A consumer is the important visitor on our premises.
He is not dependent on us. We are dependent on him.
-Mahatma Gandhi

TAMIL NADU ELECTRICITY OMBUDSMAN

4th Floor, SIDCO Corporate Office Building,Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032.
Phone : ++91-044-2953 5806,044-2953 5816Fax : ++91-044-2953 5893
Email :tneochennai@gmail.com Web site : www.tnerc.tn.gov.in

Before The Tamil Nadu Electricity Ombudsman, Chennai

Present :Thiru. N.Kannan, Electricity Ombudsman

A.P.No. 86 of 2024

M/s. Charoen Pokphand (India) Pvt. Ltd.
Pallikuppam Road,
Agaramcheri Village,
Vellore District – 635 826.

. . . . . Appellant
(Rep. by Thiru Rahul Balaji, Advocate)

Vs.

1. The Chairman & Managing Director,
TNPDCL,
144, Anna Salai, Chennai -600 002.

2. The Superintending Engineer,
Tirupattur Electricity Distribution Circle,
TNPDCL,
2, 4B, Balammal Colony, Tirupattur-635 601.

3. The Deputy Financial Controller,
Tirupattur Electricity Distribution Circle,
TNPDCL,
2, 4B, Balammal Colony, Tirupattur-635 601.

4. The Executive Engineer/O&M/Pallikonda,
Tirupattur Electricity Distribution Circle,
TNPDCL,
No.7 Kothaval Street, Pallikonda, Vellore DT -635809.

5. The Assistant Executive Engineer/O&M/Vadakathipatty,
Tirupattur Electricity Distribution Circle,
TNPDCL,
110 KV Vadakathipatty SS, Vadakathipatty,
Madanoor Post 635802.

6. The Assistant Engineer/O&M/ Agaramcheri,
Tirupattur Electricity Distribution Circle,
TNPDCL,
No.4, 8 E, MC Road, Agaramchery,
Vellore (Dt) 635804. . . . . Respondents

(Thiru S.A. Jainullabuddin, SE/ Tirupattur
Thiru S.Sridhar, DFC/ Tirupattur
Thiru S.Vijayakumar, EE/O&M/Pallikonda)

A.P.No. 87 of 2024

M/s. Charoen Pokphand (India) Pvt. Ltd.
Pallikuppam Road, Agaramcheri Village,
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Thiru S.Sridhar, DFC/ Tirupattur
Thiru S.Vijayakumar, EE/O&M/Pallikonda)

Petition Received on: 02-12-2024

Date of Hearing: 23-01-2025

Date of order: 04-02-2025

The Appeal Petition dt. 02.12.2024 filed by M/s. Charoen Pokphand (India) Pvt. Ltd. Pallikuppam Road, Agaramcheri Village, Vellore District – 635 826 was registered as Appeal Petition No. 86 of 2024 and 87 of 2024 for the HT SC No. 107 and 109 respectively. The above appeal petitions scheduled for hearing on 23.01.2025. Upon perusing the Appeal Petition, Counter affidavit, written argument and the oral submission made on the hearing date from both the parties, the Electricity Ombudsman passes the following order.

COMMON ORDER FOR A.P.No. 86 AND 87 OF 2024

1. **Prayer of the Appellant:**

As the prayer is same in all the two petitions, the relief sought for in Appeal Petition No. 86 of 2024 is given below;

The Appellant has requested to set aside the CGRF order No. 50 dt.29.10.2024 as the impugned order suffers from non- consideration of material facts and is contrary to settled law, and the said order is liable to set aside and all consequent demand notices including but not limited for levy consumption charges under the HT III commercial tariff category as illegal, arbitrary and contrary to the Tariff Order T.P. No. 1 of 2013 and the Electricity Act, 2003 and to reinstate the appellant's HT SC No.107 under HT Tariff 1A.

2.0 Brief History of the case:

2.1 The licensee initially sanctioned High Tension (HT) service under Tariff IA in 07.05.2001. The service was initially billed under HT Tariff I as activity is Hatchery - Poultry farm in nature. Subsequently, the respondent reclassified the service to HT

Tariff III from 10/2024 due to non submission of factory license. Claiming that the Tariff IA stating that the appellant's service connection was not eligible for Tariff IA. The respondent subsequently raised a short levy for the period from 05/2011 to 09/2014 under revised HT III for an amendment of Rs.31,84,192/-.

2.2 Aggrieved by the respondent's action, the appellant sought and obtained an interim stay from the Hon'ble High Court vide W.P. 2239 of 2015 and obtained stay. However, the Hon'ble High Court dismissed the appellant's writ petition on 07.07.2022 due to no representation of the Appellant's side. Subsequent to this issue, the show cause notice was issued on 11.11.2022 towards payment of difference in tariff amounting to Rs.3,22,05,106/- along with the BPSC. Further, 15 days final notice was issued on 08.12.2022 and the service was disconnected on 26.12.2022.

2.3 It is further understood that the Appellant has restored the WP No. 2239 of 2015 vide dt. 18.08.2023 and Hon'ble High Court order to approach CGRF on 22.08.2024.

2.4 Dissatisfied with the CGRF's order, the appellant filed the present appeal before the Electricity Ombudsman

3.0 Order of the CGRF:

The order issued in the case of AP No. 86 of 2024 and A.P.No.87 of 2024 is extracted below:-

CGRF Order No.50 dt.29.10.2024 for Appeal Petition No. 86 of 2024:

"In view of the above findings the Forum decides that the absence of categorization of Hatcheries and Poultry Farms activities under HT Tariff 1A in the tariff orders issued by the Hon'ble TNERC for the period before 10.09.2022 the claim of respondent to bill under HT Tariff III is in order. Further the Forum directs the petitioner M/s Charoen Pokphand (India) Pvt Ltd., is liable to pay the difference in tariff rate for the period from 06/2011 to 07/2022 with BPSC till the date of payment for the HT) Sc.No.107."

4.0 Hearing held by the Electricity Ombudsman:

4.1 To enable the Appellant and the Respondent to put forth their arguments, a hearing was conducted on 23.01.2025 through video conferencing.

4.2 On behalf of the Appellant Thiru Rahul Balaji, Advocate attended the hearing and put forth his arguments.

4.3 The Respondents Thiru S.A. Jainullabuddin, SE/ Tirupattur, Thiru S.Sridhar, DFC/ Tirupattur and Thiru S.Vijayakumar, EE/O&M/Pallikonda of Tirupattur EDC attended the hearing and put forth their arguments.

4.4 As the Electricity Ombudsman is the appellate authority, only the prayers which were submitted before the CGRF are considered for issuing orders. Further, the prayer which requires relief under the Regulations for CGRF and Electricity Ombudsman, 2004 alone is discussed hereunder.

5.0 <u>Contention of the Appellant</u>:

5.1 The Appellant M/s. Charoen Pokphand (India) Pvt. Ltd., the complainant / petitioner herein (hereinafter referred to as the Petitioner or CPF India) is an Indian subsidiary of the Charoen Pokphand Pvt. Ltd., a company specializing in poultry and prawn culture with more than 22 years of experience, operations in 22 countries / states and more than 2000 crores in yearly turnover in India. The Petitioner changed its name to CPF (India) Pvt. Ltd in 2014.

5.2 The Appellant has stated that they operate 4 poultry farms in the State of Tamil Nadu, of which 3 breeder farms and 1 is a hatchery, and each has a different electricity service connection, all of which have been taken in the HT I A category and it is engaged in manufacturing process and is an industrial establishment.

5.3 The Appellant has stated that it commenced operations in India after getting approval from the Ministry of Industry notification dated 28.11.1996 which gave the Appellant's group company the authorization to set up 5 integrated poultry projects across the country. The Appellant has thus been duly authorized to run as an industrial unit from its inception.

5.4 The Appellant has stated that installed machineries for effluent treatment and cold storage and was advised by the Respondent to take a High-Tension connection under HT I A category.

5.5 The Appellant has stated that they have established its service connection no. 107 for its breeder farm in Pangarsikuppam Village, vide HT Agreement dated 07.04.2011 under the HT IA category with the 2nd Respondent SE. The said agreement was clear that the applicable Tariff would be as per the terms laid down by the State Commission in its orders from time to time.

5.6 The Appellant has submitted that the applicable Tariff Order, i.e., T.P. No. 1 of 2013 specifically categorises poultry farming within the HT I A category. The Hon'ble TNERC's order clearly specifies the following:

"6.2 High Tension Tariff I A:

i. This Tariff is applicable to:

a) *All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants,*
b) *b) Common effluent treatment plants, Industrial estate's water treatment/supply works,*
c) *Cold storage units"*

5.7 The Appellant has stated that they have received notice dated 08.10.2014 bearing Lr. No. 286-1/SE/TEDC/DFC/TPR/RCS/AS/A2/F.HT.SC.No.107/14 informing the appellant that a copy of the industrial licence had not been received, and calling upon the appellant to produce the same, failing which the 2nd Respondent would unilaterally change the Tariff Category from HT I to HT III (Commercial).

5.8 The Appellant has stated that 2nd Respondent then unilaterally changed the Tariff in the bill for October 2014 and billed the appellant under the HT III category. The appellant, despite sending several representations clarifying its position that HT III would not be applicable to poultry farming.

5.9 The Appellant has submitted no industrial certificate is required to be produced by the appellant as HT I A industrial consumer. The appellant states that if industrial certificate if at all required to be produced, would only be from a LT industrial consumer.

5.10 The Appellant has stated that in any event, the appellant had also obtained its clearance from the Tamil Nadu Pollution Control Board, clearly indicating that the appellant was performing an industrial activity.

5.11 The Appellant has submitted that in any event, the appellant had been issued industrial certificate for its hatchery on 23.07.2010 by the Department of Industries and Commerce, Government of Tamil Nadu.

5.12 The Appellant has stated that it is also pertinent to refer to the Government of India's notification S(6)/2011- MSME POL dated 10.03.2011, issued by the Office of the Development Commissioner, Ministry of Micro, Small and Medium Industries. The relevant extract of the notification states:

> *"References were received by this office for clarification on categorization of activities under manufacturing or service. These were examined under the provisions of MSMED Act 2006 and it clarified:*
>
> *A) Activities considered as manufacturing:*
>
> *ii) Composite unit of poultry with Chicken (Meat) Processing*
> *[Poultry farm without chicken (meat) processing shall not be classified either as manufacturing or as service enterprises because this is a farming activity]"*

5.13 The Appellant has further submitted that once the terms of supply were clearly outlined in the HT Agreement and Tariff Order which clearly categories poultry farming within the HT I category, the 2nd Respondent had no power to unilaterally change the tariff classification of the Petitioner, without following the procedure specified in the Electricity Act, 2003 and the regulations there-under.

5.14 The Appellant has stated that then received Lr. No. 331/SE/TEDC/DFC/ TPR/RCS/AS/A2/F.HT.SC.No.107/14 dated 12.11.2014 revising the bills from the setting up of the service connection in December 2011 to September 2014 and demanding payment of Rs. 31,84,192/- as alleged shortfall.

5.15 The Appellant has stated that said amount was included in the subsequent current consumption bill of HTSC No. 107, in the bill for December 2014 issued to the Petitioner on 31.12.2014 with the due date being 06.01.2015.

5.16 The Appellant has stated they have received notice bearing no. Lr. No. 002/SE/TEDC/FDC/TPR/RCS/AS/A2/F.HT.sc.No. 107/2014 dated 07.01.2015 from the 2nd Respondent threatening to disconnect HT Sc. No. 109 in case of failure to pay the revised amount including BPSC, amounting to a total demand of Rs. 31,84,192/-.

5.17 The Appellant has stated that fearing disconnection, filed W.P. No. 2239 of 2015 and obtained interim stay on 30.01.2015 which was extended subsequently.

5.18 However, due to the ill health of the appellant's counsel, the writ petition no. 2239 of 2015 was dismissed for non-prosecution on 07.07.2022. Taking advantage of the inadvertent dismissal of the writ petition, the Respondents disconnected the service connection no. 107 of the appellant and also threatened to include the impugned demand amount in the other service connections of the Petitioner.

5.19 The Appellant has stated that they had written a letter dated 28.11.2022 requesting the Respondents not to disconnect the service connection in the interest of equity, and that disconnection would cause severely disrupt the appellant's operations in its breeder farm and damage its inventory.

5.20 The Appellant has stated that despite the same, the Respondents disconnected the HT Sc. No. 107 on 27.12.2022. The appellant then wrote letter dated 26.12.2022 asking for reconnection and offering to execute a bank guarantee for the demand amount for both service connections nos. 107 and 109.

