

PHONE NO. : 25664314/25664316
FAX NO. 26470953
Email: cgrfbhandupz@gmail.com
Website: www.mahadiscom.in

Consumer Grievance Redressal Forum
"Vidyut Bhavan", Gr. Floor,
L.B.S.Marg,Bhandup (W),
Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/ 265/352

Date: 31.10.2019

Hearing Date: 09.04.2019

CASE NO.265/2019
M/s. HMG Industries Ltd.,
C-21-6,MIDC,TTC Area,
Pawane Village, Navi Mumbai-705.

(CONSUMER NO.000119018722) (Hereinafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution Company Limited
through its Nodal Officer,
Vashi Circle,Vashi

. . . . (Hereinafter referred as
Licensee)

Appearance : For Licensee Shri. D.B.Pawar,Executive
Engineer, Vashi Circle.
For Consumer – - A. Aleem Baig- Consumer Representative.
Mr. Sairaj Dosani

**[Coram- Dr. Santoshkumar Jaiswal - Chairperson, Shri. Ravindra Avhad –
Member Secretary and Sharmila Ranade - Member (CPO)].**

Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with subsection 5 to 7 of

section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'.

Above name consumer filed this complaint in Schedule Form 'A' before this Forum on dated 27.12.2018. After filing this complaint notice was issued to the respondent utility on dated 01.01.2019. After service of notice respondent utility appeared and filed reply on 26.03.2018

M/s HMG and Company is categorized under HT Industrial Tariff Category, since its date of application. i.e. 17.04.2018. Bearing consumer no. 000119018722 C-21/6MIDC TTC Industrial Area-Pawane Village.

The consumer letter written to The Superintending Engineer, MSEDCL, All O&M Circles by Chief Engine Commercial Vide letter No. CE (Comm.)/Tariff/cold Storage/No.4759 dated 05.03.2018 regarding Guidelines for applicability of tariff to pre-cooling plant and cold storage units for agriculture products processed or otherwise. The consumer is referred to the case No. 48 of 2016 before the MERC and its order dated 3rd November 2016. In 1.2 admission of the petition, and Regulatory Process MSEDCL submitted its revised petition with the following prayers and point No.6" To approve the separate category of HT agriculture others and LT ports along with the tariffs proposed by MSEDCL. The MSEDCL approved tariff schedule with effect from 01.11.2016. under High Tension tariff MSEDCL has given the tariff for HT V(B): HT Agriculture (others) wherein they mention the applicability as:- "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 – processed or other;
- b) Poultry 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 purpose 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.

The same is also mentioned in the Commercial Circular No.275 No. CE (Comm.)/Tariff/34460 dated 18.11.2016 which covers areas like: "12. Creation of new categories for HT Agriculture-others" "in the Action plan- The commission has revised/introduced new tariff categories. Some of these are reproduced below for proper implementation e.g.:- HT Agricultural –others category has been created. This will include pre-cooling plants and cold storage units for Agricultural products, poultries(exclusively undertaking layer and broiler activities, including Hatcheries),high technology agriculture etc.

Further it also given the tariff for HT V(B):HT –Agriculture others applicability|:

- a) Pre-cooling plants and cold storage units for Agriculture products – processed or other;
- b) Poultries exclusively undertaking layer and broiler activities, including Hatcheries;
- c) High Technology Agriculture(i.e. Tissue Culture, Green House, Mushroom cultivation activities), provided the power supply is exclusively utilized for purpose 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.

As per the Maharashtra Act No. XX of 1964. The Maharashtra Agriculture Produce Marketing (Development and Regulation) Act, 1963, Chapter I preliminary, 2(I)(A) "agriculture produce" means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture, (fisheries) and forest specified in the schedule'. This word was inserted by Mah. 11 of 2003.

As per the Maharashtra Act No. XX of 1964. The Maharashtra Agriculture Produce Marketing (Development and Regulation) Act, 1963, Chapter X MISCELLANEOUS 62. "The state Government may after consulting the market Committee concerned by notification in the official Gazette, add to, amend or cancel any of the items of agricultural produce specified in the schedule.

As per the Maharashtra Act No. XX of 1964. The Maharashtra Agriculture Produce Marketing (Development and Regulation) Act, 1963, Schedule [see section 2(I)(a) and section 62] item XIV. Pisciculture [fish and other aquatic product and entry (I) in item XIV was submitted by G.N.A. and C.D. No. APM 2083/50932/53711C, dated the 9th May 1984.

