

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO. 73 OF 2024

In the matter of change of tariff category and refund thereof

Atomberg Technologies Pvt. Ltd. (User).....Appellant  
(Original Cons. Sheth Udyog Con. No. 000299011534)

V/s.

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

Appearances:

Appellant : Pratap Hogade

Respondent: 1. R.G. Bele, Executive Engineer  
2. Rajiv Waman, Asst. Law Officer


**Coram: Vandana Krishna (Retd. IAS)**

Date of hearing: 18<sup>th</sup> June 2024

Date of Order: 31<sup>st</sup> July 2024

## ORDER

This Representation was filed on 19<sup>th</sup> April 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 28<sup>th</sup> March 2024 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone (the Forum). The Forum dismissed the grievance application of the Appellant in a common order in Case No. 66 and 67 of 2023-24.

  
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2. The Appellant has filed this representation against the order of the Forum. An e-hearing was held on 18<sup>th</sup> June 2024. The Appellant and the Respondent attended the hearing through video conferencing. The parties were heard at length. The Appellant's submissions and arguments are stated as below: *[The Electricity Ombudsman's observations and comments are recorded under 'Notes' in brackets where needed.]*


- (i) The Appellant had taken the premises of Plot No. D-130 B from M/s. Sheth Udyog respectively on Leave and License for a period of 5 years from 01/03/2019 to 29/02/2024 which is registered before the Joint Sub Registrar, Thane on 22/04/2019. Prior to that the premises was being billed under Commercial tariff category. After the Appellant took the premises, **this premise was used for Store and Laboratory purpose from 01/03/2019 up to 31/12/2022 for electronic equipment like ceiling fans etc.** The Appellant left the premises from 01/01/2023. The details of the connection are tabulated below: -

Table 1

73 of 2024	Atomberg Technologies Pvt. Ltd. (User) (Cons.: Sheth Udyog )	130B, TTC Inds.Area, Shiravane, Nerul, Navi Mumbai	000299011534	91 KW / 60 kVA	30.06.1988	Store & fan Testing Laboratory but billed under LT-II Commercial Tariff Category	Online on 30.11.2021	03.08.2023
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*[Note: There is another HT connection (No. 000299011542) in an adjacent premises, Plot 130 A. Both the connections were used by Atomberg Technologies Pvt. Ltd. While the main connection of Plot No 130 A was used for manufacturing of fans, and the adjacent premises of Plot No. 130 B was used for store and Fan Testing laboratory].*

- (ii) Just before starting the industrial activity, the Appellant had approached and applied to SE, MSEDCL, Vashi for Change in Tariff Category from Commercial to Industrial in February 2019. SE, MSEDCL, Vashi Circle sent the tariff change proposal to Jt. MD, Kokan Region, Kalyan of the Respondent for approval. *[Note: This Feb. 2019 Application was not kept on record along with the submission].*

  
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- (iii) The Appellant argued that the original consumer (Sheth Udyog) in Rep. 73 of 2024 had applied to SE Vashi on 04/07/2019 in hard copy (online application dated 13/07/2019) that they had no objection for change in tariff category from commercial to industrial. *[Note: This Application for change of tariff category was only for the adjacent premises, i.e. HT consumer (No. 000299011542) having Plot No. 130 A, but not for this L T. Connection (Cons. No. 000299011534) having Plot No. 130 B]*
- (iv) The Testing Division, Vashi visited the sites of Plot No. 130 A & 130 B Shirawane MIDC on 16/07/2019, and as per its Spot Inspection Report, confirmed that the actual user is the Appellant, and that the premises of 130 A is being utilized for manufacturing of electronic fans like ceiling and wall mounted fans. **The Activity for the adjacent premises of 130 B was found to be that of a Laboratory and Stores. Owners of both the premises were different.** *[ Note: No official inspection of 130 B was found on record.]*
- (v) Jt. MD, Kokan Region illegally rejected the proposal of Plot No. 130 A vide his letter dated 21/10/2020. This is the date when the cause of action (the grievance) arose. The grounds on which the proposal was rejected are as below:
1. *As per joint inspection report by SE O&M Vashi and EE Testing Vashi Dn, M/s. Atomberg Technology Pvt. Ltd. is the occupier, and the actual user of premises. M/s. Sheth Steel Processor, the landlord and original consumer, is not consuming electricity for industrial activity for his own purpose.*
  2. *As per lease agreement Sr. No.14 (b), M/s. Atomberg Technology Pvt. Ltd. has agreed to bear and pay all charges for electricity and water consumed in or upon the licensed premises.*
  3. *M/s. Atomberg technology Pvt. Ltd. has not applied for tariff change for use of electricity.*
  4. *M/s. Atomberg technology Pvt. Ltd. is not a part of the multipartite agreement.*
  5. *M/s. Sheth Steel Processor has applied for tariff change for availing the benefits of lower tariff based on the manufacturing activity of M/s. Atomberg Technology Pvt. Ltd.*