5.21 The Appellant has stated that despite receipt of the same, the Respondents have not reconnected the service connections and as of date, they stand disconnected and the appellant's business and operations have been disrupted severely.

5.22 The Appellant has stated that they have immediately filed petitions to restore W.P. No. 2239 of 2015 on the file of the Hon'ble High Court and vide order dated 18.08.2023, the writ petition was restored to the file of the Hon'ble Madras High Court.

5.23 The Appellant has stated that when the writ petition came for hearing on 22.08.2024, the Hon'ble Madras High Court was pleased to grant liberty to the Petitioner approach this forum for effective adjudication. The relevant extract of the order is as follows:

> *"6. In view of the restricted prayer as sought for by the petitioner, this Court without interfering with the impugned demands, grants liberty to the petitioner to approach the CGRF by way of making appropriate application within a period of two weeks from the date of receipt of a copy of this order.*
> *Upon receipt of such application, the CGRF shall consider the same on merits and in accordance with law and pass appropriate orders within a period of four weeks thereafter, after affording an opportunity of personal hearing to the petitioner."*

5.24 The Appellant has stated that Hon'ble Madras High Court had passed the order dated 27.08.2024 in the writ petition filed by the Appellant wherein the Appellant was granted liberty to approach CGRF within 2 weeks of the receipt of the certified copy of the order. I state that despite the certified copy having been applied for, the same has not yet been issued to the Appellant. However, owing to the urgency in the matter, the Appellant has CGRF seeking urgent relief, as the Respondents are attempting to include impugned demands in the Appellant's other service connections and disrupt their operation.

5.25 The Appellant has stated that herein then approached the Consumer Grievance Redressal Forum at Balammal Colony, Tirupattur and filed CGRF complaint no. 2709241245994 & 2709241243682 dated 27.09.2024 under the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004.

5.26 The Appellant has stated that the said complaint came to be numbered as CGRF/TPR/No. 50/2024 and came up for hearing on 25.10.2024, wherein the Appellant herein, through its authorised representative, made submissions before the Forum on the illegality of the demands raised by the Respondents herein and that the demands were to be set aside as contrary to the applicable Regulations, Tariff Orders and the spirit and scheme of the Electricity Act, 2003.

5.27 The Appellant has stated that the Forum passed order dated 29.10.2024 dismissing the CGRF petition filed by the Appellant herein. The order was received by the Appellant herein on 05.11.2024 by post.

5.28 The Appellant herein is filing the present appeal against the order of the CGRF, Balammal Colony, Tirupattur as the impugned order suffers from non-consideration of material facts and is contrary to settled law, and the said order is liable to be set aside.

5.29 The Appellant has stated that the appeal is being filed within the limitation period and with a deposit of 25% of the demand as specified in Regulation 8 of the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004.

5.30 The Appellant has stated that in addition to the contentions raised above submissions made by the Appellant herein before the CGRF Tirupattur, the Appellant assails the impugned order and the demand impugned in CGRF/TPR/No. 50/2024 on the following grounds, each of which are in the alternative to and without prejudice to each other.

Grounds of the Appeal:

5.31 (A) The Appellant has stated that the impugned demand is without the authority of law, and is entirely illegal, arbitrary and barred by limitation and deserves to be set aside. The Respondents have resorted to indiscriminate reclassification of the petitioner's and other units based on their self-serving interpretation, despite not having the power or jurisdiction to do so.

(B) The Appellant has stated that it is a settled position of law that the Electricity Board and authorities cannot unilaterally alter the Tariff Classifications of a consumer in contravention of the terms of the Tariff Order.

(C) The Appellant has submitted that the distribution licensee cannot retroactively apply a higher Tariff category, especially when the same is contrary to the express terms of the Tariff Order. The Hon'ble Commission's order in T.P. No. 1 of 2013

clearly categorises poultry farming, effluent treatment plants and cold storage facilities within the HT Tariff IA category.

(D) The Appellant has submitted that the distribution licensee does not have the power to unilaterally reclassify a consumer's tariff category. In case of any discrepancy, the licensee can only apply to the Commission for clarification of the Tariff Order as the procedure prescribed in the Electricity Act. The Hon'ble TNERC has held the same in M.P. No. 4 of 2021 and in order dated 02.03.2021 had ordered the following:

> *"4.4. The Commission after careful consideration of the submissions of both the side would like to refer the Commissions views in clause 5.2.2.15 in the Tariff Order in TP no 1 of 2017 dt 11.8.2017 wherein it is mentioned that, The commission is of the view.....In case TANGEDCO identifies the need for specifically excluding any other activity, then TANGEDCO should submit the necessary proposal for the same, along with necessary justification in its next tariff Petition. Any mid-course clarification to classify any type/group of activities, after 4 years from the issue of the Tariff Order may result in retrospective revision of tariff for that category."*

(E) The Appellant has stated that despite this and the binding terms of the HT Agreement dated 18.08.2011, the 2nd Respondent has retroactively revised the bills for the 3 previous years (2011- 2014) and sought to apply a higher Tariff to the Petitioner's service connection no. 109. This action is entirely lacking in legal basis and against the directions of the Hon'ble Commission and the Hon'ble Madras High Court.

(F) The Appellant has stated that they also places reliance on the Hon'ble TNERC's order in M.P. No. 28 of 2021, where the appellant therein had approached the Commission challenging the Board's application of the LT V commercial Tariff despite his having set up and operated the service connection for an industrial activity under the LT III B Tariff category. The relevant extract of the Commission's order states:

> *"3.11. However, the intention of TANGEDCO is aimed to deny tariffs LT II-B to the Petitioner on their own assumption without properly analyzing whether any manufacturing activity is carried on or not. Therefore, it involves a serious threat to the petitioner, which is already in the process of manufacturing activity since 2014 and importantly the service connections has been sanctioned to the Petitioner Industry by the Respondent TANGEDCO as early as 2014 under LT Tariff IIIB. The*

2nd Respondent has intentionally and deliberately has issued the demand notice on the Petitioner with a mala-fide intentions and ulterior motive.

As above, the Commission was not inclined for any reclassification / clarification in respect of the above categories from the existing one, as per the Order of the Commission in T.P.1 of 2017 dated 11.08.2017. Moreover the TANGEDCO was directed to file a comprehensive Tariff petition incorporating all its clarification for deciding the matter in ensuring tariff order after getting the comments of the stakeholders.

5.8. Having any doubt in its mind on applicability of tariff, the respondent cannot punish any consumer to the extreme of disconnection of supply/ level of compounding under Section 135 of the Electricity Act, 2003. Thus no clarification issued by the Commission as above, the applicability of the order in M.P.4 of 2021 cannot be interpreted as ex post facto or ex ante. The petitioner has clearly shown its activities carried out in its premises with the pictorial evidences (photos), whereas the respondent failed to do so. From these evidences, we have our opinion that the activities can be said to be as per the major activity defined under the EM / Udyog Aadhaar Registration certificate. In view of this the change of tariff to LT-V will not arise in the case of the petitioner.
(emphasis supplied)"

(G) The Appellant has stated that the position of law is settled that the licensee ought to apply the Tariff Orders passed by the State Commission and does not have the authority to transgress or reinterpret the Tariff Order.

(H) That the Appellant's appellant's sister concern, CP Aquaculture (India) Pvt. Ltd., had filed an appeal petition before the Hon'ble TN Electricity Ombudsman for a similar issue of arbitrary re-classification of tariff from HT IA to HT III Commercial. The Hon'ble TN Electricity Ombudsman in Appeal Petition No. 7 of 2020 in order dated 17.11.2020 had quashed the impugned demand, observing the following:

"7.9 On a careful reading of the above, TANGEDCO requested the Commission to omit the word 'Registered Factories' under HT Tariff IA. Hon'ble Commission rejected the TANGEDCO's proposal stating that omission of the term 'Registered Factories' under HT Tariff IA may have some unintended consequences. Further direction is that in case TANGEDCO identifies the need for specifically excluding any other activity, then TANGEDCO should submit the necessary proposal for the same, along with necessary justification, along with its next Tariff Petition.

7.10 With the above findings, I am of the view that if the respondent desires to categorize the appellant's industry under HT Tariff III (Commercial) from HT Tariff IA (Industry), they cannot make such conversion arbitrarily but should submit necessary proposal for the same to the Hon'ble TNERC with necessary justification, along with its next Tariff Petition as per the direction of the Hon'ble Commission. Therefore the order of CGRF of Villupuram Electricity Distribution Circle issued in

CGRF petition 03 of 2019, dated 30.11.2019 is quashed. Further, the respondent is directed;
i) to reinstate the appellant's HT SC No.46 under HT Tariff IA.
ii) to adjust the excess amount paid by the appellant on account of alleged tariff change and also the BOAB audit arrear amount which was paid by the appellant under protest. Further such refund shall be made in line with regulation 12(2) of TNE Supply Code Regulations, 2004.(emphasis supplied)"

(I) The Appellant has stated that the forum has failed to consider that the Respondent has retroactively reclassified the appellant's tariff and demanded arrears in December 2014 for the period commencing October 2011. It is submitted that such a demand is also barred by limitation under Section 56 (2) of the Electricity Act, 2003.

(J) The Appellant has stated that the Forum has ignored the settled position of law has been settled by several orders of the Hon'ble Commission and the Hon'ble Madras High Court. The Respondents have acted without authority of law and have arbitrarily reclassified the Petitioner's service connection in contravention of the Tariff Order.

(K) The Appellant has submitted that the subsequent Tariff Orders have been consistent in placing poultry farms within the HT I category. The Hon'ble TNERC's order in T.P. No. 1 of 2017 dated 11.08.2017 states:

"6.1.2.1 This Tariff is applicable to:
1. *All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants. However, registered factories such as LPG bottling Units which are of non-manufacturing nature are not to be included in this tariff category.*
2. *Common effluent treatment plants, Industrial estate's water treatment/supply works,*
3. *Cold storage units"*

(emphasis supplied)

(L) The Appellant has stated that they also relies on the Tariff Order of 2022, in Order No. 7 of 2022 in T.P. No. 1 of 2022 dated 09.09.2022 of the Hon'ble Commission states:

"6.1.2.1 This Tariff is applicable to:
i. All manufacturing and industrial establishments and registered factories.

ii. *This tariff is also applicable for Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants, Industrial Workshops, Private Milk dairies, Rice Mills, Roller Flour Mills, News Papers Printing Press, Ice & Ice cream manufacturing units, Tannaries, Hatcheries, Poultry Farm, Floriculture, Poly House/Green House, Hybrid Seeds processing units, Centralised preparation units of Food/ sweets/bakery shops (provided sales counter is physically & electrically segregated & billed under respective HT-III/LT-V category), Packaging Units, Drug manufacturing units, Garment manufacturing units, Tyre retreading units, petroleum pipeline projects, Piggery farms, Analytical Lab for analysis of ore metals, Saw Mills, Toy/wood industries, Satellite communication centres, Mineral water processing plants attached with drinking water, Mineral water bottling plants and Solid Waste Processing Plant, concrete mixture (Ready Mix Concrete) units, Cutting of larger pipes and sheets into smaller one, Pumping of Oil and Gas units, RO plants Sea/hard water conversion done by Private / on behalf of CMWSS Board under Design Build and Operate (DBO), Tamil Nadu State Transport Corporation repair and Workshop and maintenance, Sericulture, Floriculture, Horticulture, Mushroom cultivation, cattle farming, Poultry & Bird farming and Fish/prawn/shrimp culture, Battery charging units.*

iii. *Common effluent treatment plants, Industrial estate's water treatment/supply works;*

iv. *Cold storage units;"*

(M) The Appellant has stated that the Forum has incorrectly emphasized on the industrial certificate despite the Appellant producing several documentation to show that it is an industrial unit, including inter alia, its pollution clearance certificate, industrial certificate as a hatchery dated 23.07.2010 and the Central government's notification allowing the appellant to set up industrial units in India for its poultry business.

(N) The Appellant has stated that the Forum has ignored the clear and binding terms of the 2013 and 2017 Tariff Orders which are applicable to 'all industrial units', despite which the Forum has wrongly held that the Appellant is carrying out a commercial activity.

(O) The Appellant has stated that the Forum has failed to consider the orders of the Hon'ble TNERC, clear provisions of the Tariff Orders and this Hon'ble Authority's order in the case of the prawn farms operated by the appellant's sister entity.

