

## BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

### REPRESENTATION NO. 132 OF 2024

In the matter of security deposit, and its adjustment to prepaid meter.

Rizwan Ice & Cold Storage .....Appellant  
(Consumer Nos. 28619047120 & 000079012513)

V/s.

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

Appearances:

Appellant : 1. Santosh Bagade, Admin Manager  
2. Nadeem Ansari, Representative

Respondent: 1. Sanjay Patil, Supdt. Engineer  
2. Rajiv Waman, Asst. Law Officer  
3. Anirudha U. Ghatage, Addl. Ex. Engineer


**Coram: Vandana Krishna [I.A.S. (Retd.)]**

Date of hearing: 23<sup>rd</sup> October 2024

Date of Order : 7<sup>th</sup> November 2024

### ORDER

This Representation was filed on 2nd September 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Original Order dated 5<sup>th</sup> April 2024 and Review Order dated 24<sup>th</sup> June 2024 in Case No. 137 of 2023-24 and Case No. 12 of 2024-25 respectively passed by the Consumer Grievance Redressal

  
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Forum, Bhandup (the Forum). The Forum, both in its original order and review order, has dismissed the grievance of the Appellant.

2. Aggrieved by the order of the Forum, the Appellant has filed this representation. A physical hearing was held on 23<sup>rd</sup> October 2024. Both the parties were heard at length. The Respondent filed its reply on 16<sup>th</sup> Oct. 2024. The Respondent's submissions and arguments are as below. *[The Electricity Ombudsman's observations and comments are recorded under 'Notes' where needed].*


- (i) The Appellant is 22 KV HT Consumer having two electricity connections, 28619047120 & 000079012513 from 07/09/2019 and 02/11/1990 respectively for their two different **pre-cooling plants and cold storage for processing of fish and shrimps** located at the addresses given in Table 1. The details of consumer numbers, addresses, sanctioned loads, Security Deposits held, additional Security Deposit demanded etc. are tabulated as below:

Table 1:

Sr. No.	Name of Consumer	Consumer No.	Address on Bill	San. Load (KW)	Contract Demand (KVA)	Date of Supply	Security Deposit held (Rs.)	Addl. S. Deposit demanded on 04/05/2023 (Rs.)
1	Rizwan Ice & Cold Storage	028619047120	M-17, Taloja Industrial Area, Taloja, Tal-Panvel, Dist.Raigad	1000	800	09-07-2019	22,10,648/-	43,29,500/-
2	Rizwan Ice & Cold Storage	000079012513	Plot No. D-366, TTC Industrial area, Turbhe, Navi Mumbai	575	575	11-02-1990	17,53,068/-	21,99,100/-

### Maintainability of Representation:

- (ii) The Appellant filed the grievance in the Forum with prayers as below:
- to remove the existing post-paid meter and to install a prepaid meter in accordance with relevant legal provisions.*
  - to consider the existing Security Deposit (SD) as a prepayment, until the installation of the new meter.*

  
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However, the Appellant filed a review application with different prayers in addition to the original prayers. The new prayers are as below:


- iii. to quash and set aside the disconnection notice issued by MSEDCL for recovery of additional security deposit.*
- iv. to change the tariff category from HT - I (Industrial) to HT V (B) (Agriculture – Others) w.e.f. 01.04.2020 as per MERC Tariff Order in respect of the HT Consumers (Nos. 028619047120 & 000079012513) with refund of the excess amount collected from 01.04.2020 along with interest as per Section 62(6) of the Electricity Act-2003.*

These additional prayers were not a part of the original “Schedule A”. Hence, the Respondent urges that the additional prayers should not be allowed in appeal with this authority as these prayers were not a part of the original Grievance.

- (iii) The Appellant had already raised the grievance in respect of Consumer (No. 000079012513) for change of Tariff Category from HT – I to HT V (B) Agriculture-Others which was heard at length and finally decided by the Forum on 31.10.2019 in Case No. 268 of 2019 and by the Electricity Ombudsman on 06.03.2020 in Rep. No. 224 of 2019 respectively. The operative part of the order passed by EO (Mumbai) is as below:

- “(a) **The Appellant to be billed at appropriate Industrial tariff as per the order of the Commission as may be applicable.***
- (b) DPC and interest, if any, for the supplementary bill towards the differential amount issued by the Respondent only for the period from May 2018 to October 2018 is waived of till the date of this order.*
- (c) The Respondent may consider recovery of the arrears amount in suitable instalments, if the Appellant so desires.*
- (d) The Representation is disposed of accordingly.”*

- (iv) The Respondent referred to Regulation 7.9 of CGRF & EO Regulations 2020 for maintainability of a representation, which is reproduced as below:

  
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“7.9 The Forum shall reject the Grievance at any stage under the following circumstances:

