



CONSUMER GRIEVANCE REDRESSAL FORUM
 UrjaBhavan, 3rd Floor, Bhigwan Road, Baramati -413102
 Tel. No. 02112-244772, 74 (O), Fax No. 02112- 244773
 E-mail: cebaramati@mahadiscom.in/ cgrfbaramati1@gmail.com

Case No.: 10/2019
 Date of Grievance: 21/06/2019
 Date of Order: 30/08/2019

M/s. Vaish Vik Food Pvt Ltd.,
 Gat No. 340/1 Wing, Tal- Khandala,
 Dist- Satara.

Applicant
 (Hereinafter referred to as consumer)

Versus

Superintending Engineer
 M.S.E.D.C.L., O&M Circle,
 Satara.

Opponent
 (Hereinafter referred to as Licensee)

Quorum

Chairperson	Mr. B. D. Gaikwad
Member	Mr. S. K. Jadhav
Member Secretary	Mr. M. A. Lawate

Appearance:-

For Consumer: - 1-Mr. Rajesh Navadkar(Representative of M/s. Vaish Vik Food Pvt Ltd.)

For Respondent: - 1- Mr. Santosh Bhosale, Deputy Manager, Account department, Satara.
 2- Mr. Sidhardh Kulkarni, LDC, Satara.
 3- Mr. Nisar Shikilgar, Jr. Law Officer, Satara.

ORDER
(Date:- 30/08/2019)

1. The consumer above named has submitted present grievance under regulation No.6.4 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006 as the consumer did not satisfy with the order passed by Internal Grievance Redressal Cell (IGRC) Satara.

2. M/s Vaish Vik Foods Pvt.Ltd is the applicant. It has established pre-cooling and cold storage plant with instant mix and chutney manufacturing unit at Gat No. 340/1 Wing at Khandala District Satara. It has obtained Single High-Tension Power Supply from MSEDCL since 18th Sept 2012 and having consumer No. 203319024320. The applicant's present contract demand and sanctioned load is 500 kVA and 600kW respectively. The applicant has been categorized as industrial consumer and is being billed by MSEDCL Satara office as per the tariff applicable to HT industrial consumers from time to time. The applicant used to collect raw material in bulk quantities like fruits and vegetables from the farmers through contract farming. It is submitted that on receiving such raw material, same cannot be stored in the cold storage in its raw form and has to undergo certain activities like washing, cleaning, insuring hygienic conditions and increasing its shelf life. The preservation of agricultural produce like fruits and vegetable is not possible without high tech processing. It is submitted that no chemical preservatives are added nor the agricultural produce undergo any change in its natural form during the processing. The process carried by the applicant is entirely different than the process from other general food products or industrial products like squash, fig, juice, jam, jelly, etc. The applicant submits that by the very nature of such agricultural produce, if they are not properly stored in cold storage and if they are not quickly processed by way of dehydration, their shelf life will not increase, and they will perish and marketing of such produce will become difficult.
3. The appropriate tariff is applicable depending upon the purpose for which electricity is being used. According to applicant agricultural tariff is applicable since Oct 2006 for cold storages having supply on HT, however its applicability was initially restricted to pre-cooling and cold storages for agricultural produce owned by farmers co-operative societies. It is submitted that by an order dated 21/12/2009 the tariff order was modified and was made applicable to all cold storages owned by farmers or traders and all the cold storages which preserve agricultural produce are eligible for agricultural tariffs. Finally by order dated 26/6/2015 commission reconfirmed that pre-cooling plant and cold storage unit for agricultural produce processed or otherwise are categorized as HT-V : HT-Agriculture Others. It is submitted that Order 48/2016 dated 3/11/2016 again reconfirmed that HT V(B) : HT-Agriculture Others shall be the tariff. The applicant submitted that recently regulatory authority has again



examined this issue in the judgment dated 6/12/2016 in Case No.114/2015 and 119/2015. It is specifically clarified that any allied activity which is supportive of the core activity has to be treated as part and parcel of the core activity and tariff applicable to the core activity shall also apply to such allied activities. According to applicant, pre-cooling and cold storage unit is the core activity and other activities are allied activities.

