises as industry, is not binding. It is not made clear what sort of goods are stored in the cold storage of Mumbai Association.

The admission by one group of cold storage owners will not be binding on others as it has no legal base. In MSEDCL Circular No. Pr-3 / Tariff / 7900 dated 17.3.2009 under the heading -‘ Applicability of appropriate tariff to cold storage ‘ states that as per MERC Tariff Order HT-V Agricultural Tariff is applicable only for pre-cooling and Cold Storage for agricultural produce of farmer’s Co-operative Societies ‘ has no relevance or is insignificant.

(11) Now turning to other submissions of Shri Hogade, representative of consumers, in the brief note mentioned in the paragraph of the judgement, it is made clear that MSEDCL itself has proposed APR Petition for separate category covering consumers of LT cold storage (agricultural produce). The Hon’ble Commission in Chapter 5.3 discussed the same under the head “ Tariff Philosophy proposed by MSEDCL “, its ruling on page 194. Hon’ble Commission has accepted the suggestions in respect of consumers utilising pre-cooling cold storage facility should be provided supply under LT IV category in a manner similar to HT V category. On going through the Judgement and Order of the Hon’ble Commission, tariff category and tariff i.e. energy charges are decided on the basis of nature of supply and purpose for which it is required as per the provision of Section 62 (4). Hon’ble, Commission in its Judgement and Order under Chapter 5.4 mentions Tariff Philosophy on page 200 and 201 discussed regarding the industrial categorisation. Thus it is clear, activity in pre-cooling cold storage units is the same, though the consumers may be on LT supply or HT supply. The purpose of use is the same i.e. preservation of agricultural produce / products. Hence the treatment in tariff of LT and HT can not be different. The submission of Shri Hogade has to be accepted.

Shri Hogade, representative of consumers, referred to the history of merging of various categories by Hon'ble Commission.

- 1) In the T.O. May 2000, Commission has merged SP-I (Ag.High Tech) and SP-II (Cold Storage) in Single Category SP-I.
- 2) In the T.O. January 2002, Commission has merged SP-I, SP-II, HTP-VIII to HTP VII as mentioned in Para 8 of brief note on page 7 as it is principally an agricultural activity “.
- 3) In the T. O. dated 17.8.2009, Hon'ble Commission has merged HTP VII in Single Category HT- V – HT-Ag.

Officer of MSEDCL have nothing to say about it. Thus it was submitted to take note that activity of cold storage is merged in HTP-VII by the Commission in Jan. 2002. Only the words regarding the ownership i.e. “ of farmers co-op. societies “ are deleted by the Errata and Corrigendum Order dated 21.12.2009. Shri Hogade has also submitted that Nasik Circle of MSEDCL has started implementing order of the Commission and Circular of the H.O. dated 21.12.2009. Accordingly, zerox copy of one of the bill of cold storage has been brought on record. This was referred in the complaint itself. However, MSEDCL in its parawise comments have not replied or commented on it nor given any explanation or circumstances under which the bill has been issued charging at the rate of Rs. 1.95 and setting it on HT VI. In this background, MSEDCL Commercial Circular No. 124 dated 14.10.2010 is of little help to the MSEDCL.

Executive Director (Commercial) by letter No. PR-3/Tariff/ 14544 dated 3.5.2010 addressed to the Secretary M.E.R.C. under the subject “ Applicability of tariff to Cold Storage an Pre-cooling Units “ seeking explanation in respect of agricultural produce distinguishing consumers in two groups - first the consumers who utilize their cold storage to preserve agricultural produce such as fresh fruits and fresh vegetable produced directly from farmers and export them and Second the Cold storage units with whom farmers keep grapes, sesin (bedana) for a certain period for preservation and withdraw the same as per their convenience for further disposal of the same. Hon'ble Commission has not distinguished agricultural produce in its Tariff Order. It is clear the request is turned down by Judgement and Order dated 12.9.2010 to the Forum. MSEDCL seems to have started charging as mentioned in the letter at fag end, Till such time MSEDCL is charging LT Ag. tariff and HT-II Commercial Tariff to cases falling in (b) i.e. cold storage units with whom farmers kept grapes, sesin for a certain period as per applicability of tariff order. Shri Hogade has also referred to the Forum provisions of Section 174 of Electricity Act which provides over-riding effect – it reads as follows :

Save as otherwise provided in Section 173, the provisions of this Act shall have effect notwithstanding anything in consistent therewith contained in any other law for the timebeing in force or in any instrument having effect by virtue of any law other than this Act..