The utility has filed his reply that HT installation in respect M/s. Of HMG Industries Ltd., bearing consumer no. 000119018722 is categorized under HT Industrial tariff category. Consumer its application dated 17.04.2018 applied utility for revision of tariff from HT-I-Industrial to HT –agricultural (others) claiming to have cold storage unit storing agricultural produce. Based on consumer's application and inspection report by Executive Engineer Vashi Division and on submission of subsequent undertaking that consumer would carry activity of storing agriculture produce, the power supply agreement executed on dtd. 21.05.2018 wotj tariff HT V(B); HT agriculture-other(22KV) and consumers tariff was revised from HT-Industrial to HT-Agricultural others. The same conveyed to

consumer vide letter NO. Se/VC/HT/V-55 Sdn/TRF_CHG/KK-034/2018-19/3578dtd.24.05.2018.

- a) It was later brought to notice of this office regarding matter of petition of seafood Exporters Association of India (SEAOI) regarding wrongful tariff categorization by MSEDCL (case No.42 of 2015)Points raised by SEAOI in the matter to Argue before Hon commission in order to convince Hon. Commission that SEAOI members are necessarily in manufacturing activity and hence need to be categorized under HT-I (Industrial) category are as below.
- b) Most factories of Members of the petitioner association are admittedly situated in an industrial area, namely the MIDC Industrial area at Taloja which are in fact notified industrial premises. The term 'Industrial Area' is defined under Maharashtra Industrial Development Act, 1961 as under:
- c) "2(g)"Industrial Area" means any area declared to be an industrial area by state government by notification in the official Gazette. Which is to be developed and where industries are to be accommodated. The aspect of the SEAOI's members being allocated and function from Industrial plots by setting up their manufacturing units is admittedly known to MSEDCL.
- d) MSEDCL has ignored the fact the petitioner's Members are taking 3-phase electricity supply at high voltage for industrial purpose. This aspect is has not been disputed by the Respondent. The activities undertaken by them at their units in the industrial areas involve various machines and include various processes like thawing, washing, blanching, cooking, marinating, flash frying, manufacturing ice for cooling, retorting, drying, cold storage, incubations and testing. The processes set out in the flow chart annexed to the Petition clearly indicate the industrial activity carried out the plants. The list of

machinery used in the process is also vital and are not disputed by MSEDCL.

- e) SEAOI and its members are functioning in industrial premises and carrying out industrial activity in their factory premises wherein the raw material is fish. An industrial which uses fish as Raw material and subject the fish to various processes and utilizes different machines for that activity cannot by any stretch of imagination be considered as being "Fisheries". Seafood manufacturing units cannot be categorized under the HT II commercial category on any ground because such units undertake various processing and manufacturing activities, seafood products units are not engaged in any rearing and breeding activities. However there is big difference between the raw material i.e. fish and the final products, i. e edible and cookable fish/seafood products. The raw fish in the latter case goes through various industrial and engineering processes.
- f) Owing to submission of seafood manufacturing units, Hon. MERC upheld the say of SEAOI and ruled in favour of SEAOI, re categorizing them as industrial.
- g) In light of this information where Hon. Commission itself ruled that seafood processing activities would attract relevant HT or LT industrial tariff, the tariff of consumer M/s. HMG Industries Ltd HT consumer no. 000119018722 was changed to HT –industrial.
- h) Applicability of tariff category. As per MERC tariff order in case on 195 of 2017 HT-I industrial tariff applicability states as below. HT I: HT-Industry. HTI(A): Industry –General i) Food (Including Seafood) processing units. HT V(B) HT-Agriculture others: this tariff category is applicable for use of electricity/power supply at High Voltage for: pre-cooling plants and cold storage units for agricultural products-processed or otherwise: poultries exclusively undertaking layer and broiler activities, including hatcheries;. 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;. Floriculture, Horticulture, Nurseries, plantations, Aquaculture, Sericulttture, Cattle Breeding, farms, etc. applicability of tariff HT-V-(B) in present case may be argued on existence of aquaculture in the list. Where in as per Merriam webtar Law dictionary. Aquaculture:- "the cultivation of aquatic organisms(such as fish or shellfish) especially of food" the present activity of consumer is defiantly not an Aquaculture. As referred to the Maharashtra Agricultural produce marketing (development and Regulation Act, 1963. i) "agricultural produce" means all produce(whether processed or not) of agriculture, horticulture, animal husbandry apiculture, pisciculture, (fisheries)and forest specified in the schedule;