4. The applicant submits that MSEDCL on its own should have been carried relevant changes in the tariff applicable to the applicant and the tariff for pre-cooling and cold storage unit shall be HT-V : HT-Agriculture and for instant mix and chutney manufacturing unit tariff shall be LT-V -LT-Industrial through installation of sub meter as per the regulation. The MSEDCL did not take any action and therefore applicant has approached Superintending Engineer O & M Circle, MSEDCL Satara with the request to apply concessional HT-V-HT-Agricultural Tariff to applicants pre-cooling and cold storage unit. The copy of the request letter dated 14/3/2016 is submitted on record. The copy of the said letter was also send to Chief Engineer (Commercial) MSEDCL Mumbai. And Chief Engineer instructed to apply appropriate tariff in case of the applicant by letter dated 31/3/2016 and also instructed to verify certain points like type of load, comparative percentage of utilization in case of mixed load and physical verification of cold storage activities.
5. As per the instructions of the Chief Engineer, Executive Engineer Phaltan was instructed to verify said points. The Executive Engineer Phaltan therefore visited the premises of the applicant on 26/5/2016 to verify activities carried in the premises. The applicant has clarified all the details of flow chart as well as electrical load percentage with the letter dated 3/5/2016. The Executive Engineer Phaltan submitted his verification report on 9/6/2016. The said report disclosed that applicant is having pre-cooling and cold storage unit as well as processing unit where agricultural products are processed and there is manufacturing of agri based products like instant mixes, chutney etc.
6. The applicant has informed by its letter dated 6/1/2017 that there are physical limitations to install two metering kiosk and transformers, it is not possible for the applicant to have two independent point's of supply. According to applicant an independent LT. network can be extended form the existing power supply



arrangement for industrial purpose since load is 95 kVA and same can be metered and billed separately through sub meter. The applicant has clarified vide letter dated 6/1/2017 that the necessary approval of the competent authority that is the Electrical Inspector for all the internal LT. Cabling including installation of distribution box / MCB / generator will be produced before release of purpose wise power supply. The MSEDCL has not considered said proposal of the applicant.

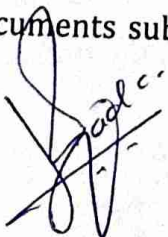
7. The applicant has therefore approached IGRC Satara and submitted application dated **14/4/2017** for redressal of grievances. The said grievance is decided by IGRC Satara on 16/6/2017. The IGRC Satara concluded that the core activity of the applicant is manufacturing of instant mixes, chutney etc. The applicant submits that IGRC has not given any reasoning for such erroneous conclusion and therefore IGRC finally concluded that it is not necessary to verify percentage of the load being used by the applicant for cold storage and processing purpose. IGRC has also referred to MERC case No. 114 /2015 and 119/2015 and concluded that those cases are not relevant to the present complaint. According to IGRC applicable tariff is industrial tariff.
8. The applicant submits that the order of IGRC may be set aside as it is contrary to the rules and the cases decided by MERC. The applicant has also placed reliance on section 62(3) of the Electricity Act 2003. It is submitted that the tariff category of every consumer is to be determined on the basis of activities carried out by the particular consumer and use of predominant load by the consumer. According to the applicant total contract demand is 500 kVA and out of which 405 kVA is being utilized for cold storage and allied activities which comes to 81% and for manufacturing of instant mixes and chutneys etc 95 kVA is being used which comes to 19%. The applicant therefore submits that use of predominant load by the applicant is for cold storage and allied activities.
9. According to applicant the appropriate tariff shall be HT-V(B) : HT - Agriculture Others for Pre-cooling and cold storage unit including allied activities like washing, cleaning, hygiene activities as well as preserving activities. The allied activities are integral part of the pre-cooling and cold storage unit since the raw material is obtained by the applicant in bulk quantity like fruits and vegetables from farmers and it cannot be directly stored in cold storage but has to undergo certain processes before the same can be marketed and supplied to the prospective buyers as per their requirement.