The Appellant has prayed to

i. Set aside the imputed order dated 29.10.2024 of the CGRF, Balammal Colony, Tirupattur in CGRF/TPR/No.50/2024 dismissing CGRF complaint No. 2709241245994 & 2709241243682 for its non-consideration of material facts and law and insufficient reasoning and thus render justice;

ii. Set aside the impugned demand notice bearing no. 002/SE/TEDC/FDC/TPR/RCS/AS/A2/F.HT.Sc.No.107/2015 Lr. No. dated 07.01.2015 and any and all consequent demand notices including but not limited to Lr. 331/SE/TEDC/DFC/TPR /RCS/AS/A2/F.HTSC.NO.107 / 2014 No. dated 12.11.2014, Lr. No. SE / TEDC /HT / Asst.2 /F.HTSC.No.107 /D03/2014 dated 07.01.2015, Lr. No. ACE/DFC/RCS/A2/F.HTSC No.089094130107/2022 dated 11.11.2022, Lr. No. SE/TEDC/HT/Asst.2/F.HTSC No.107/D03/2014 dated 08.12.2022 and Lr No. ACE/DFC/RCS/A2/F.htsc No.107&109/2023 dated 19.04.2023 for levy of consumption charges under the HT III Commercial Tariff category as illegal, arbitrary and contrary to the Tariff Order T.P. No. 1 of 2013 and the Electricity Act, 2003;

iii. to reinstate the appellant's HT SC No. 107 under HT Tariff IA; and pass such further or other orders that may be necessary in the interest of justice.

6.0 <u>Counter submitted by the Respondent</u>:

6.1 The Respondent has submitted that he has read the affidavit of the petitioner filed in support of the appeal petition and he denies all the averments there in except that are expressly admitted hereunder. He submitted that the above appeal petition filed against the order of the CGRF Tirupattur is not maintainable either in law or on facts.

6.2 The Respondent has submitted that the appellant being an agreement holder is bound by the Provisions of the Electricity Act 2003, Hon'ble Tamil Nadu Electricity Regulatory Commission's Supply code, Distribution code and Tariff Orders issued by the Hon'ble Commission from time to time and as such estopped from disputing the demand.

6.3 The Respondent has submitted that the new HT service connection was sanctioned vide Lr.No.SE / TEDC / TPR/DEV/JE/F.HT.New / D.887/10 dt.28.03.2011 with a sanctioned demand of 300 KVA to M/s Charoen Pokphand (India) Pvt.Ltd at Agaramchery Village, Ambur Taluk, Vellore District.

6.4 The Respondent has submitted that aggrieved by the above notices, the appellant had filed writ petition in the Hon'ble High court of Madras vide W.P.No.2239 of 2015 and obtained stay order. The Hon'ble High Court on 07.07.2022 has dismissed the above cases for non-prosecution due to no representation from the petitioner side.

6.5 The Respondent has submitted that consequent to the dismissal of the petition, in order to give opportunity to the appellant, show cause notices were issued to the consumer vide this office letter No.DFC/RCS/A2/F.HT Sc. No.089094130107/2022 dt.11.11.2022 towards payment of difference in Tariff rate amounting to Rs.3,22,05,106/- along with BPSC for the period from 11/2011 to 07/2022 in respect of HT Sc.No.107.

6.6 The Respondent has submitted that in response to the above show cause notice, the consumer has stated in the letter dt.28.11.2022, that restoration petition has already been filed and pending for directions and prayed for time to clear dues until writ petition is disposed off on merits.

6.7 Further, since no reply has been received from the consumer on merits and no orders restraining TNPDCL to claim the legitimate dues, a final notices was issued to the consumer vide this office letter No.ACE/DFC/RCS/A2/ F.HT Sc.No.107/D.No.184/dt.08.12.2022 to pay the dues within 15 days from the date of receipt of the letter failing which the service connections will be disconnected.

6.8 The Respondent has submitted that consumer has not paid the dues as demanded by this office within the prescribed period and hence the above service connection was disconnected on 26.12.2022. Subsequently, accounts of the service has been closed and intimated to the consumer for payment of the above demand vide this office letter dt.05.08.2024.

6.9 The Respondent has submitted that he denied averments made in para 4. It is respectfully submitted that no advise was given by the Respondent regarding applicable tariff to the above service Connection.

6.10 The Respondent has submitted that the HT Agreement dt.07.04.2021 was entered into Appellant. However, he denied the averments in para 5 that Agreement was entered under HT Tariff IA. It is clearly mentioned in the Agreement that consumer shall pay the Licensee, maximum demand charges, energy charges, surcharges, meter rents and other charges, if any in accordance with the tariff applicable and the terms and conditions of supply notified from time to time for the appropriate class of consumers to which such consumer belongs.

6.11 The Respondent has submitted that he denied the averments made in Para 6. As per the Tariff Order T.P.No.1 of 2013 issued by the Hon'be TNERC, it is submitted that poultry farming was not categorised under HT Tariff IA.

6.12 The Respondent has submitted that the appellant was requested vide this office letters dt.05.09.2014 and 10.10.2014 to produce the Industrial License obtained from the Inspector of factories for billing under HT Tariff 1A. But the appellant has not produced the Industrial license obtained from the Inspector of Factories. As such the CC bills of HT Sc.No.107 were billed under HT Tariff III from 10/2014 and the CC charges under HT Tariff III had been paid by the consumer up to December 2014.

6.13 The Respondent has submitted that CC bills from 05/2011 to 09/2014 were revised under HT Tariff III and informed to the consumer to pay the difference in tariff amount of Rs.31,84,192/- vide Lr.No.331/SE/TEDC /DFC/TPR/RCS/AS/ F.HT/ SC.No.107/ 2014 DT.12.11.2014. Since the above amount has not been paid by the consumer, a fifteen days notice was issued on 07.01.2015.

6.14 The Respondent has submitted that the Hon'ble High Court of Madras has reopened the case and disposed the case on 22.08.2024 by directing the appellant to seek remedy in the CGRF Forum at Tirupattur.

6.15 The Respondent has submitted that accordingly, the appellant has filed petition before the Consumer Grievance Redressal Forum, Tirupattur vide application No. CGRF/TPR/No.50/2024. The case came up for hearing on 25.10.2024. After hearing both sides, the CGRF has dismissed the above petition on 29.10.2024 and asked the consumer to pay the difference in tariff rates with applicable belated payment surcharge. The findings of the CGRF is submitted below.

> *"In view of the above findings the Forum decides that the absence of categorization of Hatcheries and Poultry Farms activities under HT Tariff 1A in the tariff orders issued by the Hon'ble TNERC for the period before 10.09.2022 the claim of respondent to bill under HT Tariff III is in order. Further the Forum directs the petitioner M/s Charoen Pokphand (India) Pvt Ltd., is liable to pay the difference in tariff rate for the period from 06/2011 to 07/2022 with BPSC till the date of payment for the HT Sc.No. 107. "*

6.16 The Respondent has submitted that as per the prevailing Tariff Orders issued by the Hon'ble TNERC, the Poultry farming/Hatcheries categories were not classified under HT Tariff 1A. Further, the registered factories are covered under the Industrial Tariff. Hence, the appellant was called for Industrial Certificate issued by the Inspector of factories. However, due to non productions of the said certificate, the respondent had billed the service under HT Tariff III.

6.17 The Respondent has submitted that as per the Tariff orders, the definition of HT Tariff III is "All Commercial Establishments and other categories of consumers not covered under High Tension Tariff 1A, 1B, IIA and IV.

6.18 The Respondent has submitted that in the Tariff Order issued by the Hon'ble TNERC vide Order No. 7 of 2022 T.P.No.1 of 2022 dt.09.09.2022 with effect from 10.09.2022, the Hatcheries and Poultry Farms have been categorised as HT Tariff 1A. Hence, the petitioner service is eligible for billing under HT Tariff 1A with effect from 10.09.2022 only.

6.19 The Respondent has submitted that in view of the foregoing points that in absence of categorization of Hatcheries and Poultry Farms activities under HT Tariff 1A in the tariff orders issued by Hon'ble TNERC for the period before 10.09.2022 the

claim of appellant to bill under HT Tariff 1A is not in order. It is respectfully prayed that the appeal petition to be dismissed and thus render justice.

7.0 Additional Affidavit Submitted by the Respondents:

7.1 The Respondent has submitted that averments made in para 2 is denied. The CC bills for the above services were billed, inadvertently, under HT Tariff IA for the period from 11/2011 to 09/2014 though the appellant's industry not covered under said tariff category. Moreover, the appellant had not produced factory license (obtained from the Inspector of Factories) to establish the appellant's industry as registered manufacturing industries. Hence, the bills were revised under HT Tariff III.

7.2 The Respondent has submitted that averments made in para 3 is denied. As per the prevailing Tariff order, the approval from the Ministry of Industry's notification is not adequate to classify under HT Tariff 1A.

7.3 The Respondent has submitted that the averments made in para 4 is incorrect as no advice had been issued by the Respondent with regard to applicability of tariff to the above service connection.

7.4 The Respondent has submitted that the averments made in para 5 is incorrect. The HT Agreement dt. 07.04.2011 had been entered by the appellant with 2nd respondent and nowhere the applicability of the tariff was mentioned. It is clearly mentioned in the Agreement that consumer shall pay the Licensee, maximum demand charges, energy charges, surcharges, meter rents and other charges, if any in accordance with the tariff applicable and the terms and conditions of supply notified from time to time for the appropriate category of consumers to which such consumer belongs.

7.5 The Respondent has submitted that the averments made by the appellant in Para 6 is incorrect. As per the Tariff Order T.P.No.1 of 2013 issued by the Hon'be TNERC, it is submitted that poultry farming was not categorised under HT Tariff IA. Moreover, in order to ascertain any manufacturing activity had been involved in the

appellant's premises, the appellant had been requested; vide this office letters dt.05.09.2014 and 10.10.2014, to produce the Factory License obtained from the Inspector of Factories. But, the appellant had not produced said document. Hence, the CC bills of HT SC.No.107 were billed under HT Tariff III from 10/2014 and the CC charges under HT Tariff III had been paid by the consumer up to December 2014.

7.6 The Respondent has submitted that the averments made in para 7,8 and 9 are incorrect. The CC bills for the above services were billed, inadvertently, under HT Tariff IA for the period from 11/2011 to 09/2014 though the appellant's Industry not covered under said tariff category. Moreover, the appellant had not produced factory license (obtained from the Inspector of Factories) to establish the appellant's industry as registered manufacturing industries. Hence, the bills were revised under HT Tariff III.

7.7 The Respondent has submitted that the averments made in para 10 is incorrect. The Certificate issued from the Pollution Control Board cannot be taken for consideration for applicability of Tariff.

7.8 The Respondent has submitted that averments made by the appellant in Para 11 & 12 is incorrect. The certificate issued from the Department of Industries and Commerce, Government of Tamil Nadu is taken into consideration only for MSME industries under LT tariff category. The above certificate is not taken into consideration for applicability of Tariff in HT category.

7.9 The Respondent has submitted that averments made by the appellant in Para 13 is incorrect. It is submitted that nowhere the applicability of the tariff was mentioned in the HT Agreement entered by the appellant with 2nd respondent. Further as per the Tariff Order issued by the Hon'ble TNERC at the time of effecting the above service, the Poultry farms had not been classified under HT tariff 1A.

7.10 The Respondent has submitted that averments made in Paras 14 to 30 are related subsequent developments of the case. Hence, no remarks offered.

7.11 The Respondent has submitted that averments made by the appellant in Paras A, B of Grounds are incorrect. It is submitted that the tariff of the petitioner service was revised from HT Tariff 1A to HT tariff III was due to non production of Factory licence from Inspector of factories and non classification of Poultry farms under HT Tariff 1A as per the prevailing Tariff order issued by the TNERC. Further, due notices were issued to the appellant by the respondent regarding revision of bills.

7.12 The Respondent has submitted that averments made by the appellant in Para C of Grounds are incorrect. As per the Tariff Order T.P.No.1 of 2013 issued by the Hon'be TNERC, it is submitted that poultry farming was not categorised under HT Tariff IA.