  
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6. *M/s. Sheth Steel Processor has certified manufacturing activity of its tenant (M/s. Atomberg Technology Pvt. Ltd.) on Rs. 200/- stamp paper.*

*These grounds of rejection are illegal and wrong. [Note: There was no proposal for Plot No 130 B for change of tariff category from Commercial to Industrial].*

- (vi) Thereafter the Appellant approached SE, Vashi office and explained to them all the facts in detail. SE office advised him to apply again for change in tariff category. This was the Covid period. **He applied online on 30/11/2021** (*after more than one year*) and submitted hard copies on 02/03/2022. SE, Vashi sent it to CE (Commercial) Mumbai for approval unnecessarily without any reason.
- (vii) Till today the Appellant has not received any rejection or approval on the online application dated 30/11/2021. The Appellant followed up with SE, Vashi office many times but no satisfactory answer or approval was received. Therefore, he submitted this grievance for Change in Tariff Category and refund of Tariff Difference with interest before the Forum on 03/08/2023. The Forum rejected it on wrong grounds that it was barred by limitation, therefore he is filing this appeal before Hon. Electricity Ombudsman. The Forum has clearly erred in interpretation of the Hon. Supreme Court Order regarding exclusion of the Covid-19 Pandemic period (15/03/2020 to 28/02/2022).
- (viii) Hon'ble Ombudsman has allowed 2 years' tariff difference in many cases, i.e. 2 years before the date of application to the Forum; hence the Appellant is also eligible for tariff difference refund from **04/08/2021 up to 31/12/2022**, as the grievance was submitted before the Forum on 03/08/2023. This issue was also raised before the Forum, but the Forum failed to understand this, and rejected the grievance on wrong grounds.
- (ix) **Submissions /Grounds:**
- (1) Tariff Categorisation - Concerned MERC Regulations -**

  
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- The concerned Regulation No. 4.13 of MERC (SOP) Regulations 2014 came in force from 20/05/2014 which reads as below -

*4.13 The Distribution Licensee shall intimate the charges to be borne by an applicant for change of name and change of tariff category within seven (7) days of receipt of an application in this regard and shall give effect to it within the following time limits:—*

*(a) change of name shall be effected within the second billing cycle on receipt of an application and payment of necessary charges.*

*(b) change of category for use of supply in reference of Tariff schedule shall be effected within the second billing cycle on receipt of application and payment of necessary charges.*


- The same period for change in tariff category is provided in the new MERC (Supply Code & SoP) Regulations 2021 dated 25/02/2021 in Annexure II Sr. No. 7(ii) along with payable compensation for delay in implementation.
- The SOP Regulations 2014 were applicable at the time of its 1<sup>st</sup> application in February 2019, and the MERC (Supply Code & SOP) Regulations 2021 were applicable at the time of its 2<sup>nd</sup> application dated 30/11/2021. In both the regulations, there is a provision of compensation of Rs.100/- per week for delay.