The Circular No. 124 dated 14.10.2010 issued by H.O. of MSEDCL brought to the notice of Forum by Suptdg. Engineer, Sangli was intimated to Shri Prataprao Hogade and then he has filed today on 30.11.2010 explanation in respect of this Circular and the query by Chairperson of Forum on phone why interest should be granted at the rate of 12% when Section 62(6) of Indian Electricity Act 2003 provides at the bank rate.

It is submitted in the explanation received today on 30.11.2010 from the representative of consumers that Hon'ble Commission passed Order directing while applying Ag. Tariff to the consumer, purpose should be agriculture produce to the pre-cooling and cold storage. Such agricultural tariff will not be applicable to the Ice Factory, Dairy, Fishery etc. It is further submitted that Hon'ble Commission has not used the word processed or unprocessed. In both the orders of Hon'ble Commission dated 17.8.2009 & 12.9.2010 in Tariff Philosophy, the consumers who manufacture the product are classified as industrial and the pre-cooling and cold storage, no process is done nor any thing manufactured, those are not classified as industrial consumer. On going through the order of Hon'ble Commission, Forum has to accept the explanation given by Shri Hogade in Say dated 30.11.2010 as well as earlier submission to Forum and discussed above.

(12) The consumers have prayed to award interest at the rate of 12% on refund of amount by applying Ag. tariff from 1.8.2009. On query by the Forum to Shri Hogade what is the rationality or basis to claim or award interest @ 12% when Sub Section 6 of Section 62 of Electricity Act provides bank rate. In the written note dated 30.11.2010 submitted to Forum, 5 banks have declared their basic rate (BPLR) 7 ½ % to 8 ½% and at present Nationalised Bank charged interest at the 12 to 15% over and above Rs. 2.0 lakhs loan. In support of his statement, a copy of Sanction Order of such one of the Banks has been produced. It is further submitted Hon'ble Commission has fixed minimum interest @ 12% to maximum 18% mentioned in its Tariff Order. Thirdly, it is submitted CGRF Akola awarded 12% in its Order. Hence, prayed to award interest as prayed.

After perusing the papers produced with note indicating various bank charges 11% to 15% over loan amount of Rs. 2.0 lakhs and BPL rate of 5 banks is at present in between 7.5 to 8.5. The Hon'ble Commission has approved minimum interest 12% to 18% over and above dues and payable to the consumer by MSEDCL. There is no dispute about the same. It may be submitted the Judgement and Order of Akola Forum is not binding on this Forum and it is needless to go into the Judgement of Akola Forum. The prayer to award interest at the rate of 12% from 1.8.2009 over the amount refundable by applying Ag. Tariff to consumers connections has to be accepted.

(13) Thus from the above discussions, it is clear the consumers in all three complaints have established they are entitled to classified as H.T. Ag. Tariff for the purpose of energy charges and entitled to refund of the excess amount recovered from them from 1st Aug.2009 as HT-Industrial Tariff with 12% interest. The amount be released in ensuing bills of the consumers as prayed by them. The point 1 an 2 are answered in the affirmative and the following Orders passed.

Order

- 1) All these complaints bearing No. 207, 208, 209, 210, 211, 212, 213/2010 are allowed.
- 2) The Suptdg.Engineer, MSEDCL Circle Office, Sangli is directed to order to classify these consumers under HT-Ag.Tariff from 1st Aug. 2009. The Suptdg.Engineer Sangli is directed to refund the amount to the consumers with 12% interest charged as per Tariff rate of HT Inustrial from 1.8.2009 to each consumer. The amount be adjusted in ensuing bills of respective consumers.

..21..

- 3) The Respondent Distribution Company should report to the Forum about Implementation of this Order as per CGRF & Electrical Ombudsman Regulation 2006 (8.7).
- 4) The applicants / aggrieved persons by this Order are having right to prefer appeal within 60 days from the date of this order before the Hon. Ombudsman at ' Keshwa ' Bandra Kurla Complex, Bandra (E) Mumbai.

Date :

(B. G. Pawar)
Chairperson

1) Shri G. B. Pankar, Member Secretary :

2) Shri G.C. Lele, Member :

Say of Member Secretary, C.G.R.F. Kolhapur

As per the M.E.R.C. Tariff Order datd 17.8.2009, H.T. Agricultural Tariff is applicable to -

- i) pre-cooling and cold storage for Agricultural Produce of Farmers' Co-operative Societies.