10. The applicant submits that the Chief Engineer (Commercial) MSEDCL has clarified by his letter dated 17/9/2016 that if the applicant is having two different purposes of power supply, two separate connections can be released. However the officials of MSEDCL and IGRC have not given any due consideration to the said letter. The applicant has placed reliance on some representations decided by Hon'ble ombudsman in this respect and also letter's dated 31/1/2013 and 11/3/2013. The applicant is having two different activities namely pre-cooling and cold storage and manufacturing of instant mix, chutney etc. and therefore applicant is entitled for two separate connections in the same premises. The applicant submits that the main connection will be under HT-V : Agriculture Category and sub meter can be installed and MSEDCL should refund the excess amount recovered on account of tariff difference with effect from tariff effective date 1/6/2015.
11. The applicant also relied on the order dated 3/8/2017 passed by CGRF Baramati in case No. 14 and 15 of 2017 and also orders passed by MERC and ombudsman. According to the applicant it is entitled for refund U/s 62 (6) of the Electricity Act 2003. It is submitted that licensee has applied Agricultural tariff in respect of another similar consumers. The applicant also prays for refund of excess security deposit U/s 47 on Electricity Act 2003. It prays for revision in the tariff retrospectively from 1/6/2015. It also prays for installation of sub-meter as stated earlier.
12. The respondent MSEDCL has resisted the present representation by submitting written statement. It is submitted that the applicant has obtained electricity connection for food processing and cold storage plant and it is not the core activity of the applicant because food processing and production of instant mixes and chutney is the main activity of the applicant. The cold storage is the necessity of the applicant for preservation of food products manufactured by the applicant. It is submitted that definition of agriculture produce in Agriculture Produce Act 1926 is not applicable. When there is process on agriculture produce, then final product should be charged under industrial tariff as per the schedule. The activities carried on by the applicant are not covered under agriculture tariff. As the applicant is having processing activities on fruits and vegetables, hence applicable tariff is HT I Industry. The cold storages of such nature are not covered under HT V (B) Agriculture Others as per commercial circular No.311 dated 1/10/2018. The applicant is not utilizing electric supply exclusively for

cold storage purpose. It is submitted that applicant is covered under fruit product activities as per the definition under Food Products Order 1955. The applicant is manufacturing fruits as well as food products and those are exported. The core activity of the applicant is processing of food and fruits. And cold storage is necessary for storing the products and so applicant is not entitled for sub meter as claimed.

13. The applicant has made the application dated 16/3/2016 for change of tariff and also for refund. Then there was inspection by Executive Engineer Phaltan and his report dated 26/5/2016 is submitted. The said report indicates that there is not only cold storage unit for agriculture produce. It is submitted that there is processing and manufacturing of agriculture produce like instant mixes and others. The cold storage is not covered under Agricultural Tariff as per commercial circular No.311 dated 1/10/2018. On the receipt of the report of the inspection, the respondent issued letter dated 17/11/2016 and informed the applicant to submit additional information as mentioned said letter. The MSEDCL never agreed to give additional connection to the applicant. The ratio of load bifurcation cannot apply in this case.
14. The MSEDCL submits that case laws and orders passed by CGRF are not relevant and those are not applicable in the present case. The activities carried by the applicant are interconnected and so ratio of load bifurcation is not applicable in this case. The cold storage storing multi-commodity products are in Industrial Category. It is necessary to store only agricultural produce in raw form, but in the present case cold storage is used for many purposes. The applicant is manufacturing instant mix, sauces, chutneys and paste, desert mixes and frozen foods in large quantity as mentioned in the certificate issued by District Industries Center Satara on 21/3/2012. There is no storage of agricultural produce and it is purely processing activity on fruits and vegetables as mentioned in catalogue of the applicant. The load calculation statement is not correct and same is prepared by the applicant for its benefit. The applicant has submitted load requirement at the time of release of tariff and it is submitted on record. The applicant is not entitled for agriculture tariff and refund as claimed as well as sub meter. The MSEDCL therefore submits that the present representation shall be dismissed with cost.
15. We have heard representative of both the parties at length. We have also perused documents submitted on record. In the light of the arguments advanced on behalf of



the parties, following points arise for our consideration and we have recorded our findings thereon for the reason stated hereinafter.

POINTS-

FINDINGS-

- | | |
|---|------------------------|
| i) Whether applicant is entitled for change in tariff
From HT-Industrial to HT-V (B) : Agriculture Others? | :- No |
| ii) Whether applicant is entitled for Sub meter
as claimed? | :- No |
| iii) Whether applicant is entitled for refund in tariff
difference and security deposit? | :- No |
| iv) Whether present representation is within the
period of limitation? | :- No |
| v) What order? | :- As per final order. |

REASONS.