Hence the Appellant is eligible for change in tariff category from Commercial to Industrial from 1<sup>st</sup> April 2019 on the basis of its 1<sup>st</sup> application submitted in February 2019, and he is also eligible to get compensation.

The rights given to a consumer by the Act and by its regulations are his inherent rights. The application of the Consumer for change in tariff category must be considered under the above-mentioned Regulations, and the change must be made applicable from the 2<sup>nd</sup> billing cycle, i.e. from 01/04/2019.

## **(2) MSEDCL Illegal Rejection Grounds -**

Joint Managing Director, Kokan Region, Kalyan rejected the Appellant's demand vide its letter dt. 21/10/2020 on the first application. The grounds for rejection are already quoted above, which are illegal and against all the

  
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provisions in the Electricity Act and the concerned regulations and explained as under:

**(3) Section 2 of the Act is clearly defined. "Consumer" means any person who is supplied with electricity for his own use by a licensee, and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee.**

- Section 45, Power to recover charges -

(2) *The charges for electricity supplied by a distribution licensee shall be -*

(a) *fixed in accordance with the methods and the principles as may be specified by the concerned State Commission.*

(5) *The charges fixed by the licensee shall be accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.*

It clearly means that the tariff must be applied on the basis of principles & methods specified by the Commission. It cannot be decided on the whims of the licensee.


- Electricity act Section 62(3) reads as below,

*S. 62 (3) The appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supplies required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. [emphasis added by underlining]*

*Section 62 (6) If any licensee or a generating company recovers price or charge exceeding the tariff determined under the section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.*

Section 62(3) clearly states that **the tariff depends on the purpose and usage of electricity and not on any other basis as assumed by the licensee.** Also, Section 62(6) clearly states that if excess amount is recovered it must be refunded to the concerned consumer along with the interest thereon.

➤ Supply Code Provisions -

  
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Electricity Supply Code 2005, definition of Occupier reads as below: -

**(s) "Occupier" means the person in occupation of the premises where energy is used or is proposed to be used.**

It clearly means that the occupier of the premises can be the user of the electricity and it is allowed by the Act and the concerned regulations.

Regulation 13 of the Supply Code Regulations 2005 reads as below,

*Classification and reclassification of Consumers into Tariff Categories -*

*The distribution licensee may classify or reclassify consumer into various commission approved tariff categories based on the purpose of usage of supply by such consumer.*

*Provided that the distribution licensee shall not create any tariff category other than those approved by the Commission. (emphasis added by underlining)*

It means that it is the duty of the distribution licensee to classify or reclassify the consumer. Also, the categorisation should be based on the **purpose of usage of supply** by the consumer and not on any other criteria.

#### **(4) MYT Tariff Regulations Provisions -**

- Regulation No 16 - Adherence to Tariff Order


Reg. 16.2 *If any Generating Company or Licensee recovers a price or charge exceeding the Tariff determined under Section 62 of the Act and in accordance with these Regulations, the excess amount shall be payable to the person who has paid such price or charge, along with interest equivalent to the Bank Rate declared by the Reserve Bank of India prevailing during the relevant period, without prejudice to any other liability to which such Generating Company or Licensee may be subjected to:*

*Provided that such interest payable to any party shall not be allowed to be recovered through the Aggregate Revenue Requirement of the Generating Company or Licensee:*

*Provided also that the Generating Company or Licensee shall maintain separate details of such interest paid or payable by it, and shall submit them to the Commission along with its Petition.*

Regulation No 91 - Determination of Retail Supply Tariff

- Reg. 91.1 *The Commission may categorize consumers on the basis of their load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required*

  
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*or the geographical position of any area, the nature of supply and the purpose for which the supply is required. (emphasis added)*

It is clearly stated in Reg. 16.2 that the Licensee cannot recover excess price or charge from the Consumer and if recovered, it must be refunded to the concerned Consumer along with interest. **Also stated in Reg 91.1 that the categorisation is on the basis of purpose for which the supply is required.** It is also based on some other factors but not on the basis of ownership of the premises.