As per Errata and Corrigendum Order dated 21st December 2009, M.E.R.C. rectifies the applicability of H.T. Agricultural Tariff as under :

- i) Pre-cooling and cold storage for Agricultural Produce.

Hon'ble Commission has not defined the " Agricultural Produce " in is Tariff Order.

For applicability of the tariff, the consumers can be broadly distinguished in two groups :

- i) First the consumers who utilize their Cold Storage to preserve the Agricultural Produce such as fresh fruits and fresh vegetables produced directly from farmers and export them.
- ii) Second the Cold Storage units with whom farmers keep resins (bedana) for a certain period for preservation and withdraw the same as per their convenience for the further disposal of the same.

Hon'ble Supreme Court in its Order dated 19.1.1996 has defined that, " the Agricultural Produce produced by the agriculturist can legitimately be called Agricultural Produce in his hand but in the hands of traders it would be apporopriate to call it agricultural commodities, it would not be his agricultural produce".

The cold storages of the traders indulging in purchase and subsequent export / sale of agricultural produce (defined as agricultural commodities by Hon'ble Supreme Court) should be applied HT Agricultural Tariff or HT Commercial Tariff is not clear.

As per MERC Tariff Order dated 12.9.2010, H.T. Agriculture tariff is continued for pre-cooling and cold storage for" Agricultural Produce".

On the basis of that Tariff Order, Commercial Circular No. 124 dated 14.10.2010 has been issued by Chief Engineer (Commercial). As per this Circular, the applicability of Agriltural Tariff category to pre-cooling and cold storage is defined at point No. 11 as -

"HT or LT Agricultural Tariff category shall be applicable for pre-cooling and cold storage for agricultural produce irrespective of whether pre-cooling and cold storage are being used by farmers or traders, and irrespective of the ownership pattern in respect of supply on HT or LT side. In this case, care should be taken that this applicability is extended only to the Cold Storage of unprocessed agricultural produce only and not to any other Cold Storage and Ice Cream Parlors, Ice Factopry etc."

The grievances received from the consumers in case No. 207, 208, 209,210, 211, 212, 213 -2010 are preserving Bedana / Resin in their cold storage which is processed " agricultural produce " and hence HT – Ag. V tariff will not be applicable.

(G.B. Pankar)
Member Secretary
CGRF Kolhapur

CASE STUDY OF CASE NO. 207 – 213 / 2010 DECIDED ON 31.12.2010

Applicability of tariff to pre-cooling and cold storage unit preserving

Agricultural produce i.e. dry grapes / Bedana

Seven H.T. consumers from Sangli are approached to Forum for applicability of tariff H.T.- Ag. instead of HT- Industrial to their Cold Storage Units preserving dry grapes/ Bedana / Kismis, from 1st August 2009.

The consumers contended that Hon'ble M.E.R.C. passed an Order on dtd. 17th Aug. 2009 in Petition No. 116/2008 applying L.T. Ag. tariff from 1st August, 2009 to the L.T. pre-cooling and cold storage for Agricultural Produce. Hon'ble Commission by its Order dated 21.12.2009 passed an Errata and Corrigendum Order and as per the said Order, H.T. pre-cooling and cold storage consumers are classified as H.T. Ag. and accordingly tariff applied to them H.T. Ag. for Agricultural Produce.

During the hearing M.S.E.D.C.L. relied on -

(1) Supreme Court Case Law reported in SSC 1996 that the agricultural produce in the hands of traders would be appropriate to call it agricultural commodities.

(2) The consumer has taken new connection by submitting Factory License and Registration Certificate This proves that the premises of consumer is industry.

(3) H.T. Ag. tariff is applicable for unprocessed agricultural produce only, since dry grapes / Bedana is in processed item.

The Forum has decided the case on following merit to apply H.T. Ag. tariff to above 7 consumers :

- (1) Hon'ble Commission has not distinguished agricultural produce in its tariff Order i.e. processed or unprocessed, considering tariff philosophy.**
- (2) The grapes are processed by farmers and kept in pre-cooling and cold storage plant as dry grapes. It is difficult to accept how it becomes an industrial commodity.**
- (3) The provision of Section 174 of Electricity Act which provides over-riding effect, it reads as follows :**

“ Save as otherwise provided in Section 173, the provisions of this Act shall have effect notwithstanding anything in consistent therewith contained in any other law for the timebeing in force or in any instrument having effect by virtue of any law other than this Act. “