16. The **POINTS I to IV** – All points can be discussed together for the sake of brevity. The learned representative of the applicant placed reliance on MERC tariff order dated 26/6/2015 in case No.121/2014 and also the letter dated 14/3/2016 addressed to Chief Engineer (Commercial) Mumbai and submitted that for pre cooling plants and cold storage unit for agricultural process the agricultural tariff is applicable. The letter dated 31/3/2016 issued by Chief Engineer to the Superintending Engineer MSEDCL Satara clearly indicates that appropriate tariff as per applicability determined by MERC should be applied by verifying certain points. It was requested to verify whether the consumer is having cold storage only for agricultural produce. It was also requested to verify type of load used for cold storage and comparative percentage of utilization in case of mixed load. It was requested to verify and confirm cold storage activity of the applicant. By letter dated 28/4/2016 SE Satara requested Executive Engineer Phaltan to inspect the premises of the applicant and to submit inspection report. The letter dated 27/5/2016 of the applicant addressed to Executive Engineer Phaltan indicate's that block diagram of machinery installed in the premises of the factory was sent to EE Phaltan. It was also requested to provide copy of inspection report. It appears that EE

Phaltan informed SE Satara that it was not merely cold storage unit for agricultural produce it is informed that there is processing unit where agricultural produce are processed and there is manufacturing of agri based products like instant mixes that is ready to cook from grains and lentils, sauces ready to eat from vegetables and fruits, chutneys , pastes , desert mixes and frozen foods. The nature of activity is manufacturing. There is also permit for frozen fruits and vegetable and frozen snacks manufacturing with canned and bottling fruits and vegetable manufacturing issued by Ministry Of Commerce and Industry. It appears that on the basis of report of EE Phaltan, SE Satara circle Satara informed the applicant on 20/8/2016 that HT Agriculture Tariff is not applicable to the applicant as per MERC tariff order 2015 and commercial circular No.243 dated 3/7/2015. It appears that cause of action arose from the date of rejection of the application vide letter dated 20/8/2016 and it was necessary for the applicant to submit grievance within the period of two years from 20/8/2016 but it was not submitted within the period of limitation. It cannot be said that the cause of action is continuing cause of action merely because there is correspondence claiming agricultural tariff. In our opinion representation is time bared under regulation 6.6 of MERC (CGRF and EO) Regulations 2006.

17. It appears that even though claim of applicant was rejected by SE Satara by letter dated 20/8/2016, the applicant has again sent letter dated 27/8/2016 to Chief Engineer (Commercial) Mumbai and requested to give the directions to concerned authorities to apply appropriate tariff. The CE (commercial) Mumbai informed that incase of mixed loads, with due verification two category individual connections may be given. Even CE did not direct SE to provide sub meter and to apply Agricultural Tariff in the present case. The applicant again wrote a letter dated 19/9/2016 and again informed that applicant is not carrying out any activity of food processing like sauces and pickles etc. It is also submitted that load utilized for pre cooling plant, frozen plant and cold storage is 80% and 20% load is used for instant mix and chutney line and again submitted that they are entitled for HT-V Agricultural tariff. The applicant has also mentioned in the letter that MSEDCL Sangamner Division has already applied HT-V Agricultural Tariff to M/S Daulat Agro (India) Pvt.Ltd. however all the details of said unit are not brought on record. The SE Satara by letter dated 17/11/2016 again informed that applicant is using the power supply for processing activity and cold

storage and HT Agricultural Tariff is not applicable and said fact is already informed to the applicant. Even in respect of sub meter the applicant was directed to comply certain points so as to provide sub meter as prayed by the applicant. It is rightly submitted on behalf of MSEDCL that there is no compliance of all the points by the applicant. There is correspondence in respect of sub meter and it appears that MSEDCL has not provide Sub meter as all the points raised by MSEDCL are not complied with. The MSEDCL cannot be directed by this Forum to provide sub meter without compliance of necessary objections.