MERC in its tariff orders, from FY 2000 till today, have always determined the tariff applicability on the basis of purpose of usage of electricity supply.

➤ **Compliance of Other Eligibility Conditions -**

The Appellant had already submitted all the documents regarding their Industrial Tariff Eligibility to MSEDCL. The concerned documents include:-


- Copy of the Factory Act Registration Certificate.
- Copy of MPCB Undertaking-cum-Application-cum-Receipt.
- Detailed List of Machineries and Load.

The Joint Managing Director, Kalyan in his own rejection letter dt. 21/10/2020 has clearly mentioned that the Appellant is the Occupier and User of the premises having manufacturing activity. Hence the rejection by Jt. MD is totally illegal.

➤ **Eligible Tariff Difference & Amount Details -**

The Appellant left the premises from 01/01/2023. He is fully eligible to get the tariff difference between Commercial and Industrial for the above-mentioned billing period i.e. from 01/04/2019 up to 31/12/2022. For this purpose, the following details are enclosed.

- Total Tariff/Billing difference - month wise chart from March 2019 to Dec. 2022.
- Tariff Difference Heads/Details are as below,
  - 1) Difference in Demand Charges, Wheeling Charges, energy charges etc. from March 2019 to Dec. 2022.

  
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2) Excess Demand Charges levied from March 21 to Dec. 22 on the basis of wrong derived demand calculations.

- **It is requested to please credit all the above-mentioned amounts with Interest in the Appellant's Live HT Consumer Connection at Chakan as per MSEDCL Commercial Circular No. 319 dated 28/06/2019.**

**(5) Grievance is well within Limitation Period -**


- I. **Date of Cause of Action** – The Appellant had applied for change in tariff category to MSEDCL in February 2019, 04/07/2019 and 17/07/2019 in Rep. No. 74 of 2024. These applications were rejected by Joint Managing Director, Kalyan on 21/10/2020. Hence the **Cause of Action is 21/10/2020.** [ Note: There is no application for Rep No. 73 of 2024, and hence this is not applicable for Rep.73 of 2024]
- II. **Exclusion of Covid-19 Period** - As per order dated 10/01/2022 of the Hon'ble Supreme Court of India in Suo Motu Writ Petition (C) No. 3 of 2020, it has excluded the Covid Period from 15/03/2020 up to 28/02/2022.

The concerned part in Para 5(I) reads as below,

*“The order dated 23/03/2020 is restored and in continuation of the subsequent orders dt. 08/03/2021, 27/04/2021 and 23/09/2021, it is directed that the period from 15/03/2020 till 28/02/2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.”*

As per order of the Hon'ble Apex Court mentioned above, the limitation period starts on 01/03/2022 in the Appellant's case. The rejection letter is dated 21/10/2020 during the Covid-19 period. **The Appellant approached the Forum on 03/08/2023, i.e. within 17 months from 01/03/2022.** Hence it is well within the limitation period of 2 years.

- (x) The Appellant referred to the order dated 04/05/2023 in Rep. 6 of 2023 of the Electricity Ombudsman (Mumbai) where users have been allowed refund towards change of tariff category.


  
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- (xi) MSEDCL has recently issued Com. Circular No. 319 dated 28/06/2019 regarding the policy for refund of tariff difference amount to consumers on the basis of Board Resolution No. 1671. A copy of the circular is kept on record. As per this circular MSEDCL can retain 12 months amount for adjustment through bills, and the excess amount should be refunded to the consumer through direct payment transfer mechanism in case of live consumers.
- (xii) The Appellant prays as below: -
- (1) The tariff category should be declared as LT V-Industrial for the period of 2 years before the date of grievance before the Forum, i.e. from 04/08/2021 up to 31/03/2022 as allowed in many other orders.
  - (2) The tariff difference between LT II – Commercial and LT V Industrial from 1st April 2019, or from August 2019, or from 04/08/2021 up to 31<sup>st</sup> Dec. 2022 should be refunded along with interest. All the refund amounts should be credited in the bank account as per MSEDCL Circular quoted above.
  - (3) SOP Compensation, for delay in Complaint Resolution, at the rate of Rs. 100/- per week from 04/08/2021 onwards.