- (a) ***In cases where proceedings in respect of the same matter and between the same Appellant and the Licensee are pending before any court, tribunal, 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;***
- (c) ***In cases where the Grievance has been submitted two (2) years after the date on which the cause of action has arisen; .....(Emphasis added)***
- (v) The grievance application for change of tariff category from HT - I (Industrial) to HT-V B (Agriculture Others) was already heard and decided by the Forum and Electricity Ombudsman. **The Factory has remained the same for consumer no. 000079012513 with the same purpose of processing of fish and shrimps.** The Appellant again prayed for HT-V B Agricultural tariff with retrospective effect from April 2020, for which the grievance was not originally filed in the prescribed Schedule A, but was subsequently raised in the review application. The Appellant has filed a Civil Suit against MSEDCL in Civil Court CBD Belapur against the order dated 06.03.2020 passed by EO (Mumbai) in Rep. 224 of 2019, which is pending till date. The grievance is filed after two years from the cause of action in the year 2020. As such the grievance is not maintainable.

**Reply on Merit: -**

**A. Reply on Demand of Additional Security Deposit: -**

- (vi) The Appellant is billed under HT -I Industrial Tariff Category. The Appellant had paid Security Deposits of Rs. 22,10,648/- and Rs.17,53,068/- for Consumer Nos. 28619047120 & 000079012513 respectively with MSEDCL as per average billing of one month. As per Section 47 of the Electricity Act, 2003 (the Act), the consumer has to pay security deposit as derived by the Regulatory Commission. As per Regulation 13 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees

  
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including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021) every consumer shall pay security deposit equivalent **two months billing** as per Regulation in force from 25.02.2021. Regulation 13 of Security Deposit is reproduced as below: -

**“13. Security Deposit**


13.1 *Subject to the provisions of sub-section (5) of Section 47 of the Act, the Distribution Licensee may require any person to whom supply of electricity has been sanctioned to deposit a security in accordance with the provisions of clause of sub-section (1) of Section 47 of the Act.*

13.2 *The amount of the security referred to in Regulation 13.1 above shall be twice the average billing of the billing cycle period. For the purpose of determining the average billing under this Regulation 13.2, the average of the billing to the Consumer for the last Twelve (12) months, or in cases where supply has been provided for a shorter period, the average of the billing of such shorter period, shall be considered:*

13.3 .....

13.4 *The Distribution Licensee shall re-calculate the amount of security based on the actual billing of the Consumer once in each financial year, which shall be refundable to the Consumer in accordance with Regulation 13.5 and payable by the Consumer in accordance with Regulation 13.6:*

*Provided that for a Consumer whose electricity connection is less than Three (3) months old, the security deposit shall not be revised at the beginning of the Financial Year:*

  
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*Provided further that subsequent to the notification of these Regulations, the Distribution Licensee shall recalculate the amount of security for its existing Consumers and raise the demand for additional security on its existing **Consumers, to be recovered in Six (6) equal monthly instalments:***

*Provided further that the Distribution Licensee shall also mention the total amount of the additional security deposit and the Consumer has an option to pay the total additional security amount in less than Six (6) equal monthly instalments.*

**13.5** *Where the amount of security deposit maintained by the Consumer is higher than the security required to be maintained under this Regulation 13, the Distribution Licensee shall refund the excess amount of such security deposit by way of adjustment in the next bill.*

**13.6** *Where the amount of security re-calculated pursuant to Regulation 13.4 above, is higher than the security deposit of the Consumer, the Distribution Licensee shall be entitled to raise a demand for additional security on the Consumer:*


*Provided that the Consumer shall be given a time period of not less than Thirty (30) days to deposit the additional security pursuant to such demand.*

**13.7** .....

**13.8** *The Distribution Licensee may adjust any security so deposited, towards satisfaction of any amount which is due or owing from the Consumer.*

**13.9** .....

**13.10** *A Consumer –*  
*a. with a consumption of electricity of not less than one lac (1,00,000) kilo-watt hours per month; and*

  
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*b. with no undisputed sums payable to the Distribution Licensee under Section 56 of the Act*

*may, at the option of such Consumer, deposit security under this Regulation 13, by way of cash, irrevocable letter of credit or unconditional bank guarantee issued by a scheduled commercial bank.*


*13.11 The Distribution Licensee shall pay interest on the amount of security deposited in cash (including payments made through NEFT/RTGS, cheque and demand draft) by the Consumer at a rate equivalent to the Bank Rate of the Reserve Bank of India:*

*Provided that such interest shall be paid where the amount of security deposited in cash under this Regulation 13 is equal to or more than Rupees Fifty. .... (Emphasis added)*

Accordingly, the amount of the security deposit shall be twice the average of the billing cycle period. MSEDCL is supposed to recalculate the Security deposit of a consumer in each financial year on the basis of average billing in last twelve months. In case the Security deposit held with MSEDCL is insufficient, MSEDCL has a right to ask for additional security deposit to meet the shortfall, and to issue disconnection notices.

**MSEDCL has demanded additional security deposit of Rs. 43,29,500/-and Rs.21,99,100/- each for Consumer Nos. 28619047120 & 000079012513 respectively from the Appellant vide letters dated 04.05.2023.** The Appellant was allowed to pay the same in six monthly installments. However, Appellant has failed to pay the additional security deposits, therefore notices of disconnection were issued on 28.12.2023. (However, the supply of these two connections were not disconnected till date.).