7.13 The Respondent has submitted that as regards the averments contained in para (I) of the grounds of the petition filed by the Petitioner is concerned, it is respectfully submitted the Hon'ble Supreme Court of India passed an order on 05.10.2021 in C.A.No. 7235 of 2009, the relevant portion which held as follows:

"xxxx

4. *After 3 years of the grant of extension, the appellant was served with a memo dated 11.09.2009 by the third respondent herein, under the caption "short assessment notice", claiming that though the multiply factor (MF) is 10, it was wrongly recorded in the bills for the period from 3.08.2006 to 8/09 as 5 and that as a consequence there was short billing to the tune of Rs.1,35,06,585/. The notice called upon the appellant to pay the amount as demanded, failing which certain consequences would follow.*

5. Aggrieved by the said notice, the appellant gave a representation on 22.09.2009 and then filed a consumer complaint before the National Commission, contending inter alla that the demand made by the respondents is the outcome of a glaring mistake and gross negligence on their part and that under Section 56 of the Electricity Act, 2003 (for short "the Act"), no amount due from a customer is recoverable after a period of two years from the date on which it became first due.

6. By an Order dated 1.10.2009, the National Commission dismissed the complaint on the ground that it is a case of "escaped assessment and not a case of "deficiency in service". Aggrieved by the said Order, the appellant is before us.

7. While ordering notice in the above appeal on 13.11.2009, this Court granted interim stay of the impugned order. However, on an application filed on behalf of the respondents for vacating the interim order, this Court modified the stay Order on 19.08.2014 directing the appellant to pay to the first respondent herein, 50% of the demand amount within six weeks with a condition that in case the appellant succeeded, the said amount shall be refunded with interest 9% p.a. Accordingly, the appellant has paid a sum of Rs.54,03,293/, on 24.09.2014. The appellant claims to have already paid a sum of Rs.13,50,000/on 9.10.2009 itself and this amount, together with the amount deposited on 24.09.2014 pursuant to the interim order of this Court, constituted 50% of the amount as demanded in short assessment notice dated 11.09.2009.

8. The sheet anchor of the case of the appellant is Section 56(2) of the Act and the exposition of law made by this Court in the decision in Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam limited and Anr. vs. Rahamatullah Khan alias Rahamjulla.

9. Before we proceed to consider the statutory provision and the decision of this Court relied upon by the appellant, it is relevant to take note of the fact that the appellant never disputed the correctness of the claim of the respondents that the multiply factor (MF) to be applied was 10, but it was wrongly applied as 5. The only grievance raised by the appellant both in their representation and in their consumer complaint was that they cannot be made to suffer on account of the negligence on the part of the respondents and that on the basis of the bill already raised, they have charged their customers and that it may not be possible for them to go back to their customers with an additional demand now. In addition, the bar under Section 56 was also pleaded.

10. Section 56 of the Electricity Act, 2003 reads as under: "56. Disconnection of supply in default of payment.

Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, an amount equal to the sum claimed from him, or the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2). Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

11. Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term "first due" in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.

12. On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in Rahamatullah Khan (supra), that "the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)".

This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in Mahabir Kishore & Ors. vs. State of Madhya Pradesh.

13. Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available

in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).

14. But a careful reading of Section 56(2) would show that the bar contained therein is not merely with respect to disconnection of supply but also with respect to recovery. If Subsection (2) of Section 56 is dissected into two parts it will read as follows: No sum due from any consumer under this Section shall be recoverable after the period of two years from the date when such sum became first due; and the licensee shall not cut off the supply of electricity.

15. Therefore, the bar actually operates on two distinct rights of the licensee, namely, (i) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect, is actually an exception to the law of limitation. Under the law of limitation, what is extinguished is the remedy and not the right. To be precise, what is extinguished by the law of limitation, is the remedy through a court of law and not a remedy available, if any, de hors through a court of law. However, section 56(2) bars not merely the normal remedy of recovery but also bars the remedy of disconnection. This is why we think that the second part of Section 56(2) is an exception to the law of limitation.

16. Be that as it may, once it is held that the term "first due" would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But Rahamatullah Khan says in the penultimate paragraph that "the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under subsection (2) of section 56 of the Act".

17. It appears from the narration of facts in paragraph 2 of Rahamatullah Khan (supra) that this Court was persuaded to take the view that it did, on account of certain peculiar facts. The consumer in that case was billed under a particular tariff code for the period from July2009 to September2011. But after audit, it was discovered that a different tariff code should have been applied

Therefore, a show cause notice was issued on 18.03.2014 raising an additional demand for the period from July 2009 to September2011. Then a bill was raised on 25.05.2015 for the aforesaid period. Therefore, the consumer successfully challenged the demand before the District Consumer Forum, but the Order of the District Forum was reversed by the State Commission on an appeal by the licensee. The National Commission on a revision filed by the consumer, set aside the order of

the State Commission and restored the order of the District Forum. It was this Order of the National Commission that was under challenge before this Court in Rahamatullah Khan (supra).

18. Eventually, this Court disposed of the appeals, preventing the licensee from taking recourse to disconnection of supply, but giving them liberty to take recourse to any remedy available in law for recovery of the additional demand. Therefore, the decision in Rahamatullah Khan (supra) is distinguishable on facts.

19. Even otherwise there are two things in this case, which we cannot overlook. The first is that the question whether the raising of an additional demand, by itself would tantamount to any deficiency in service, clothing the consumer fora with a power to deal with the dispute, was not raised or considered in Rahamatullah Khan (supra). The second is the impact of Subsection (1) of Section 56 on Subsection (2) thereto.

20. The fora constituted under the Consumer Protection Act, 1986 is entitled to deal with the complaint of a consumer, either in relation to defective goods or in relation to deficiency in services. The word "deficiency" is defined in Section 2(1)(g) of the Consumer Protection Act, 1986 as follows:

"2(1)(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

21. The raising of an additional demand in the form of "short assessment notice", on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of "escaped assessment" and not "deficiency in service".

22. In fact, even before going into the question of Section 56(2), the consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only then that the recourse taken by the licensee for recovery of the amount, can be put to test in terms of Section 56. If the case on hand is tested on this parameter, it will be clear that the respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

23. Coming to the second aspect, namely, the impact of Subsection (1) on Subsection (2) of Section 56, it is seen that the bottom line of Sub section (1) is the negligence of any person to pay any charge for electricity. Subsection (1) starts with the words "where any person neglects to pay any charge for electricity or any some other than a charge for electricity due from him".

24. Subsection (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Subsection (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer under this Section", appearing in Subsection (2).

26. The matter can be examined from another angle as well. Sub section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Subsection (2) of Section 56 has a nonobstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Subsection (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in Rahamatullah Khan and Section 56(2) will not go to the rescue of the appellant.

27. Therefore, we are of the view that the National Commission was justified in rejecting the complaint and we find no reason to interfere with the Order of the National Commission. Accordingly, the appeal is dismissed. However, since the appellant has already paid 50% of the demand amount pursuant to an interim order passed by this Court on 19.08.2014, we give eight weeks time to the appellant to make payment of the balance amount. There shall be no order as to costs.''

7.14 The Respondent has submitted that from conjoint reading of the above mentioned the Hon'ble Supreme Court orders, Sub section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Subsection (2) of Section 56 has a non obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Subsection (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence, the contentions of the petitioner are not sustainable one.

7.15 The Respondent has submitted that in nutshell, the Supreme Court of India has held that Section 56(2) of the Electricity Act, 2003 does not apply in the case where a licensed Electricity Distribution Company under the Electricity Act, 2003 raises an additional bill after detecting a mistake. Therefore the law of limitation would commence from the date of 05.09.2014 i.e the date of discovery of mistake. Pursuant to the above, the respondent issued impugned demand notice on 12.11.2014. The said impugned order/supplementary bill/ additional bill/short assessment notice was issued within the limitation period of two years as per the Section 56 (2) of the Electricity Act, 2003. Hence, the contention of the appellant is misconceived one.

7.16 The Respondent has submitted that in absence of factory licence issued by the Inspector of Factories and non-categorisation of Hatcheries and Poultry Farms activities under HT Tariff 1A in the tariff orders issued by Hon'ble TNERC for the period before 10.09.2022 the claim of appellant to bill under HT Tariff 1A is not in order. It is respectfully prayed that the appeal petition to be dismissed and thus render justice.

8.0 Findings of the Electricity Ombudsman:

8.1 Based on the prayer, counter and subsequent arguments at the time of hearing the following are the issues to be decided;

1. What is the nature of activity in the appellant HT service?
2. What is the disputed period for the claim?
3. What are the activities defined in HT tariff IA & III over the above period?
4. Whether the Appellant's claim to remain under HT Tariff IA, asserting that their activity was of an industrial nature during the disputed period, is valid?
5. Whether the Appellant's claim to set aside the demand notice, reinstate Tariff IA, and determine if the claim is barred by limitation under Section 56(2) of the Electricity Act, 2003, is valid?

9.0 Findings on the first issue:

9.1 Upon scrutiny of the documents submitted by the Applicant, it was ascertained that the Appellant requested an HT service connection with a demand of 300 KVA on 18-03-2011 from SE/Thirupattur EDC, mentioning the activity as a hatchery. Furthermore, during the hearing, it was confirmed that the activity involved both a hatchery and a poultry farm.

10.0 Findings on the second issue:

10.1 As per the documents, it was observed that the HT tariff was changed from HT Tariff IA to III for the period from 05/2011 to 09/2014, resulting in a revised arrear payment demand of Rs.31,84,192/-. In October 2014, the bill was issued under HT Tariff III. Following this, the Appellant obtained an interim stay in W.P. Nos. 2238 & 2239 of 2015 on 30-01-2015. Subsequently, the Respondent billed under HT Tariff IA until the dismissal of W.P. Nos. 2238 & 2239 of 2015 on 07-07-2022.

10.2 The Respondent revised the bill for the period from June 2011 to July 2022 under Tariff III and claimed the shortfall amount from the Appellant. Upon non-payment of the amount, the Respondent disconnected the service on 26-11-2022.

10.3 It is further understood that the Appellant restored W.P. No. 2239 of 2015 on 18-08-2023, and the Hon'ble High Court directed the Appellant to approach the CGRF on 22-08-2024. Dissatisfied with the CGRF's order, the Appellant filed the present appeal before the Electricity Ombudsman.

10.4 From the above, it is understood that the adoption of the tariff and the subsequent claim of demand pertained to the disputed period was from June 2011 to July 2022.

11.0 Findings on the third issue:

11.1 In order to ascertain the applicable tariff for the Appellant's HT service connections during the disputed period, I would like to refer to the relevant Tariff Order for HT IA and III right from 2010 Tariff Order.

Order No. 3 of 2010 dated 31.07.2010.

"9.11.2 High Tension Tariff IA:

9.11.2.1 This tariff is applicable to all industrial establishments and registered factories which includes Tea Estates, Textiles, Fertilizers, Salem Steel Plant, Heavy Water Plant, Chemical Plant, common effluent treatment plant, Cold storage units, Information Technology Services.

Information Technology Services as defined in the Information Communication Policy (ICT Policy) 2008 of Government of Tamil Nadu. The definition is reproduced below:

"IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation.

9.11.7 High Tension Tariff III

9.11.7.1 This tariff is applicable to all commercial establishments and other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IIB, IIC and IV.

9.11.7.2 IT Enabled services / private communication providers will be charged under this tariff.

9.11.7.3 Industries requiring HT supply shall be charged under the tariff during construction period.

Order No. 1 of 2012 dated 30.03.2012.

10.0 High Tension Tariff IA:

10.2.1 This Tariff is applicable to all manufacturing and industrial establishments and registered factories including Tea Estates, textiles, fertilizers, Salem Steel Plant, Heavy Water Plant, chemical plant, common effluent treatment

plant, Cold storage units, Industrial estates water works, water Supply Works by new Tirupur Area Development Corporation.

10.2.2 Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu.

*10.2.3 ****

10.6 High Tension Tariff III

10.6.1 All Commercial Establishments and other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IIB and IV.

10.6.2 Private Communication providers, Cinema Studios and Cinema Theatres.

Order No. 1 of 2013, dated 20.06.2013.

6.2 High Tension Tariff IA:

a) All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants,

b) Common effluent treatment plants, Industrial estate's water treatment/supply works,

c) Cold storage units

ii. This tariff is also applicable to Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:

*"IT services are broadly defined as systems integration, processing services, information services outsourcing packaged software support installation, hardware support and installation. ****

6.6 High Tension Tariff III:

i. This tariff is applicable to all other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IV and V.

Order No. 9 of 2014 dated 11.12.2014.

6.4 High Tension Tariff II-A

i. This Tariff is applicable to:

a) All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants,

b) Common effluent treatment plants, Industrial estate's water treatment/supply works,

c) Cold storage units

ii. *This tariff is also applicable to Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:*
"IT services are broadly defined as systems integration, processing servicex, information services outsourcing, packaged software support and installation, hardware support and installation ***

6.6 High Tension Tariff III:

i. This tariff is applicable to all other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IIB, IV and V.