3. The Respondent filed its reply dated 28<sup>th</sup> May 2024. Its submission and arguments are stated as below: -

- (i) The present Representation and grievance to the Forum is filed by M/s. Atomberg Technologies Pvt. Ltd who is not the consumer. He left the premises in Jan.2023, hence has no locus standi to file and agitate the present grievance. At present the said premises is occupied by Fortune Cars Pvt. Ltd. which is carrying out activity of vehicle repairing (Tata Vehicles) and therefore the applicable tariff is HT II Commercial. The complainant's grievance has become infructuous. *[Note: The grievance relates to the period when the Appellant was occupying the premises. Hence this argument is not valid.]*
- (ii) The grievance is not maintainable as per Regulation 6.6 / 7.9 of MERC (CGRF and EO) Regulations, 2006 / 2020, being filed beyond the period of 2 yrs. Appellant filed

  
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his complaint to the Forum on 03.08.2023 for refund of tariff difference from April 2019. If the Appellant was aggrieved with the tariff category from April 2019, he should have protested to MSEDCL, and in case of non-redressal by MSEDCL, he had the option to approach the Forum within two years from the original cause of action. However, the Appellant filed his complaint before the Forum on 03/08/2023 which is beyond two years from April 2019 and hence time barred.

- (iii) The Appellant is trying to justify the delay in filing the grievance by stating the reason of Covid-19 which emerged from March 2020 onwards. The Appellant is trying to rely on MSEDCL's rejection letter dated 21/10/2020; however, it was not necessary for the Appellant to wait till the rejection letter, and he could have filed the grievance after the second billing cycle from the date of application when the cause of action originally arose. If the contention of the Appellant is accepted, then it will result in absurdity because could it be inferred that there will be no cause of action till an application for change of tariff is rejected. The Appellant also relied upon various Suo Moto orders of the Hon'ble Supreme Court passed in W.P.No.3 of 2020 in respect of extension of the period of limitation during the surge of Covid -19. However, this attempt of taking shelter under this order for justifying the delay in filling the grievance is totally misplaced. The Appellant did not face any hurdles for making correspondence and visits to MSEDCL during the period of April-2020 to March-2022. Claiming that Covid -19 prevented him from filing a grievance before the Forum is not acceptable.
- (iv) Various orders passed by the Bombay High Court and the Electricity Ombudsman have held that cause of action would mean an actual date of legal injury/grievance caused to consumer. The time limit of two years will start from there, and the journey of the grievance through IGRC should reach CGRF within a period 2 years from the cause of action. In view of the above, the claim of the Appellant is time barred and therefore liable to be rejected.

### **REPLY ON MERIT**


- (v) The original consumer, Sheth Udyog is an LT Consumer of MSEDCL bearing Con.No.000299011534 at Plot No. D-130B /TTC Industrial Area, Shiravne, Nerul, Navi Mumbai with Contract Demand of 60 KVA and Connected Load 91 KW. LT -II

  
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(Commercial) tariff was initially applied as per purpose of supply, and billed as per HT-II tariff till date. The date of connection is 30/06/1988.