#### **B. Reply on Installation of Pre-Payment Meter:**

  
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- (vii) There is no mandatory direction under the Act and the Supply Code & SOP Regulations 2021 in force for installation of a prepayment meter to HT consumers. The relevant provision found in Act and Regulations are as under: -

**Section 47(5) of the Act: -**


*(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.*

**Regulation 13.7 of Supply Code & SOP Regulations 2021: -**

*13.7 Where a Consumer who has deposited security subsequently opts to receive supply through a pre-payment meter, the amount of such security deposit shall, after deduction of all monies owing from such Consumer, be either refunded to such Consumer or treated as a part of the value of the prepayment credit to the account of such Consumer, from which the value of his future consumption is to be deducted.*

- (viii) The above provision is applicable in a situation where the option of prepayment meter is available. It does not mandate to install a prepayment meter on the request of a consumer. MSEDCL has installed prepaid meters as a pilot project in Kothrud Division.


As per existing norms, metered supply to HT/LT consumers of MSEDCL is provided where billing is done after consumption in a billing cycle of one month, except agricultural consumers. The Respondent selects the area /feeder /class of consumers where Smart Prepaid Billing shall be implemented after installation of Smart Prepaid Meters, in a phased manner. Accordingly, all eligible consumers (having single phase and three phase whole current metering) of an area / feeder /class of consumers as decided by the Distribution Licensee, shall be migrated to Prepaid Billing system, considering the challenges of technology changes.

  
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- (ix) MSEDCL is interested to install more prepaid meters in stagewise manner for single phase and three phase consumers having whole current metering arrangement in order of merit. In case of consumers having HT supply & load above 20 kW, metering is connected on secondary side through CT/PT (CTs, or current transformers, and PTs, or potential transformers are used in metering to step down current and voltage to safer and more manageable levels). Hence disconnection / reconnection cannot be implemented at present due to technological limitations. When the Commission referred to installing prepaid metering in its regulations as well as in tariff order, it was only **of single phase and three phase whole current metering system**. The Appellant is confused and stuck up, as the metering of the Appellant is CT/PT operated metering and not whole current metering. The sanctioned load/ contract demand of the Appellant is tabulated in Table 1. The metering is on 22 KV HT Side and the metering is done by installing CT/PT on site. **Hence, the request of this consumer for installation of a prepaid meter is not technically feasible.**
- (x) In order to sort out this issue, MSEDCL has collected information from various Meter manufacturers viz M/s. Schneider, M/s. Genus, M/s. Secure, M/s. Vision Tek, M/s. Avon and M/s. HPL, as to whether pre-paid meters could be installed to LT consumers above 20 kW, and HT consumers. **All meter manufacturers have conveyed that they don't have such a product, and further informed that the concept of pre-paid meter cannot be made applicable to CT operated meters used for consumers above 20 kW and HT consumers.**
- (xi) As per Indian Standard 16444 (Part 2), connect / disconnect facility is not available for LT-CT operated meters and HT meters, as these meters are connected on secondary side of metering equipment. **In the absence of the connect/disconnect facility to these meters, pre-paid meters could not be installed to HT and LT (load above 20 kW) consumers.**
- (xii) At present MSEDCL is implementing the prepayment meter as a pilot project for consumers except HT & LT consumers above 20 kW load. This limitation of pre-paid meters was conveyed in reply of MERC Case No.226 of 2022 (para. No.12 to

  
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14). The above stand is upheld by the Commission in its order dated 31.03.2023 in Case No.226 of 2022, and it has given a ruling at para 7.16.9 as below: -

*“The Commission notes MSEDCL’s submission that pre-paid meter cannot be installed in case of LT CT operated meters (load above 20 kW) and HT meters, in the absence of connect/disconnect facility to these meters. Further, the Commission also notes the compilation of responses filed by various meter vendors/ manufacturers about infeasibility of incorporating feature remotely operated disconnection/reconnection for pre-paid meters and as claimed by few meter manufacturers that such requirement is not in compliance provision in IS16444 (Part 2).”*

- (xiii) Unless and until MSEDCL introduces prepayment meters to HT Industrial consumers, the option of prepayment meter will not be available to HT industrial consumers. Consequently, the consumers are bound to pay security deposit as per Supply Code and SOP Regulations 2021. However, MERC in its order dated 31.03.2023 in Case No.226 of 2022 allowed the facility of advance payment or pre-payment, which can entitle a consumer to avail some form of rebate.
- (xiv) The Appellant is inter alia seeking an amendment and modification in Section 47 of the Act and in Supply Code and SOP Regulations 2021. The prayer of Appellant is thus beyond the scope of the existing provision of Section 47 of the Act and Supply Code & SOP Regulations 2021, and therefore not maintainable before this Forum. The Appellant should approach Hon’ble MERC for a policy decision on prepayment meters and for amendment in the Supply Code & SOP Regulations 2021 to introduce a provision of exemption of payment of Security deposit till a prepayment meter is installed to them.