Order No. 1 of 2017 dated 11.08.2017.

6.1.2 HT Tariff I A:

6.1.2.1 This Tariff is applicable to:

1. *All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants. However, registered factories such as LPG bottling Units which are of non-manufacturing nature are not to be included in this tariff category.*
2. *Common effluent treatment plants, Industrial estate's water treatment/supply works,*
3. *Cold storage units*

6.1.2.2 This tariff is also applicable to Information Technology services as defined the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:
*"IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation"****
Information Technology Services includes:

(a) Systems integration includes:

i. *Network Management Services*
ii. *Applications Integration*

(b) Processing services includes:

i. *Outsourced Services in Banking, HR, finance, Technology and other areas*
ii. *Outsourced Back office support or Business transformation and Process Consulting Services.*

(c) Information Services Outsourcing includes:

i. *Outsourced Global Information Support Services*
ii. *Knowledge Process Outsourcing*
iii. *Outsourced Global Contact Centre Operations*
iv. *Outsourced Process Consulting Services.*

(d) Packaged Software Support and Installation includes:

i. *Software Design and Development, Support and Maintenance*
ii. *Application installation, support and maintenance*
iii. *Application testing.*

(e) Hardware Support and Installation includes:

i. *Technical and network operations support*

ii. Hardware installation, administration and management
iii. Hardware Infrastructure maintenance and support

(f) *This tariff is also applicable to Aeronautical services provided by the Airports under Airports Authority of India. The Non-Aeronautical services provided shall be categorised under HT III Commercial/Miscellaneous category.*

(g) *This tariff is also applicable to start-up power provided to generators. The generators are eligible to get start-up power under this tariff after declaration of CoD. The demand shall be limited to 10% of the highest capacity of the generating unit of the generating station or the percentage auxiliary consumption as specified in the Tariff Regulations, whichever is less. The supply shall be restricted to 42 days in a year. Drawal of power for a day or part thereof shall be accounted as a day for this purpose. Power factor compensation charges are not applicable for start-up power.*

(h) The HT Industrial consumers (HT IA) shall be billed at 20% extra on the energy charges for the energy recorded during peak hours. The duration of peak hours shall be 6.00 A.M. to 9.00 AM and 6.00 P.M to 9.00 P.M.

(i) The HT Industrial Consumers (HT IA) shall be allowed a reduction of 5% on the energy charges for the consumption recorded during 10.00 P.M to 5.00 A.M as an incentive for night consumption."

6.1.6 High Tension Tariff III:

This tariff is applicable to all other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IIB, IV and V.

Order No. 7 of 2022 dated 09.09.2022.

6.1.2 High Tension Tariff I: *(Industries, Factories, Information Technology Services) for FY 2022-23*

For FY 2023-24 to FY 2026-27
The applicable tariff (both fixed and energy charge) for FY 2022-23 shall undergo an inflation based adjustment, as per para 6.1.1.13. The revision will be effective from 01 July of each of the subsequent years of the control period.

6.1.2.1 This Tariff is applicable to:
i. All manufacturing and industrial establishments and registered factories

ii. This tariff is also applicable for Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants, Industrial Workshops, Private Milk dairies, Rice Mills, Roller Flour Mills, News Papers Printing Press, Ice & Ice-cream manufacturing units, Tanneries, Hatcheries, Poultry Farm, Floriculture, Poly House/Green House, Hybrid Seeds processing units, Centralised preparation units of Food/sweets/bakery shops (provided sales counter is physically & electrically segregated & billed under respective HT-III/LT-V category), Packaging Units, Drug manufacturing units, Garment

manufacturing units, Tyre retreading units, petroleum pipeline projects, Piggery farms, Analytical Lab for analysis of ore metals, Saw Mills, Toy/wood industries, Satellite communication centres, Mineral water processing plants attached with drinking water, Mineral water bottling plants and Solid Waste Processing Plant, concrete mixture (Ready Mix Concrete) units, Cutting of larger pipes and sheets into smaller one, Pumping of Oil and Gas units, RO plants Sea/hard water conversion done by Private/ on behalf of CMWSS Board under Design Build and Operate (DBO), Tamil Nadu (v) State Transport Corporation repair and Workshop and maintenance, Sericulture, Floriculture, Horticulture, Mushroom cultivation, cattle farming, Poultry & Bird farming and Fish/prawn/shrimp culture, Battery charging units.

iii. Common effluent treatment plants, Industrial estate's water treatment / supply works;

iv. Cold Storage units;

v. This tariff is also applicable to the Research & Development Centre/Lab attached therein to the activities mentioned under (i) to (iv) above.

6.1.2.2 This tariff is also applicable to Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:
*"IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation."****
6.1.2.3 This tariff is also applicable to Aeronautical services provided by the Airports under Airports Authority of India. The Non-Aeronautical services provided shall be categorised under HT III/ LT V Commercial / Miscellaneous category.

6.1.2.4 This tariff is also applicable to start-up power provided to generators. The generators are eligible to get start-up power under this tariff after declaration of CoD. The demand shall be limited to 10% of the highest capacity of the generating unit of the generating station of the percentage auxiliary consumption as specified in the 'TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, whichever is less. As the generator is paying the MD charges for the entire year, the restriction on the days of usage is removed. The restriction on number of days as specified in TN Grid Code will be applicable only when demand equated energy charge is fixed by the Commission.

6.1.5 ***High Tension Tariff III: (Miscellaneous categories)***
For FY 2023-24 to FY 2026-27
The applicable tariff (both fixed and energy charge) for FY 2022-23 shall undergo an inflation based adjustment, as per para 6.1.1.13. The revision will be effective from 01" July of each of the subsequent years of the control period.

6.1.5.1 This tariff is applicable to Commercial Complexes/Malls/Business premises, Super market/Departmental stores, Cinema theatres/Multiplex, Private hospitals, Hotels, Restaurants, Private Guest Houses, Boarding-Lodging Homes, All Government/Private/Local body offices, Banks, Telephone Exchanges, T.V. Station, All India Radio, Railway Stations, MRTS stations, Transport Corporation bus stations, Private bus stations, LPG bottling plants, Stadiums other than those maintained by

Government and Local Bodies. Petrol Diesel and Oil storage plants, Oil /Petroleum projects, Petrol/Gas bunks, Diagnostic/scan centres. Marriage halls, convention centres, Service Stations/ Garages, Tyre vulcanizing centres, Gym/Fitness centres, Race Course Clubs, Amusement Parks, Centralised preparation unit of food with Sales counter/ selling activity Yoga/Meditation centres, Ashrams, Mutts, Air Port (other than Aeronautical activities), Private hospitals and all other categories of consumers and usages not covered under High Tension Tariff 1. II(A). II(B), IV and V.

6.1.5.2 In respect of Marriage Hall/Convention centre, commercial establishment 5% extra on the energy charges for the entire consumption will be collected as a component of lavish illumination on usage. For the installations where a separate service connection is available for the exclusive purpose of lavish illumination, this 5% extra charges shall not be applicable. The status of usage of lavish illumination shall be assessed and recorded on regular interval."

11.2 From the above, it is noted that the HT Tariff IA benefit was extended over a period to various activities, which are discussed below:

As per 2010 Tariff order under HT Tariff IA is applicable to all industrial establishments and registered factories which includes Tea Estates, Textiles, Fertilizers, Salem Steel Plant, Heavy Water Plant, Chemical Plant, common effluent treatment plant, Cold storage units, Information Technology Services.

In the tariff order issued during 2012, the following activities were additionally included such as Industrial estates water works, water Supply Works by new Tirupur Area Development Corporation and new classification in Information Technology services viz. software design support, outsourced global information support service, Technical and network operations support. There were no changes in the tariff order issued during 2013 and 2014.

In the tariff order issued during 2017, the activities of Aeronautical services provided by the Airports under Airports Authority of India and start-up power to generators had been included. Further, in the said tariff order it has provided that the registered factories such as LPG bottling Units which are of non-manufacturing nature are not to be included in this tariff category.

11.3 During the period from 2010 to 2017 (Order No.3 of 2010, dated 31.07.2010 to Order No.1 of 2017, dated 11.08.2017), the Hon'ble TNERC added certain activities under Tariff IA and excluded non-manufacturing activities such as LPG

bottling units. Furthermore, it is clarified that Tariff IA is not exclusively for industrial and manufacturing activities. It encompasses a variety of activities, which have been discussed above.

12.0 Findings on the fourth issue:

12.1 The Appellant has stated that the Forum incorrectly emphasized the industrial certificate, despite the Appellant producing several documents to demonstrate that it is an industrial unit. These documents include, among others, the pollution clearance certificate, an industrial certificate as a hatchery dated 23.07.2010, and the Central Government's notification allowing the Appellant to set up industrial units in India for its poultry business.

12.2 The Appellant has stated that the Forum has ignored the clear and binding terms of the 2013 and 2017 Tariff Orders, which are applicable to 'all industrial units'. Despite this, the Forum has wrongly concluded that the Appellant is engaged in a commercial activity.

12.3 The Appellant has stated that the Forum has failed to consider the orders of the Hon'ble TNERC, the clear provisions of the Tariff Orders, and this Hon'ble Authority's order in the case of the prawn farms operated by the Appellant's sister entity.

12.4 The Respondent has submitted that the Appellant was requested, via office letters dated 05.09.2014 and 10.10.2014, to provide the Industrial License obtained from the Inspector of Factories for billing under HT Tariff IA. However, the Appellant did not produce the required Industrial License. As a result, the CC bills for HT Service Connection No. 107 were billed under HT Tariff III starting from October 2014, and the CC charges under HT Tariff III were paid by the consumer until December 2014.

12.5 The Respondent has submitted that the CC bills from May 2011 to September 2014 were revised under HT Tariff III, and the consumer was informed to pay the difference in the tariff amount of Rs.31,84,192/- via Lr. No. 331/SE/TEDC/DFC/TPR/ RCS/AS/F.HT/ SC.No.107/2014 dated 12.11.2014. Since

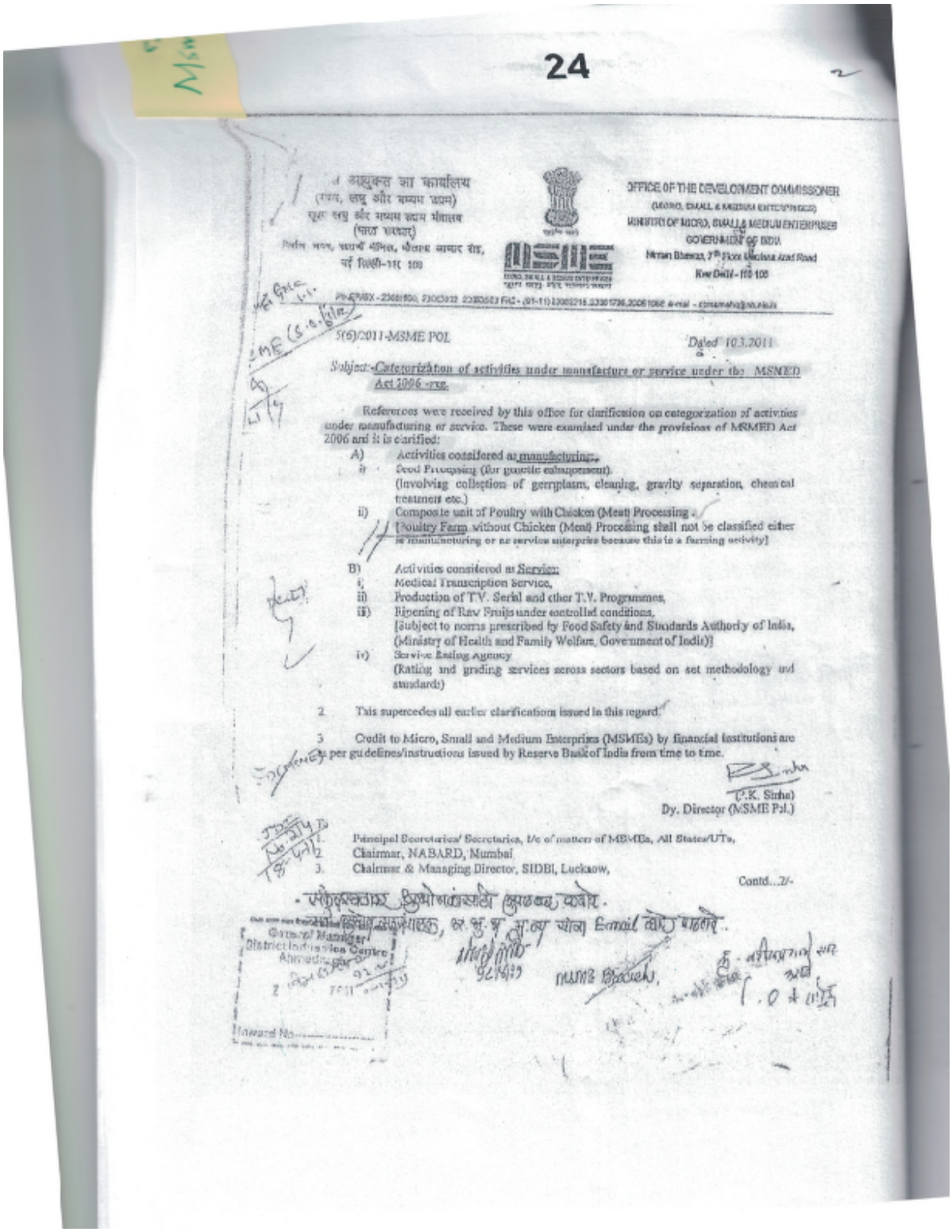
the above amount was not paid by the consumer, a fifteen-day notice was issued on 07.01.2015.