Where is as per Merriam webtar Law dictionary Fisheries is defined as the occupation, industry or season of taking fish or other sea animals (such as sponges, shrimp or seals: Fishing. A place for catching fish or taking other sea animals. A fishing establishment also : its fishermen. The legal righ to take fish at a particular place or in particular waters. The technology of fishery usually used in plural. pisciculture is defined as . Piscicultre: "the cultivation of fish"

The topic of applicability of tariff HT-V-B,HT Agricultural others was discussed by Hon MERC in case no. 114 and 119 of 2015.

Hon. MERC ruled in above cases on 06.12.2016 were in Hon. MERC noted as below. *As regards the suggestion for a full listing of agricultural produce, considering the Schedules applicable under the Agricultural Produce (Grading and Marketing) Act, 1937 or other such material, the commission is of the view that this is impractical, and that such listings vary depending on the different purpose of the respective*

statutes or orders. The Licensee is expected to interpret the terms used in the applicability clause of the tariff orders depending on their context or in the sense of their ordinary usage unless illustrations or further specifics have been provided. The consumer grievance redressal mechanism is available to resolve difference on this account with the Licensee and the Commission for generic clarification where necessary.

As it is already submitted to Hon Forum that MERC while its determination of tariff Ht-V-B, implied the applicability to Floriculture, Horticulture, Nurseries, Plantation, Aquaculture, Cattle breeding farms etc. Hon MERC in its case no.48/2016 and 195/2017 mentioned as above clearly. Respondent utility has already submitted before Hon Forum regarding actual meaning of Aquaculture and or cattle breeding farm, and maintained our say that cold storage activity as specified by consumer is not in line with the actual meaning of aquaculture or Cattle breeding farm. They further submit that the guidelines as issued by MERC in its various orders are binding. And in line of orders issued by MERC, clarified on the issue that applicability of tariff HT-V (B) to cold storage units storing fishes and cattle meat is not in line with directives of MERC and hence need to be denied.

j) It was brought to the notice of the utility regarding matter of petition of seafood exports association of India regarding wrong full tariff categorization by MSEDCL in case No.42/2015 point raised by SEAIO in the matter to Hon'ble Commission in order to convince the Hon'ble commission that SEAIO members is not necessary of manufacturing activities and hence the need to be categories under HT I industrial category in light of the observation of Hon'ble Commission itself rule

that sea foods activities food attract relevant HT or LT industrial tariff and therefore this tariff was change to HT industrial.

We have gone through the pleadings of both sides and heard both side at length. We also gone through the provision of law and case law cited by both sides, it appears that the MERC Rules and provision of APMC Act, If it collectively read then it will not attract the connection of consumer is to be treated as agricultural one. The utility has clearly shown that the Act performed by the consumer regarding provision of cold storage cannot be treated as the agricultural act but it is industrial Act and purpose.

Therefore it is cleared from the evidence of record that the connection given to the consumer is industrial-one. Hence the claim or prayer made by applicant that their electricity connection be treated as Agriculture one is not sustainable. Hence we pass the following order.

ORDER

This application is hereby dismissed.

No order as to the cost.

I Agree/Disagree

I Agree/Disagree

**MRS. SHARMILA RANADE,
MEMBER
CGRF, BHANDUP**

**Dr. SANTOSHKUMAR JAISWAL
CHAIRPERSON
CGRF, BHANDUP**

**RAVINDRA AVHAD
MEMBER SECRETARY
CGRF, BHANDUP**

The order is issued under the seal of Consumer Grievance Redresses Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup.

Note:

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address. " Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606, Keshav Building,Bandra - Kurla Complex, Bandra (E),Mumbai - 400 051"
- b) b) consumer, as per section 142 of the Electricity Act, 2003, can approach Hon'ble Maharashtra electricity Regulatory Commission for non- compliance, part compliance or
- c) Delay in compliance of this decision issued under" Maharashtra Electricity Regulatory Commission (consumer Redressed Forum and Ombudsman) Regulation 2003" at the following address:-

"Maharashtra Electricity Regulatory Commission, 13th floor,world Trade Center, Cuffe Parade, Colaba, Mumbai 05"
- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.