**C. Reply on applicability of tariff to Fish and Shrimps Processing Unit: -**

- (xv) Out of the total production of the Appellant, about 95% is that of fish and shrimps, and about 5% is of other products. The Appellant does not simply store **fish and shrimps** which it purchases from the market. On the contrary, it undertakes processes like cleaning, drying, grading, sorting, packaging etc., in order to make


  
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**fish and shrimps** suitable and neat for storage and preservation purpose. These processes are supportive of the core activities of cold storage, without which the stored products would not become saleable or marketable. Therefore, these activities and storage put together constitute an Industrial activity. By no stretch of imagination can it be classified as an Agriculture-others activity. The Appellant is functioning in industrial zone and carrying out industrial activity in their factory premises wherein the raw material is fish and shrimps. The Respondent carried out various inspections of the premises of the Appellant from time to time, and the activity has remained the same for at least one decade. An industry which uses fish and shrimps as a Raw material, and the fish and shrimps goes through various processes, through different machines with considerable (-) centigrade temperature is an industrial activity, which cannot be considered as being “Fisheries”.

- (xvi) On the basis of MERC order dated 30.03.2020 passed in MYT tariff case No. 322 of 2019 and MERC mid-term review order dated 30.03.2023 passed in Case No.226 of 2022, the Appellant submitted several representations for change of tariff from HT-I Industrial to HT-V B Agricultural Others. These applications were not submitted on the online portal which is mandatory for HT Consumers in urban areas as per Supply Code & SOP Regulations 2021.
- (xvii) The premises of Appellant were again recently inspected in May 2024 in which it was seen that the Appellant is carrying out industrial activity in their factory premises, which uses fish and shrimps as raw material, and subjects the fish and shrimps to various processes like cleaning, drying, grading, sorting, packaging etc., in order to make the fish and shrimps suitable for storage and preservation purposes. *[Note: The Appellant argued that since the raw material as well as the end product is still ‘raw fish and shrimps’, it should be considered as an agricultural process.]*
- (xviii) The Appellant referred to the order of the Electricity Ombudsman (Mumbai) of the same consumer in Rep. No. 224 of 2019 in Case of Rizwan Ice and Cold Storage V/s MSEDCL. The EO had observed in the order as below:

**“Analysis and Ruling**

  
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8. *The Appellant was billed by the Respondent under Industrial tariff category prior to May 2018. There was no issue whatsoever from the Appellant. However, the Appellant raised the issue through its application dated 05.02.2018 to the Respondent for change of tariff in pursuance of the Respondent's Chief Engineer (Commercial) letter No. 4759 dated 05.03.2018 which happens to be the internal correspondence of the Respondent. The Respondent carried out the inspection and changed the tariff category to HT V (B): HT – Agriculture Others. However, the Respondent again switched over to HT Industrial tariff to the Appellant. This switchover as per the submission of the Respondent, is an error in judgment assessing the processes of the Appellant. In this case, the Appellant was billed HT V (B): HT – Agriculture Others for a brief period of May 2018 to October 2018 i.e. only for six months. The Appellant argued that its core activity is pre-cooling and cold storage used for storing fish which undergoes various activities like cleaning, drying, grading, sorting, packaging etc. in order to make raw material / produce suitable and neat for storage and preservation purpose. All these activities are not at all Industrial activity. Therefore, it is its right to have been billed at HT V (B): HT – Agriculture Others tariff. Applicability of Industrial tariff as per order in Case No. 42 of 2015 is with respect to petition filed by Seafood Export Association of India. The Appellant's main argument is that its core activity is pre-cooling and cold storage and it is requesting applicability of HT V (B) Agricultural tariff prospectively. It does not want any back recovery. I specifically noted that the Appellant is silent on applicability of Industrial tariff prior to May 2018 since the applicability of tariff order i.e. from November 2016.*

9. *Commission in its various tariff orders / orders as regards to cold storage and food processing units has reasoned out the tariff issues which are listed as below:*

**(a). Commission's order dated 26.06.2015 in Case No. 121 of 2014**

**HIGH TENSION (HT) – TARIFF**

**HT I: HT- Industry**

**Applicability**



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*This category includes consumers taking 3-phase electricity supply at High Voltage for industrial purposes of manufacturing.*

- .....
- j) Cold Storage not covered under HT – (V);*
- k) Fisheries and integrated sea-food processing units.*

**HT V: HT – Agricultural**

**Applicability:**

*This category shall be applicable for Electricity / Power Supply at High Tension*

- .....
- (i) For pre-cooling plants & cold storage units for Agriculture Produce;*
- (ii) .....*
- (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 Consumers for purpose directly concerned with crop cultivation process and further provided that the power is not utilized for any engineering or industrial process;*
- (iv) .....*
- (v) .....*