12.6 The Respondent has submitted that, as per the prevailing Tariff Orders issued by the Hon'ble TNERC, poultry farming and hatchery activities were not classified under HT Tariff IA. Furthermore, only registered factories are covered under the Industrial Tariff. As a result, the Appellant was asked to provide the Industrial Certificate issued by the Inspector of Factories. However, due to the non-production of the said certificate, the Respondent service billed under HT Tariff III.

12.7 The Respondent has submitted that the certificate issued by the Department of Industries and Commerce, Government of Tamil Nadu, is considered only for MSME industries under the LT tariff category and is not applicable for determining tariff under the HT category. Further, the Respondent has submitted that the certificate issued by the Pollution Control Board cannot be considered for determining tariff applicability.

12.8 The Respondent has submitted that in the absence of a factory license issued by the Inspector of Factories and the non-categorization of hatcheries and poultry farming activities under HT Tariff 1A in the tariff orders issued by the Hon'ble TNERC for the period before 10.09.2022, the claim of the Appellant to be billed under HT Tariff 1A is not valid.

12.9 In view of the above arguments, I would like to refer to the MSME letter dated 10.03.2011, submitted by the Appellant, for the categorization of activities under manufacturing or services as per the MSME Act, 2006, which is reproduced below:



अपर आयुक्त का कार्यालय
(लघु, लघु और मध्यम उद्यम)
सूक्ष्म लघु और मध्यम उद्यम मंत्रालय
(भारत सरकार)
निर्माण भवन, पश्चिमी ब्लॉक, वैलिंगडन क्रिसेन्ट रोड,
नई दिल्ली-110 001

OFFICE OF THE DEVELOPMENT COMMISSIONER
(MICRO, SMALL & MEDIUM ENTERPRISES)
MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES
GOVERNMENT OF INDIA
Nirman Bhawan, 7th Floor, Maulana Azad Road
New Delhi - 110 108

PBX-23061500, 23063932 23330563 FAX - (91-11) 23001715,23301736,23061088 e-mail - dcmsme@nic.in

5(6)/2011-MSME POL

Dated 10.3.2011

Subject:-Categorization of activities under manufacture or service under the MSMED Act 2006 -reg.

References were received by this office for clarification on categorization of activities under manufacturing or service. These were examined under the provisions of MSMED Act 2006 and it is clarified:

A) Activities considered as manufacturing:-

i) Seed Processing (for genetic enhancement).
(Involving collection of germplasm, cleaning, gravity separation, chemical treatment etc.)

ii) Composite unit of Poultry with Chicken (Meat) Processing.
[Poultry Farm without Chicken (Meat) Processing shall not be classified either as manufacturing or as service enterprise because this is a farming activity]

B) Activities considered as Service:

i. Medical Transcription Service,
ii) Production of T.V. Serial and other T.V. Programmes,
iii) Ripening of Raw Fruits under controlled conditions,
[Subject to norms prescribed by Food Safety and Standards Authority of India, (Ministry of Health and Family Welfare, Government of India)]
iv) Service Rating Agency
(Rating and grading services across sectors based on set methodology and standards)

2. This supercedes all earlier clarifications issued in this regard.

3. Credit to Micro, Small and Medium Enterprises (MSMEs) by financial institutions are as per guidelines/instructions issued by Reserve Bank of India from time to time.

(P.K. Sinha)
Dy. Director (MSME Pol.)

1. Principal Secretaries/ Secretaries, I/c of matters of MSMEs, All States/UTs,
2. Chairman, NABARD, Mumbai.
3. Chairman & Managing Director, SIDBI, Lucknow,

Contd...2/-

General Manager
District Industries Centre
Ahmedabad

Inward No.

12.10 It is categorically stated that poultry farming, without chicken (meat) processing, shall not be classified either as a manufacturing or as a service enterprise, as it is considered a farming activity. Therefore, based on the above, the Appellant's HT service was not classified as manufacturing but rather as poultry farming. Furthermore, as per the Factories Act, 1948, which is defined below,

"xxx

58.(k) "manufacturing process" means any process for—
59.(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning,
60. breaking up, demolishing, or otherwise treating or adapting any article or substance with a view
61. to its use, sale, transport, delivery or disposal; or

62. 1[(ii) pumping oil, water, sewage or any other substance; or]
63. (iii) generating, transforming or transmitting power; or
64. 2[(iv) composing types for printing, printing by letter press, lithography, photogravure or
65. other similar process or book binding; 3[or]]
66. (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or
67. vessels; 3[or]
68. 3[(vi) preserving or storing any article in cold storage;]"

12.11 Hence, as per the MSME letter and as per the Factories Act, 1948, the activities in the Appellant's HT service connection was not in the nature of manufacturing activity.

12.12 Further, the Appellant argued that the poultry farm was an industrial service, citing the production of a pollution certificate and a Department of Industry certificate. However, the Department of Industry certificate was never produced by the Appellant, which was the main contention of the Respondent for changing the tariff from HT Tariff IA to III. The Appellant's additional contention that they have enclosed a pollution certificate, which categorizes their HT service as an industrial unit, is not applicable in this case.

12.13 In this context, I would like to discuss the provisions under the Water Act of 1974 and the Air Act of 1981. In Tamil Nadu, a poultry farm, especially a medium or large-scale one, is required to obtain a pollution certificate, also known as "Consent to Establish" (CTE) and "Consent to Operate" (CTO), from the State Pollution Control Board (TNPCB) to operate legally. This is based on the provisions of the Water Act, 1974 and the Air Act, 1981.

12.14 Further, the issuance of a pollution control certificate does not classify the activity as an industrial one; it is classified as a farming activity, as per the MSME letter dated 10.03.2011. Furthermore, it should be noted that the Department of Industries and Commerce issued an acknowledgement certificate to the Appellant's premises as a hatchery for chicks only. This certificate also includes a note stating: *"The issue of this acknowledgement does not bestow any legal right. The enterprise is required to seek requisite clearance/ Licence/Permit required under statutory obligation stipulated under the Law of Central Government/State Government/UT Administrations/Court Orders."*

12.15 Further, the Appellant referred to M.P. No. 4 of 2021, which advised TANGEDCO to seek proper clarification regarding the activities, and M.P. No. 28 of 2021, which issued an order against the misuse of tariff claimed by the licensee under Sections 126 & 135 of the Electricity Act, 2003. However, the above Commission's order cannot be applicable to the present case. This is because the nature of the Appellant's poultry farm activities is neither manufacturing nor industrial, and it is not classified as any other category of activities that have been added over the period in various Tariff Orders.

12.16 However, the Appellant's main contention is that the Forum has ignored the clear and binding terms of the 2013 and 2017 Tariff Orders, which are applicable to all industrial units. On perusal, it is noted that Hon'ble Commission used the term "*all industrial establishments and registered factories"* in 2010 tariff order and *"All manufacturing and industrial establishments and registered factories"* in 2012 to 2017 tariff orders. In my view, in order to qualify under HT Tariff IA as per the provisions in the Tariff orders, the industrial units should have manufacturing activities as mentioned in the First schedule of The Industries (Development and Regulation) Act, 1951 and should also be a Registered Factory.

12.17 From the above findings, it is noted that as per the MSME letter, the activities in the appellant's HT service is not to be considered as 'manufacturing' as such activity has not been included as manufacturing activity in the Factories Act, 1948 as well as in the First schedule of The Industries (Development and

Regulation) Act, 1951. Therefore, non production of factory license as per Factories Act, 1948 and also non fulfillment of terms mentioned in the Tariff orders issued during the period from 2010 to 2017, it is concluded that Appellant's unit was not eligible to be categorised under HT Tariff IA for the disputed period. As the said activity does not fall under High Tension Tariff IA, IB, IIA, IIB, IV and V, will have to be billed only under HT Tariff III as per the provisions in the Tariff Order for the disputed period. Therefore, the prayer of the appellant to reinstate the appellant's HT SC No.107 under HT Tariff 1A is rejected. Accordingly, the prayer of the appellant in A.P.No.86 of 2024, to reinstate the appellant's HT SC No.107 under HT Tariff 1A is also rejected.

13.0 <u>Finding on the fifth issue:</u>

13.1 The Appellant has stated that they received a notice dated 08.10.2014 bearing Lr. No. 286-1/SE/TEDC/DFC/TPR/RCS/AS/A2/F.HT.SC.No.107/14, informing them that a copy of the industrial license had not been received and calling upon the Appellant to produce the same. The notice further stated that, failing the production of the license, the 2nd Respondent would change the tariff category from HT IA to HT III (Commercial).

13.2 The Appellant has stated that the 2nd Respondent then unilaterally changed the tariff in the bill for October 2014 and billed the Appellant under the HT III category. Despite sending several representations to the Respondent clarifying that HT III was not applicable to poultry farming, the change was made.

13.3 The Appellant has stated that they then received Lr.No.331/SE/TEDC/ DFC/TPR/RCS/AS/A2/F.HT.SC.No.107/14, dated 12.11.2014, revising the bills from setting up of the service connection in December 2011 to September 2014 and demanding payment of Rs.31,84,192/- as alleged shortfall. The said amount was included in the subsequent current consumption bill for December 2014 in HTSC No. 107, issued to the Petitioner on 31.12.2014, with the due date being 06.01.2015.

13.4 The Appellant has stated that they received notice bearing Lr. No. 002/ SE/TEDC/FDC/TPR/RCS/AS/A2/F.HT.sc.No.107/2014 dated 07.01.2015 from the

2nd Respondent, threatening to disconnect HT Sc. No. 107 in case of failure to pay the revised amount including BPSC, amounting to a total demand of Rs.31,84,192/-.

13.5 The Appellant has stated that fearing disconnection, they filed W.P. No. 2239 of 2015 and obtained an interim stay on 30.01.2015, which was extended subsequently. However, due to the ill health of the Appellant's counsel, the writ petition No. 2239 of 2015 was dismissed for non-prosecution on 07.07.2022. Taking advantage of the inadvertent dismissal of the writ petition, the Respondents disconnected HT Sc. No. 107 on 27.12.2022.

13.6 The Respondent has submitted that the Appellant was requested by their office letters dated 05.09.2014 and 10.10.2014 to produce the industrial license obtained from the Inspector of Factories for billing under HT Tariff 1A. But the Appellant has not produced the industrial license obtained from the Inspector of Factories. As such, the CC bills of HT Sc. No. 107 were billed under HT Tariff III from 10/2014, and the CC charges under HT Tariff III had been paid by the consumer up to December 2014.

13.7 The Respondent has submitted that CC bills from 05/2011 to 09/2014 were revised under HT Tariff III and informed to the consumer to pay the difference in tariff amount of Rs.31,84,192/- vide letter dated 12.11.2014. Since the above amount has not been paid by the consumer, a fifteen-day notice was issued on 07.01.2015.

13.8 The Respondent has submitted that aggrieved by the above notices, the Appellant had filed writ petition in the Hon'ble High Court of Madras vide W.P. No. 2239 of 2015 and obtained a stay order. The Hon'ble High Court on 07.07.2022 dismissed the case for non-prosecution from the petitioner side.

13.9 The Respondent has submitted that consequent to the dismissal of the petition, in order to give the Appellant an opportunity, a show-cause notice was issued to the consumer vide letter No. DFC/RCS/A2/F.HT Sc. No. 089094130107/2022, dated 11.11.2022 towards payment of the difference in tariff

rate amounting to Rs.3,22,05,106/- along with BPSC for the period from 11/2011 to 07/2022 in respect of HT Sc. No. 107.