- (vi) The Respondent carried out a site inspection of the adjacent premises on 21/09/2019 primarily for HT Consumer (Rep. No. 74 of 2024). The EE, Nerul in his inspection report dated 21/09/2019 reported that, M/s. Atomberg Technologies Pvt. Ltd is the actual occupier of the premises, and was carrying out the activity of Fan manufacturing in the premises of HT Consumer No.000299011542, whereas the connection stands in the name of Sheth Steel Processor. The current LT connection [Con.No.000299011534 (Sheth Udyog)] through tri-party arrangement was found in the adjacent premises Plot No.130/B, TTC Ind. Area, Shirawane, Nerul, wherein the activity of “**fan testing Laboratory & Stores**” was found to be carried out, for which LT-II Commercial tariff was applicable. **The Appellant never submitted any application for change of Tariff Category for this LT Consumer (C. No. 000299011534) from 01/04/2019 to 29/11/2021.**
- (vii) **The application for tariff change from commercial to industrial was received for the first time on 30/11/2021 (Application ID. 36642391). The activity of the Appellant was primarily for Store Purpose and secondarily for Laboratory purpose.** Hence, the question of tariff change from commercial to industrial did not arise.
- (viii) The activities at the said premises are not carried out by the registered consumer. M/s. Atomberg Technologies Pvt.Ltd is not MSEDCL’s registered consumer, therefore his documents of activities cannot be taken into consideration for change of tariff, unless the connection was transferred in the name of M/s. Atomberg Technologies Pvt.Ltd.
- (ix) The Forum has considered all issues and accordingly rejected the Grievance No.66 of 2023 by its order dated 28/03/ 2024. It is requested to reject the Representation being filed beyond the period of limitation.

  
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## Analysis and Ruling

4. Heard the parties and perused the documents on record. The original connection is in the name of the landlord, Sheth Udyog (Cons. No. 000299011534) from 30/06/1988. The details of the connection are charted in Table 1.

5. M/s. Sheth Udyog (a Partnership Firm) entered into a leave and license agreement with Atomberg Technologies Pvt. Ltd. on 22<sup>nd</sup> Feb. 2019 for the premises of Plot No. D-130 B for a period of 60 months from 01/03/2019 to 28/02/2024. This agreement was duly registered before the Joint Sub Registrar, Thane on 22/04/2019. Subsequently, the Appellant / lessee vacated the premises from 01/01/2023.


6. **The Section 2 (15) of the Electricity Act, 2003 defines a consumer as**

*(15) "Consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be; ..... (Emphasis added)*

Accordingly, the Supply Code Regulations 2005 define an "Occupier" as below: -

*"2(s) "Occupier" means the person in occupation of the premises where energy is used or is proposed to be used."*

7. From the above definitions of 'consumer' and 'occupier', it is clear that an occupier is the implied consumer, and is therefore authorised to apply for change of tariff category. The stand taken by the Respondent that "the Appellant is not the consumer" is totally incorrect as per various Regulations in force. The Appellant has the status of a deemed consumer for the period from 01/03/2019 to 31/12/2022, and the Appellant has the right to file a complaint/grievance with the Respondent licensee. We find no merit in the Respondent's argument that the Appellant has no locus standi as he was not the original consumer. The Respondent should not have rejected the online application for change of tariff category to

  
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industrial on these flimsy grounds. The Appellant was the registered licensee, tenant and occupant of the premises, and hence the Respondent should have taken into account the actual use of the premises.

8. There are two original consumers namely M/s. Sheth Steel Processor and M/s. Sheth Udyog in premises 130 A & 130 B respectively, being separate consumers and having different identities. Both these premises were given on rent to the Appellant. The details of these connections are tabulated below:

Rep. No.	Consumer name	Address	Consumer No.	San. Load / Contract Demand	Date of Supply	Activity	Application for change of Tariff Category	Grievance Date in Forum
74 of 2024	Atomberg Technologies Pvt. Ltd. (User) (Cons. : Sheth Steel Process)	130A, TTC Inds.Area, Shiravane, Nerul, Navi Mumbai	000299011542	94 KW / 94 kVA	30.06.1988	Industrial from 01.03.2019 to 31.12.2022, but billed under HT-II Commercial Tariff Category	July 2019 (initial), 1st online on 13.07.2019 & 2nd online on 30.11.2021	03.08.2023
73 of 2024	Atomberg Technologies Pvt. Ltd. (User) (Cons.: Sheth Udyog)	130B, TTC Inds.Area, Shiravane, Nerul, Navi Mumbai	000299011534	91 KW / 60 kVA	30.06.1988	Store & fan Testing Laboratory but billed under LT-II Commercial Tariff Category	Online on 30.11.2021	03.08.2023

9. The original HT consumer, Sheth Steel Processor (Con. No.000299011542) had applied for change of tariff category from commercial to industrial on 04/07/2019 (hard copy) and vide an online application dated 13/07/2019 (Rep. No. 74 of 2024). M/s. Sheth Udyog had never applied separately for change of tariff category from commercial to industrial (Rep. No. 73 of 2024). However, from the leave and license agreement and other circumstances on record, it seems that both the premises 130 A and 130 B were commonly rented out to Atomberg Technologies Ltd. by the original consumer / landlord. While one part was used for manufacturing, the other was used for laboratory and store.