**(b) Commission’s order dated 13.05.2016 in Case No. 42 of 2015**

**Commission’s Analysis and Ruling**

*11. SEAOI is essentially seeking a clarification regarding the tariff category applicable to Units, such as those of its Members, considering the nature of their activities and processes; and the correct interpretation of the terms used in the Tariff Order to define the tariff categories. SEAOI contends that, considering the categorisation set out in the Tariff Order dated 16 August, 2012 in Case No. 19 of 2012, the Industrial category tariff is to be applied to such Units, as against*


*the Commercial category tariff which has been applied retrospectively by MSEDCL.*

*12. In its Tariff Order of 2012, the Commission defined the tariff categories relevant to this Case as follows:*

*“HIGH TENSION (HT) – TARIFF HT I : HT- Industry*

*Applicability*

*This category includes consumers taking 3-phase electricity supply at High Voltage for industrial purpose...*

  
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.....  
“HT II: HT- Commercial

Applicability

HT II (A): EXPRESS FEEDERS

..... It does not extend to the further chain of processing, including into essentially different forms, of the raw produce. The Commission is of the view that the latter, for which fish is the raw material, would qualify as activities to which the Industrial tariff would apply. This restricted meaning of the term ‘fisheries’, which is clear from the nature of the other activities cited in the same Item (m), as used in the tariff categorization is also in consonance with the common or dictionary meaning of the term ‘fisheries’ (and the Black’s Law Dictionary has also been cited during these proceedings). Moreover, as envisaged in the Commercial tariff category, such rearing, breeding and associated activities would generally not be undertaken in industrial premises.

14. The supply of electricity for ‘industrial purpose’ to which the Industrial tariff under the Tariff Order of 2012 is to be applied has to be construed in the light of the above. Moreover, industrial purpose would commonly include manufacturing as well as processing, and no contrary dispensation has been set out in the Tariff Order. While different statutes are enacted for different purposes, and the meaning ascribed to a term may differ from one statute to another, the Commission also notes that the IDR Act, 1951 and the MSME Act, 2006, for instance, both include such food processing as an industrial activity; that the Petitioner’s Members claim to hold Licences under the Factories Act, 1948, and are said to be located on industrial plots in MIDC areas. The various integrated processing activities said to be undertaken by its Members subsequent to the commercial rearing or breeding of fish and other seafood have been described by SEAIOI in its Petition, and illustrated through a flow chart.

15. At paras. 12 and 13 above, the Commission has clarified that such seafood processing activities would attract the relevant HT or LT Industrial tariff and not the Commercial tariff. Obviously, the interpretation of terms clarified by the Commission in this Order shall apply to all such undertakings and not only to the Petitioner’s Members. MSEDCL shall, within 2 months: review the tariff applied to the Petitioner’s Members and other such Units in the light of this clarification; revise (if appropriate) the tariff category sought to be applied to such Units; and refund the consequential excess amount, if any has been recovered.....



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(c) *Commission's order dated 03.11.2016 in Case No. 48 of 2016*

**HT I: HT – Industry**

**HT I (A): Industry – General**

**Applicability:**

.....

- k) *Cold Storages not covered under HT V (B)– Agriculture (Others);*
- l) *Food (including Seafood) Processing units.*

**HT V(B): HT – Agriculture Others**

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

- a) *Pre-cooling plants and cold storage units for Agricultural Products – processed or otherwise.*
- b) *Poulties exclusively undertaking layer and broiler activities, including Hatcheries;*
- c) *High-Technology Agriculture (i.e. Tissue Culture, Green House, Mushroom cultivation activities), provided the power supply is exclusively utilized for purposes directly concerned with the crop cultivation process, and not for any engineering or industrial process.*
- d) *Floriculture, Horticulture, Nurseries, Plantations, Aquaculture, Sericulture, Cattle Breeding Farms, etc;*

(d) *Commission's order dated 06.12.2016 in Case No. 114 and 119 of 2015*

**Commission's Analysis and Ruling**

8. ....

9. *As mentioned by the Petitioners during the hearing, their prayer for correction in the applicability of the HT-Agriculture tariff category to include 'agriculture products – processed or otherwise', as in the case of the corresponding LT category, has been addressed by the Commission in its Order dated 29 January, 2016 in Case No. 121 of 2015 as follows:*

*"the Commission finds a similar and unintended discrepancy between another entry in the Tariff applicability of HT V: HT-Agriculture category and the corresponding LT category in the Approved Tariff Schedule regarding precooling and cold storage units. Para. 6.1.7 of the impugned Order states that "...the Commission has decided to broaden the existing tariff treatment of cold storages and to consider them in two categories, namely (a) Cold Storages for*



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*Agriculture Products; processed or otherwise and (b) Cold Storages for other purposes. While the tariff of Agriculture – Others (Metered) category shall be applicable for Cold Storages for Agriculture Products, the latter would be covered under the Industry instead of the Commercial category as at present.” This is correctly reflected in the applicability of the LT IV (C): LT – Agriculture Metered – Others category in the Approved Schedule, but not in the corresponding HT category. The relevant entry in the HT V: HT-Agriculture category is accordingly corrected to read as follows:*

*“i) For pre-cooling plants & cold storage units for Agriculture Products – processed or otherwise;...”*

*10. As regards the treatment of electricity consumption of allied activities as part of the main activity of cold storage, with some limit in terms of a percentage of the total consumption if necessary, the Commission notes that, in its 2015 MYT Order, in order to simplify the energy metering and billing procedure and to take into account the allied activities which are essentially required to support the core activity, the Commission allowed the consumption of such activities in industrial premises to be treated at par with the power consumption for the core industrial activity.*

.....