13.10 The Respondent has submitted that in response to the above show-cause notice, the consumer has stated in the letter dated 28.11.2022 that the restoration petition has already been filed and is pending for directions and prayed for time to clear dues until the writ petition is disposed of on merits. Since no reply has been received from the consumer on merits and no orders restraining from claiming the legitimate dues, a final notice was issued to the consumer vide letter No. ACE/DFC/RCS/A2/F.HT Sc. No. 107/D. No. 184/dt. 08.12.2022 to pay the dues within 15 days from the date of receipt of the letter, failing which the service connection will be disconnected.

13.11 The Respondent has submitted that the consumer has not paid the dues as demanded by this office within the prescribed period, and hence the above service connection was disconnected on 26.12.2022. Subsequently, the accounts of the service have been closed and intimated to the consumer for payment of the above demand vide letter dated 05.08.2024.

13.12 The Appellant's service (poultry farm) was initially provided with HT Tariff IA during the agreement executed on 07-04-2011, the Respondent subsequently found that the Appellant's service was not eligible to be categorized under HT Tariff IA during 2014. After noticing this, the Respondent issued notice.

13.13 In this regard, I would like to refer to the Regulation 12 of Tamilnadu Electricity Supply Code which is reproduced as follows:

> *"12. Errors in billing*
>
> *(1) In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Licensee, the Licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in the case of overcharging.*
>
> *(2) Where it is found that the consumer has been over-charged, the excess amount paid by such consumer shall be computed from the date on which the excess amount was paid. Such excess amount with interest may be paid by cheque in the month subsequent to the detection of excess recovery or may be adjusted in the future current consumption bills upto two assessments at the option of the consumer. The*

sum which remains to be recovered after two assessments any be paid by cheque. Interest shall be upto the date of last payment.

(3) Wherever the Licensees receive complaints from consumers that there is error in billing, etc. the Licensee shall resolve such disputes regarding quantum of commercial transaction involved within the due date for payment, provided the complaint is lodged three days prior to the due date for payment. Such of those complaints received during the last three days period shall be resolved before the next billing along with refunds / adjustments if any. However, the consumer shall not, on the plea of incorrectness of the charges, with hold any portion of the charges."

13.14 Further, I would like refer HT agreement Clause 6 and 7 made by the appellant with respondent on 07.04.2011.

"6. Obligation of consumer to pay all charges levied by licensee
From the date this agreement comes into force the consumer shall be bound by and shall pay the Licensee, maximum demand charges, energy charges, surcharges, meter rents and other charges, if any in accordance with the tariffs applicable and the terms and conditions of supply notified from time to time for the appropriate class of consumers to which such consumer belongs.

7. Licensee's right to vary terms of agreement
The consumer agrees that the Licensee shall have the right to vary from time to time, tariffs, general and miscellaneous charges and the terms and conditions of supply under the directions/regulations or by special or general proceedings of Tamil Nadu Electricity Regulatory Commission. The consumer, in partivular, agrees that the Licensee shall have the right to enhance the rates etc. chargeable for supply of electricity according to exigencies again with the approval of Tamil Nadu Electricity Regulatory Commission. It is also open to Licensee to restrict or impose power cuts totally or partially at any time as it deems fit."

13.15 From the co-joint of the above, it is clear that the licensee was entitled to reclassify the incorrectly applied HT Tariff IA to the appropriate category for the Appellant's service. In this context, I would like to refer the TNERC regulation 14,(5) and 21 which is given below:

*"**14. Due dates and notice periods***
xxx
xxx

5) If the amount of any bill remains unpaid beyond the period specified, the Licensee may also, without prejudice to any of its rights under the agreement entered into by the consumer with the Licensee, order supply of electricity to the consumer to be discontinued forthwith without further notice and keep the service connection disconnected until full payment for all obligations pending and the charge for the work of disconnection and reconnection has been paid. Such discontinuance of supply of electricity shall not relieve the consumer of his liability to pay the minimum

monthly charges nor shall such discontinuance affect any right, claim, demand or power which may have accrued to the Licensee hereunder."

*****

*"**21. Disconnection of supply***

Section 56 of the Act with regard to disconnection of supply in default of payment reads as follows :

" (1).Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a Licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the Licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such Licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

a) An amount equal to the sum claimed from him or
b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months. Whichever is less, pending disposal of any dispute between him and the Licensee."

13.16 The Respondent issued notices on 05-09-2014 and 10-10-2014 requesting the production of an industrial license. A notice on 12-11-2014 was issued to pay the difference in tariff arrears amount. A fifteen-day notice was then issued on 07-01-2015. The Appellant obtained a stay in WP No. 2238 & 2239 of 2015 and M.P.Nos.2 & 2 of 2015 on 30-01-2015. Subsequently, the Appellant's writ petitions were dismissed on 07-07-2022. Following the dismissal, a show-cause notice was issued on 11-11-2022 to pay the difference in tariff due to the incorrect tariff adoption for the period from 06/2011 to 07/2022. A final fifteen-day notice was issued on 08-12-2022, and the service connection was disconnected on 26-12-2022.

13.17 As per the above regulations, the Respondent's action in taking corrective measures for the incorrect adoption of the Tariff from HT Tariff IA to III for the poultry farm was in order. The failure on the part of the Appellant to pay the amount led to disconnection, with the Respondent following due procedures. Therefore, the Respondent's action to disconnect the service is justified.

13.18 Regarding the Appellant's argument that the Respondent is barred from claiming the bill under Section 56(2) of the Electricity Act 2003, I would like to refer to Section 56(2) of the Electricity Act 2003.

> *"Sec. 56(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the Licensee shall not cut off the supply of the electricity."*

This clause stipulates that no sum due from any person under this section shall be recoverable after a period of two years from the date when such sum becomes first due. In this context, I would like to refer to the recent orders of the Hon'ble Supreme Court in Civil Appeal No. 1672/2020, dated 18.02.2020, and Civil Appeal No. 7235 of 2009, dated 05.10.2021. The relevant paragraphs of the orders are reproduced below:

> *"Civil appeal No.1672/2020 issued on 18.02.2020*
>
> *Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes or recovery which may be initiated by the licensee company for recovery of a supplementary demand.*
>
> *****
>
> *Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bonafide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand."*
>
> *Civil appeal No.7235 of 2009 issued on 05.10.2021*

"21) The raising of an additional demand in the form of "Short assessment notice" on the ground that the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of "escaped assessment" and not "deficiency in service".

22) In fact, even before going to the question of Section 56(2), the Consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only and then that the recourse taken by the licensee for recovery of the amount, can be put to best in terms of Section 56. If the case on hand is tested on this parameter, it will be clear that the Respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

23) Coming to the second aspect named the impact of Sub-section (1) on Sub-section (2) of Section 56, it is seen that the bottom line of Sub- section (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words ***"where any person neglects to pay*** *any charge for electricity or any some other than a charge for electricity due from him".*

24) Sub-section (2) uses the words "no sum due from any consumer ***under this Section".*** *Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with the negligence on the Part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.*

25) In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer ***under this Section****, appearing in Sub-section (2).*

26) The matter can be examined from another angle as well. Sub-section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensees. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of

limitation prescribed under Sub- section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in ***Rahamatullah khan*** *and Section 56 (2) will not go to the rescue of the Appellant."*

13.19 It is seen from the above two court orders that the Respondent can invoke Section 56(2) for escaped assessment. Furthermore, Section 56(2) does not prevent the licensee from raising an additional or supplementary demand after the expiry of the limitation period, in the case of a mistake or bona fide error.

13.20 Further, the liability to pay energy charges is created on the day electricity is consumed; however, the charge becomes first due only after a bill or demand notice is served. Therefore, the limitation in the present case would also run from the date of the demand notice. Any demand involving short levy, incorrect billing, wrong application of the multiplying factor, audit objections, etc., made after two years is considered a supplementary bill for the unbilled energy. There is no bar in the Electricity Act to raise a supplementary bill.

13.21 Upon examining the documents submitted, it is established that the Respondent noticed the mistake on 05-09-2014, reminded the appellant on 10-10-2014, and issued further notices on 12-11-2014 and 07-01-2015. The Appellant filed for a stay order from the Hon'ble High Court on 30-01-2015, which was subsequently dismissed on 07-07-2022. Further, a show cause notice was issued on 11-11-2022, followed by a final 15-day notice on 08-12-2022, and the service connection was disconnected on 26-12-2022.

13.22 This sequence of actions reflects the Respondent's continued efforts, with the restoration petition allowed on 18-08-2023 in W.M.P 32634 of 2022 & 2719 of 2023, regarding WP No. 2038 & 2239 of 2015, and the subsequent order on 22-08-2024 to take up the matter by CGRF on merits. Therefore, it is established that the supplementary bill raised continuously treated as outstanding arrears, and hence the period of limitation has not lapsed. In view of the above, the respondent's claim is not barred by limitation.

13.23 With respect to the restoration of supply, the respondent is directed to take necessary action as per Regulation 22 of TNE Supply Code Regulations. The respondent is also instructed to adjust the 25% of the amount that has already been paid by the appellant from the outstanding dues to be collected from the appellant.

14.0 <u>Conclusion</u>:

14.1 In view of the above findings, the appellant's prayer to set aside the demand notices issued in respect of HT SC No.107, after the correction of the wrong tariff by the respondent for the period from 06/2011 to 07/2022 is rejected. Accordingly, the prayer of the appellant in A.P.No.86 of 2024 and A.P.No.87 of 2024, to reinstate the appellant's HT SC No.107 and 109 under HT Tariff 1A is rejected.

14.2 With the above findings A.P.No.86 of 2024 and A.P.No.87 of 2024 is disposed of by the Electricity Ombudsman.

(N. Kannan)
Electricity Ombudsman

"நுகர்வோர் இல்லையேல், நிறுவனம் இல்லை"
"No Consumer, No Utility"

To

1. M/s. Charoen Pokphand (India) Pvt. Ltd. - By RPAD
Pallikuppam Road,
Agaramcheri Village,
Vellore District – 635 826.

2. The Chairman & Managing Director, – By Email
TNPDCL,
144, Anna Salai, Chennai -600 002.

3. The Superintending Engineer, – By Email
Tirupattur Electricity Distribution Circle,
TNPDCL,
2, 4B, Balammal Colony, Tirupattur-635 601.

4. The Deputy Financial Controller,
Tirupattur Electricity Distribution Circle,
TNPDCL,
2, 4B, Balammal Colony, Tirupattur-635 601.

5. The Executive Engineer/O&M/Pallikonda,
Tirupattur Electricity Distribution Circle,
TNPDCL,
No.7 Kothaval Street, Pallikonda, Vellore DT -635809.

6. The Assistant Executive Engineer/O&M/Vadakathipatty, – By Email
Tirupattur Electricity Distribution Circle,
TNPDCL,
110 KV Vadakathipatty SS, Vadakathipatty,
Madanoor Post 635802.

7. The Assistant Engineer/O&M/ Agaramcheri, – By Email
Tirupattur Electricity Distribution Circle,
TNPDCL,
No.4, 8 E, MC Road, Agaramchery,
Vellore (Dt) 635804.

8. The Secretary, – By Email
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate, Guindy, Chennai – 600 032.

9. The Assistant Director (Computer) – **For Hosting in the TNERC Website**
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate, Guindy, Chennai – 600 032.

A consumer is the important visitor on our premises.
He is not dependent on us. We are dependent on him.
-Mahatma Gandhi

TAMIL NADU ELECTRICITY OMBUDSMAN

4th Floor, SIDCO Corporate Office Building,Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032.
Phone : ++91-044-2953 5806,044-2953 5816Fax : ++91-044-2953 5893
Email :tneochennai@gmail.com Web site : www.tnerc.tn.gov.in

Before The Tamil Nadu Electricity Ombudsman, Chennai

Present :Thiru. N.Kannan, Electricity Ombudsman

A.P.No. 86 of 2024

M/s. Charoen Pokphand (India) Pvt. Ltd.
Pallikuppam Road,
Agaramcheri Village,
Vellore District – 635 826.

. . . . . Appellant
(Rep. by Thiru Rahul Balaji, Advocate)

Vs.

1. The Chairman & Managing Director,
TNPDCL,
144, Anna Salai, Chennai -600 002.

2. The Superintending Engineer,
Tirupattur Electricity Distribution Circle,
TNPDCL,
2, 4B, Balammal Colony, Tirupattur-635 601.