  
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10. The Superintending Engineer/Executive Engineer, Testing Division, Vashi carried out a spot inspection on 16/07/2019 of both these premises of 130A and 130 B. It was found that the activity of the Appellant was “manufacturing of fans” in Premises 130 A. In this Spot Inspection Report, it was mentioned in the Remarks column for the activity of Sheth Udyog (Atomberg Technologies Pvt. Ltd.: User) as

*Plot No. 130 B: Activity witnessed in the said adjacent premises is Laboratory & Stores. Owners of both the premises are different.*

11. There was no separate detailed Inspection Report for LT Consumer (No. 000299011534) in this case by the Respondent. However, considering that both the premises were jointly occupied by the Appellant, and admittedly jointly inspected too, we must consider the above Remarks in the inspection report to determine actual use of the premises.

12. The Appellant applied online for tariff change on 30.11.2021 (as mentioned by the Respondent in para 3 (vii), and approached the Forum on 03/08/2023 i.e. after 1 year and 8 months. Hence, we are inclined to allow his grievance application, particularly as the rejection by the Respondent was totally unjustified, as already explained above.

13. In this case, the activity of the Appellant was “store and laboratory”. While “Store” activity comes under commercial tariff category, “Laboratory” activity comes under industrial activity. Because of this mixed use, we must look at the break-up of the load to determine which activity was dominant. Since this information was missing in the site inspection report, we called for this data separately after the hearing. As per data received, out of total load of 93 KW, the load of “Laboratory” was found to be 78 KW, and load of the “Store” was found to be 15 KW, as per the load profile submitted by the Appellant. Since the dominant load is that of “laboratory”, we hold that the correct applicable tariff in this case would be that of industrial.

  
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14. The Appellant applied for change of tariff from commercial to industrial on 30/11/2021. Annexure II of Supply Code & SOP Regulations 2021 is reproduced as below:

<i>Annexure - II: Level of Compensation Payable to Consumer for failure to meet Standards of Performance</i>			
<i>Supply Activity/Event</i>	<i>Standard</i>	<i>Compensation Payable</i>	<i>Automatic/Manual</i>
<b>7. Other Services</b>			
<i>(ii) Change of Tariff Category</i>	<i>Second billing cycle</i>	<i>Rs 100 per week or part thereof of delay subject to maximum of Rs 500</i>	<i>Automatic</i>


In the instant representation, the Appellant applied for change of tariff category online for the first time on 30/11/2021. The second billing cycle starts from Jan. 2022. Thus, the Appellant was entitled to get the benefit of lower (industrial) tariff from Jan.2022

15. The original Consumer has issued a letter giving No Objection for payment of refund directly to the implied consumer, Atomberg Technologies Pvt. Ltd. (User), vide its email dated 26<sup>th</sup> July 2024.

16. Due to all the reasons detailed above, the Forum's order is set aside.

17. The Respondent is directed as under: -

- a) to refund the tariff difference between commercial and industrial (only for Connection No. 000299011534) for the period of Jan. 2022 to Dec. 2022 to the Appellant, Atomberg Technologies Pvt. Ltd. in its Consumer No. 176759071080.
- b) Compliance to be submitted within two months from the date of issue of this order.


  
 (Dilip Dumbre)  
 Secretary  
 Electricity Ombudsman Mumbai



c) Other prayers of the Appellant are rejected.

18. The Representation is disposed of accordingly.

Sd/-  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