11. ....

*12. As regards the suggestion for a full listing of agricultural produce, considering the Schedules applicable under the Agricultural Produce (Grading and Marking) 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 purposes of the respective statutes or orders. The Licensee is expected to interpret the terms used in the applicability clauses of the Tariff Orders depending on their context or in the sense of their ordinary usage unless illustrations or further specifics have been provided.*

*9. All above orders are to be read harmoniously to give fruitful meaning to the basic issues in the instant representation. It could be seen from the submissions of the Appellant that it does not simply store the fish and shrimps which it purchases from the market. On the contrary, it has specifically mentioned that it undertakes processes like deboning, cutting, cleaning, drying, grading, sorting, packaging, in order to make raw material i.e. fish and shrimps, suitable and neat for storage and preservation purpose. These processes are supportive*




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*of the core activities of cold storage without which the stored products would not become saleable or marketable. Therefore, these activities and storage put together constitutes the activity to be termed as an Industrial one. By no stretch of imagination, it can be classified as an agricultural activity.*

15. *Appellant's prayer is not tenable in view of the observations of the Commission in its order dated 06.12.2016 in Case No. 114 and 119 of 2015. The doctrine of applicability of Industrial tariff in respect of seafood and its further processing, squarely applies in the instant representation. It is also interesting to note that the processing activities could be as a matter of fact, its main activities which help process the raw materials, in this case, the fish, to make it marketable, by storing it in cold storage so that it will not lose its food value / quality, etc. In course of time, it could be the case of some other raw material which needs to be processed on similar lines to preserve its food value and quality. Therefore, it cannot be construed that the process undertaken by the Appellant is primarily pre-cooling and cold storage. Therefore, the argument of the Appellant does not fit into the applicability of HT – Agricultural Others tariff category as the process undertaken by the Appellant is purely Industrial one. Merely, drawing parallel between fish and food under some provisions of the Act does not automatically entitle the case of the Appellant to be billed at HT V (B) Agricultural (Others). In fact, the Commission in its order dated 13.05.2016 in Case No. 42 of 2015 has said that while different statutes are enacted for different purposes, and the meaning ascribed to a term may differ from one statute to another. The Commission also noted that the IDR Act, 1951 and the MSME Act, 2006, for instance, both include food processing as an industrial activity. The various integrated processing activities said to be undertaken by the Appellant does not entitle it to claim for applicability of HT V (B) Agriculture (Others). The Respondent during the hearing argued that pre-cooling and cold storage is part and parcel of the entire industrial process of the Appellant and therefore, it cannot be said to be other than any industrial activity.*

  
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Therefore, the entire process put together adopted by the Appellant in making fish a marketable and almost ready to eat product is nothing but industrial.

(xix) The Respondent also put on record further abstracts of Tariff Orders as below:

**Commission's order dated 30.03.2020 in Case No. 322 of 2019**

**HT I: HT – Industry**

**HT I (A): Industry – General**

**Applicability: .....**

*k) Cold Storages not covered under HT V (B)– Agriculture (Others);*

*l) Food (including Seafood) Processing units.*

**HT – Agriculture Others**

**Applicability:**

.....  
.....

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

*b. Pre-cooling plants and cold storage units for Agriculture Products as defined under APMC Act 1963 processed or otherwise;.*

(a) **Commission's order dated 30.03.2023 in Case No. 226 of 2022**

**HT I: HT – Industry**

**HT I (A): Industry – General**

**Applicability: .....**

*n. Cold Storages not covered under HT – Agriculture (Others), Packaged Drinking Water Plant;*

*o. Food (including Seafood and meat) Processing units.*

(xx) The Appellant's prayer is not tenable in view of the tariff order of the Commission.

The Forum, by its original order dated 04.05.2024 and review order dated 24.06.2024 considered all issues and passed a reasoned order.

(xxi) In view of the above, the Respondent prays that the Representation of the Appellant be rejected.



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3. The Appellant's submissions and arguments are as below.


- (i) The Appellant is 22 KV HT Consumer having two electricity connections, 28619047120 & 000079012513 from 07/09/2019 and 02/11/1990 respectively for their two different pre-cooling plants and cold storage for processing of fish and shrimps located at the addresses given in Table 1.