18. The copy of the order passed by IGRC 16/6/2017 is produced on record. It appears that electricity is being used mainly for manufacturing of agricultural produce and for processing on the fruits. There is also manufacturing of instant mixes and chutneys. The applicant has also produced orders passed by CGRF Baramati dated 3/8/2017 in case No. 14/2017 and 15/2017. It may be noted that in case No.14/2016 initially tariff was changed from HT-Industrial to HT-Agricultural vide letter dated 17/5/2016 and subsequently tariff was changed by inspecting the premises. Moreover the orders passed by CGRF cannot be binding on this Forum. Even the facts in the said cases are different than the facts in the present case. The applicant has also placed reliance on the order passed by MERC in case No.114/2015 and 119/2015 wherein it is observed that allied activities which are part and parcel of, and are subordinate and cater to the core activity in the same premises, may be charged the same tariff. It is also observed that full listing of agricultural produce is impractical.
19. The applicant has placed reliance on the case M/s B.G. Shirke Construction Technology Vs MSEDCL Aurangabad decided on 26/4/2017 by Electricity Ombudsman Nagpur wherein it is held that consumer has right to obtain two separate electricity connections for two different purposes. In the case in hand MSEDCL submitted that there are no tow deferent purposes' to provide separate meters.
20. The applicant has produced letters dated 31/1/2013 , 11/3/2013 and 12/3/2013 showing that sub meter is provided to HT-Consumer M/s Voss Exotech Automotive Pvt.Ltd Pirangut Tal Mulshi Dist. Pune. Even in the present case MSEDCL has expressed its willingness to provide sub meter to present applicant but subject to the compliance of the objections and conditions. Moreover all the detailed facts in respect of above consumer are not placed on record.





21. The MSEDCL produced application for electric power submitted by the present applicant on 14/2/2011. It clearly indicates that electricity was required for food processing. The copy of the Fruit Products Order 1955 is also produced on record which indicates food products. The product catalogue of the applicant clearly indicates that it manufactures several products like instant mix, dessert mix, canned products, chutneys, pickled vegetables, spices, commodity, culinary paste, frozen snacks, frozen vegetables, frozen parathas and frozen fruites. The nature of the products clearly indicates that there is manufacturing process and industrial tariff which is made applicable since beginning is just and proper. It is not merely precooling and cold storage for agricultural produce. It is rightly submitted on behalf of MSEDCL that the cold storage is the necessity. There was spot inspection and it is disclosed that cold storage is not purely used for storage of agricultural produce and there is continues production of food articles as mentioned above. In our opinion the premises of the applicant is covered under HT-I industry and it cannot be covered under HT V (B) agriculture others. The applicant is not using electric supply exclusively for cold storage. In respect of sub meter it was informed to the applicant to make physical changes and to comply certain objections. The manufacturing capacity of food products is also given by MSEDCL and it can be said that there is large quantity of manufacturing of food products. There is even export of said food products. The cold storage is merely necessity of the applicant to preserve food products. In our opinion the tariff applied to the applicant is legal and proper and there is no question to refund the tariff difference amount and amount of security deposite.

22. There is no dispute that IGRC has passed order on 16/6/2017. The present representation is submitted by the applicant in schedule 'A' by email dated 14/6/2019. According to applicant it received hard copy of order of IGRC on 13/7/2017. Under these circumstances it was necessary for the applicant to prefer present grievance on or before 13/9/2017 but it is submitted on 20/6/2019 and there is inordinate delay in filing the present grievance. As per regulation No. 6.4 of said regulations the grievance shall be submitted within two months form the date of intimation or where no remedy has been provided within such period. In our opinion the present grievance is not submitted within the period of limitation and there is no provision to condone delay. It may be noted that representation can be submitted against the orders of CGRF to





Electricity Ombudsman. As per regulation 17.2 of said regulations, representation shall be submitted to ombudsman against the order of forum within the period of 60 days from the date of order of the forum. There is specific provision for condonation of delay if there is sufficient cause for not filing the representation within the period of 60 days. The electricity ombudsman can very well condone the delay under regulation 17.2 of said regulations. However there is no provision for condonation of delay under regulations 6.4. In this way we cannot condone the delay and present grievance is liable to dismiss even on the ground of delay. In the light of above discussion we are of the opinion that present grievance shall be dismissed and we accordingly pass following order.


ORDER

1- **The present grievance is dismissed.**

2- **No order as to costs.**


M. A. Lawate
Member/Secretary
CGRE, BMTZ, BARAMATI


S.K. Jadhav
Member
CGRE, BMTZ, BARAMATI


B.D. Gaikwad
Chairperson
CGRE, BMTZ, BARAMATI

- Note:-**
- 1) This Grievance could not be decided within the period of two months as MSEDCL has requested for adjournments.
 - 2) The Consumer if not satisfied may file representation against this order before Hon'ble Ombudsman within 60 days from date of this order at the following address.

**Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Building, BandraKurla Complex, Bandra (East), Mumbai-51.**