**A & B: Demand of Additional Security Deposits & installation of prepaid meters: -**

- (ii) MSEDCL demanded additional security deposit of Rs. 43.29 Lakh & Rs. 21.99 lakh for consumer nos. 28619047120 & 000079012513 respectively on 04.05.2023. The Appellant received disconnection notices on 28.12.2023 issued by Supdt. Engineer MSEDCL Vashi. The Appellant by its letters dated 05.01.2024 informed MSEDCL that he has maintained the security deposits equivalent to the average of one month as per the previous regulations. The Appellant had consistently paid the electricity bills promptly, thereby availing the prompt payment discount.
- (iii) As per Regulation 13 of Supply Code and SOP Regulations 2021, MSEDCL is permitted to collect the Security Deposit twice the average billing of the billing cycle period. According to MERC Regulations, metering is to be provided free of cost by MSEDCL, and consumers have the choice of either paying the SD or opting for pre-payment via a prepaid meter. Consequently, the Appellant proposed to issue the bill as usual, and he would promptly pay the same, possibility the next day, thereby qualifying for prompt payment incentive.
- (iv) The Appellant urged to consider the existing SD amount as a prepayment, and to expedite the installation of a prepaid meter at the earliest, to prevent the necessity of demanding additional SD.

**C. Change of tariff category from Industrial to Agricultural – Others from 01.04.2020: -**

- (v) The Respondent MSEDCL converted the tariff of the Appellant from Industrial to Agricultural – Others from May 2018 to September 2018, considering the tariff order of the Commission in force. The Respondent again arbitrarily reverted the

  
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tariff from Agricultural – Others to Industrial from October 2018 without assigning any reason. MSEDCL is abruptly changing the tariff frequently illegally. **The Appellant, against the abrupt reclassification of tariff category, filed a Civil Suit against MSEDCL in Civil Court CBD Belapur, which is pending till date.**

- (vi) The activities of the Appellant are covered under “Agricultural-Others” tariff category as per Commission tariff order dated 30.03.2020 in case of 322 of 2019.
- (vii) The Appellant filed a grievance application in the Forum on 19.01.2024. The Forum by its order dated 5<sup>th</sup> April 2024 dismissed the grievance application. The Appellant filed a review application on 01.05.2024 which was also rejected on 24.06.2024.


(viii) **Prayer: -**

The Appellant prays

- a) to pass an interim relief order as a stay for disconnection notice
- b) to quash and set aside the disconnection notices.
- c) to direct MSEDCL to install the prepaid meters.
- d) to direct MSEDCL to change the tariff category from Industrial to Agricultural – Others retrospectively with effect from 01.04.2020 onwards and refund tariff difference with interest as per Section 62(6) of the Act.
- e) to set aside the cost of Rs.5000/- imposed by the Forum in review application.
- f) to set aside the wrong & illegal findings of the Forum for debarring the consumer representative Mr. Nadeem Ansari.

## **Analysis and Ruling**

4. Heard the parties and perused the documents on record. The Appellant is 22 KV HT Consumer having two electricity connections No. 28619047120 & 000079012513 from 07/09/2019 and 02/11/1990 respectively for their two different pre-cooling plants and cold storage for processing of fish and shrimps located at the addresses given in Table 1. The detailed fish and shrimps processing activities are mentioned in para 2 (xv).


  
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5. The Appellant contended that the Respondent is duty bound to install prepaid meters to the Appellant as per the Tariff order dated 30.03.2020 in case of 322 of 2019. The Appellant by its letter dated 19/01/2024 has specially requested for the same, in order to avoid paying additional security deposits as charted in Table 1. However, the Respondent did not install prepaid meters till date. As per Regulation 13 of Supply Code and SOP Regulations 2021, MSEDCL is permitted to collect the Security Deposit twice the average billing of the billing cycle period. According to MERC Regulations in force, metering is to be provided free of cost by MSEDCL, and consumers have the choice of either paying the SD or opting for pre-payment via a prepaid meter. The Appellant has requested to consider the existing Security Deposit as a pre-payment and to expedite the installation of a prepaid meter at the earliest to prevent the need for additional SD.

6. The second issue raised by the Appellant is regarding the tariff category. He claims that he is eligible for “Agriculture – Others” tariff, as per the end product of his factory is raw fish and shrimps, albeit processed. The Respondent MSEDCL converted the tariff of the Appellant from Industrial to Agricultural – Others but only for the limited period from May 2018 to September 2018, considering the tariff order of the Commission in force. The Appellant has filed a Civil Suit against MSEDCL in Civil Court CBD Belapur against the order dated 06/03/2020 in Rep. 224 of 2019 of consumer No. 28619047120 which is pending till date. There is no court case pending for other H T Consumer no. 000079012513.

7. The Respondent MSEDCL contended that it has demanded additional security deposits of Rs. 43.29 Lakh & Rs. 21.99 lakh for the consumer nos. 28619047120 & 000079012513 respectively from the Appellant vide bill dated 04.05.2023 which the Appellant was allowed to pay in six monthly installments. The Appellant did not pay the said additional SD as charted in Table 1. Hence, notices of disconnection were issued to the Appellant on 28.12.2023. (However, the supply of the two connections were not disconnected till date.). There is no mandatory direction under the Act, and/or Supply Code and SOP Regulations 2021, nor any direction by the Commission for installation of prepayment meters to HT consumers. The

  
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direction of the Commission intended for promoting prepaid metering is for single phase/ three phase whole current metering. The Regulation 13.7 of Supply Code & SOP Regulations 2021 mandates only that the amount of security deposit be either refunded to such Consumer or treated as a part of the value of the prepayment credit to the account of such Consumer, from which the value of his future consumption is to be deducted. As per existing norms, supply to all HT/LT consumers is provided through meters for which billing is done after consumption. The billing cycle is one month except for agricultural consumers. To switch over to Pre-payment meter and billing needs technological changes which are currently not available. MSEDCL is itself interested to install more prepaid meters in a stagewise manner but only for single phase and three phase consumers having whole current metering system. In case of consumers having HT supply & load above 20 kW, metering is connected through CT/PT, and hence automatic disconnection / reconnection cannot be done in case of insufficient payment of bills. The sanctioned load/ contract demand of the Appellant is tabulated in Table 1. The metering is on 22 KV HT Side and the metering is done by installing CT/PT on site. Hence, the request of this consumer for installation of a prepaid meter is not technically feasible. All meter manufacturers have conveyed that they don't have such a product, and further informed that the concept of a pre-paid meter cannot be made applicable to a CT operated meter used for consumers above 20 kW, and for HT consumers. As per Indian Standard 16444 (Part 2), connect / dis-connect facility is not available for LT-CT operated meters and HT meters, as these meters are connected on secondary side of metering equipment. **In the absence of the connect/disconnect facility to these meters, pre-paid meters cannot be currently installed to HT and LT (load above 20 kW) consumers.** This limitation of pre-paid meters was conveyed to the Appellant. The above stand is upheld by the Commission in order dated 31.03.2023 in Case No.226 of 2022, and it has given a ruling which is quoted in Para 2 (xiii).

8. The Commission by its Tariff order dated 30.03.2020 in case of 322 of 2019 has observed that

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*2.11.6 The Commission notes that although cost of pre-paid meter is high it has number of advantages which reduces O&M expenses of Distribution Licensees and also it gets advance payment for electricity. Hence, prepaid meter needs to be promoted. Hence, the Commission is retaining existing rebate of 5% for pre-paid consumers.”*

9. However, there is a technological limitation for providing prepaid facility for CT/PT operated meter. Meter manufacturers have conveyed that they do not have such a product, and further informed that currently the concept of prepaid meter cannot be made applicable to CT operated meters used for consumers above 20 kW and to HT consumers.
10. The Appellant also not produced any documentary proof in support of their claim for mandatory installation of a prepaid meter to HT connections. Therefore, we conclude that the Appellant is bound to pay the required additional security deposit, which he has been allowed to pay in six monthly installments, under Regulations 13, 13 (2) of Supply Code And SOP Regulations 2021.
11. The Appellant had already raised the grievance in respect of applicability of HT V (B) (Agriculture-Others) tariff to its unit, which was heard and finally decided by the Electricity Ombudsman on 06.03.2020 in Rep. No.224 of 2019. The content of the said order is already produced in Para 2 (iii). The Appellant has filed a Civil Suit against MSEDCL in Civil Court CBD Belapur against the said order, which is pending till date. Also, the issue of applicability of HT V (B) Agriculture-Others tariff category was not mentioned in Schedule A before the Forum. Hence this issue cannot be entertained as this stage. The Appellant has repeatedly raised this issue which has already been adjudicated upon, leading to unnecessary waste of official time of this forum.
12. As per Regulation 19.22 of CGRF & EO Regulations 2020, in view of the pending court case on the same issue, the representation is not maintainable. The Regulation 19.2 is reproduced as below:

  
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19.22 The Electricity Ombudsman shall entertain a representation only if all the following conditions are satisfied:

*“(f) The Electricity Ombudsman is satisfied that the representation is not in respect of the same subject matter that has been settled by him in any previous proceedings;*


***(g) The representation by the Complainant, in respect of the same Grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has not already been passed by any such court, tribunal, arbitrator or authority;***

The matter of application of HT-V B (Agriculture – Others) tariff to the Appellant was already heard and finally rejected by the Forum and Electricity Ombudsman. Hence the additional prayer of the Appellant at this stage for **Change of tariff category from Industrial to Agricultural – others from 01.04.2020 is not maintainable** in view of Reg.No.7.9 of CGRF & EO Regulations 2020. Hence this prayer is rejected. He is advised to approach the Commission for any policy decision on considering fish and shrimps processing units under “Agriculture – Others” tariff category.

13. In view of the above, the representation of the Appellant is rejected with a cost of Rs.2000/-. The Representation is disposed of accordingly.

14. The secretariat of this office is directed to refund an amount of Rs.23,000/- [Rs. 25000/- (deposit taken) – Rs. 2000/- (cost imposed on the Appellant)] to the Respondent to adjust in the Appellant’s ensuing bill.

Sd/  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