3. The Deputy Financial Controller,
Tirupattur Electricity Distribution Circle,
TNPDCL,
2, 4B, Balammal Colony, Tirupattur-635 601.

4. The Executive Engineer/O&M/Pallikonda,
Tirupattur Electricity Distribution Circle,
TNPDCL,
No.7 Kothaval Street, Pallikonda, Vellore DT -635809.

5. The Assistant Executive Engineer/O&M/Vadakathipatty,
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110 KV Vadakathipatty SS, Vadakathipatty,
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6. The Assistant Engineer/O&M/ Agaramcheri,
Tirupattur Electricity Distribution Circle,
TNPDCL,
No.4, 8 E, MC Road, Agaramchery,
Vellore (Dt) 635804. . . . . Respondents

(Thiru S.A. Jainullabuddin, SE/ Tirupattur
Thiru S.Sridhar, DFC/ Tirupattur
Thiru S.Vijayakumar, EE/O&M/Pallikonda)

A.P.No. 87 of 2024

M/s. Charoen Pokphand (India) Pvt. Ltd.
Pallikuppam Road, Agaramcheri Village,
Vellore District – 635 826.

. . . . . Appellant

(Rep. by Thiru Rahul Balaji, Advocate)

Vs.

1. The Chairman & Managing Director,
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144, Anna Salai, Chennai -600 002.

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No.4, 8 E, MC Road, Agaramchery,
Vellore (Dt) 635804. . . . . Respondents

(Thiru S.A. Jainullabuddin, SE/ Tirupattur
Thiru S.Sridhar, DFC/ Tirupattur
Thiru S.Vijayakumar, EE/O&M/Pallikonda)

Petition Received on: 02-12-2024

Date of Hearing: 23-01-2025

Date of order: 04-02-2025

The Appeal Petition dt. 02.12.2024 filed by M/s. Charoen Pokphand (India) Pvt. Ltd. Pallikuppam Road, Agaramcheri Village, Vellore District – 635 826 was registered as Appeal Petition No. 86 of 2024 and 87 of 2024 for the HT SC No. 107 and 109 respectively. The above appeal petitions scheduled for hearing on 23.01.2025. Upon perusing the Appeal Petition, Counter affidavit, written argument and the oral submission made on the hearing date from both the parties, the Electricity Ombudsman passes the following order.

COMMON ORDER FOR A.P.No. 86 AND 87 OF 2024

1. **Prayer of the Appellant:**

As the prayer is same in all the two petitions, the relief sought for in Appeal Petition No. 86 of 2024 is given below;

The Appellant has requested to set aside the CGRF order No. 50 dt.29.10.2024 as the impugned order suffers from non- consideration of material facts and is contrary to settled law, and the said order is liable to set aside and all consequent demand notices including but not limited for levy consumption charges under the HT III commercial tariff category as illegal, arbitrary and contrary to the Tariff Order T.P. No. 1 of 2013 and the Electricity Act, 2003 and to reinstate the appellant's HT SC No.107 under HT Tariff 1A.

2.0 Brief History of the case:

2.1 The licensee initially sanctioned High Tension (HT) service under Tariff IA in 07.05.2001. The service was initially billed under HT Tariff I as activity is Hatchery - Poultry farm in nature. Subsequently, the respondent reclassified the service to HT

Tariff III from 10/2024 due to non submission of factory license. Claiming that the Tariff IA stating that the appellant's service connection was not eligible for Tariff IA. The respondent subsequently raised a short levy for the period from 05/2011 to 09/2014 under revised HT III for an amendment of Rs.31,84,192/-.

2.2 Aggrieved by the respondent's action, the appellant sought and obtained an interim stay from the Hon'ble High Court vide W.P. 2239 of 2015 and obtained stay. However, the Hon'ble High Court dismissed the appellant's writ petition on 07.07.2022 due to no representation of the Appellant's side. Subsequent to this issue, the show cause notice was issued on 11.11.2022 towards payment of difference in tariff amounting to Rs.3,22,05,106/- along with the BPSC. Further, 15 days final notice was issued on 08.12.2022 and the service was disconnected on 26.12.2022.

2.3 It is further understood that the Appellant has restored the WP No. 2239 of 2015 vide dt. 18.08.2023 and Hon'ble High Court order to approach CGRF on 22.08.2024.

2.4 Dissatisfied with the CGRF's order, the appellant filed the present appeal before the Electricity Ombudsman

3.0 Order of the CGRF:

The order issued in the case of AP No. 86 of 2024 and A.P.No.87 of 2024 is extracted below:-

CGRF Order No.50 dt.29.10.2024 for Appeal Petition No. 86 of 2024:

"In view of the above findings the Forum decides that the absence of categorization of Hatcheries and Poultry Farms activities under HT Tariff 1A in the tariff orders issued by the Hon'ble TNERC for the period before 10.09.2022 the claim of respondent to bill under HT Tariff III is in order. Further the Forum directs the petitioner M/s Charoen Pokphand (India) Pvt Ltd., is liable to pay the difference in tariff rate for the period from 06/2011 to 07/2022 with BPSC till the date of payment for the HT) Sc.No.107."

4.0 Hearing held by the Electricity Ombudsman:

4.1 To enable the Appellant and the Respondent to put forth their arguments, a hearing was conducted on 23.01.2025 through video conferencing.

4.2 On behalf of the Appellant Thiru Rahul Balaji, Advocate attended the hearing and put forth his arguments.

4.3 The Respondents Thiru S.A. Jainullabuddin, SE/ Tirupattur, Thiru S.Sridhar, DFC/ Tirupattur and Thiru S.Vijayakumar, EE/O&M/Pallikonda of Tirupattur EDC attended the hearing and put forth their arguments.

4.4 As the Electricity Ombudsman is the appellate authority, only the prayers which were submitted before the CGRF are considered for issuing orders. Further, the prayer which requires relief under the Regulations for CGRF and Electricity Ombudsman, 2004 alone is discussed hereunder.

5.0 <u>Contention of the Appellant</u>:

5.1 The Appellant M/s. Charoen Pokphand (India) Pvt. Ltd., the complainant / petitioner herein (hereinafter referred to as the Petitioner or CPF India) is an Indian subsidiary of the Charoen Pokphand Pvt. Ltd., a company specializing in poultry and prawn culture with more than 22 years of experience, operations in 22 countries / states and more than 2000 crores in yearly turnover in India. The Petitioner changed its name to CPF (India) Pvt. Ltd in 2014.

5.2 The Appellant has stated that they operate 4 poultry farms in the State of Tamil Nadu, of which 3 breeder farms and 1 is a hatchery, and each has a different electricity service connection, all of which have been taken in the HT I A category and it is engaged in manufacturing process and is an industrial establishment.

5.3 The Appellant has stated that it commenced operations in India after getting approval from the Ministry of Industry notification dated 28.11.1996 which gave the Appellant's group company the authorization to set up 5 integrated poultry projects across the country. The Appellant has thus been duly authorized to run as an industrial unit from its inception.

5.4 The Appellant has stated that installed machineries for effluent treatment and cold storage and was advised by the Respondent to take a High-Tension connection under HT I A category.

5.5 The Appellant has stated that they have established its service connection no. 107 for its breeder farm in Pangarsikuppam Village, vide HT Agreement dated 07.04.2011 under the HT IA category with the 2nd Respondent SE. The said agreement was clear that the applicable Tariff would be as per the terms laid down by the State Commission in its orders from time to time.

5.6 The Appellant has submitted that the applicable Tariff Order, i.e., T.P. No. 1 of 2013 specifically categorises poultry farming within the HT I A category. The Hon'ble TNERC's order clearly specifies the following:

"6.2 High Tension Tariff I A:

i. This Tariff is applicable to:

a) *All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants,*
b) *b) Common effluent treatment plants, Industrial estate's water treatment/supply works,*
c) *Cold storage units"*

5.7 The Appellant has stated that they have received notice dated 08.10.2014 bearing Lr. No. 286-1/SE/TEDC/DFC/TPR/RCS/AS/A2/F.HT.SC.No.107/14 informing the appellant that a copy of the industrial licence had not been received, and calling upon the appellant to produce the same, failing which the 2nd Respondent would unilaterally change the Tariff Category from HT I to HT III (Commercial).

5.8 The Appellant has stated that 2nd Respondent then unilaterally changed the Tariff in the bill for October 2014 and billed the appellant under the HT III category. The appellant, despite sending several representations clarifying its position that HT III would not be applicable to poultry farming.

5.9 The Appellant has submitted no industrial certificate is required to be produced by the appellant as HT I A industrial consumer. The appellant states that if industrial certificate if at all required to be produced, would only be from a LT industrial consumer.

5.10 The Appellant has stated that in any event, the appellant had also obtained its clearance from the Tamil Nadu Pollution Control Board, clearly indicating that the appellant was performing an industrial activity.

5.11 The Appellant has submitted that in any event, the appellant had been issued industrial certificate for its hatchery on 23.07.2010 by the Department of Industries and Commerce, Government of Tamil Nadu.

5.12 The Appellant has stated that it is also pertinent to refer to the Government of India's notification S(6)/2011- MSME POL dated 10.03.2011, issued by the Office of the Development Commissioner, Ministry of Micro, Small and Medium Industries. The relevant extract of the notification states:

> *"References were received by this office for clarification on categorization of activities under manufacturing or service. These were examined under the provisions of MSMED Act 2006 and it clarified:*
>
> *A) Activities considered as manufacturing:*
>
> *ii) Composite unit of poultry with Chicken (Meat) Processing*
> *[Poultry farm without chicken (meat) processing shall not be classified either as manufacturing or as service enterprises because this is a farming activity]"*

5.13 The Appellant has further submitted that once the terms of supply were clearly outlined in the HT Agreement and Tariff Order which clearly categories poultry farming within the HT I category, the 2nd Respondent had no power to unilaterally change the tariff classification of the Petitioner, without following the procedure specified in the Electricity Act, 2003 and the regulations there-under.

5.14 The Appellant has stated that then received Lr. No. 331/SE/TEDC/DFC/ TPR/RCS/AS/A2/F.HT.SC.No.107/14 dated 12.11.2014 revising the bills from the setting up of the service connection in December 2011 to September 2014 and demanding payment of Rs. 31,84,192/- as alleged shortfall.

5.15 The Appellant has stated that said amount was included in the subsequent current consumption bill of HTSC No. 107, in the bill for December 2014 issued to the Petitioner on 31.12.2014 with the due date being 06.01.2015.

5.16 The Appellant has stated they have received notice bearing no. Lr. No. 002/SE/TEDC/FDC/TPR/RCS/AS/A2/F.HT.sc.No. 107/2014 dated 07.01.2015 from the 2nd Respondent threatening to disconnect HT Sc. No. 109 in case of failure to pay the revised amount including BPSC, amounting to a total demand of Rs. 31,84,192/-.

5.17 The Appellant has stated that fearing disconnection, filed W.P. No. 2239 of 2015 and obtained interim stay on 30.01.2015 which was extended subsequently.

5.18 However, due to the ill health of the appellant's counsel, the writ petition no. 2239 of 2015 was dismissed for non-prosecution on 07.07.2022. Taking advantage of the inadvertent dismissal of the writ petition, the Respondents disconnected the service connection no. 107 of the appellant and also threatened to include the impugned demand amount in the other service connections of the Petitioner.

5.19 The Appellant has stated that they had written a letter dated 28.11.2022 requesting the Respondents not to disconnect the service connection in the interest of equity, and that disconnection would cause severely disrupt the appellant's operations in its breeder farm and damage its inventory.

5.20 The Appellant has stated that despite the same, the Respondents disconnected the HT Sc. No. 107 on 27.12.2022. The appellant then wrote letter dated 26.12.2022 asking for reconnection and offering to execute a bank guarantee for the demand amount for both service connections nos. 107 and 109.

5.21 The Appellant has stated that despite receipt of the same, the Respondents have not reconnected the service connections and as of date, they stand disconnected and the appellant's business and operations have been disrupted severely.

5.22 The Appellant has stated that they have immediately filed petitions to restore W.P. No. 2239 of 2015 on the file of the Hon'ble High Court and vide order dated 18.08.2023, the writ petition was restored to the file of the Hon'ble Madras High Court.

5.23 The Appellant has stated that when the writ petition came for hearing on 22.08.2024, the Hon'ble Madras High Court was pleased to grant liberty to the Petitioner approach this forum for effective adjudication. The relevant extract of the order is as follows:

> *"6. In view of the restricted prayer as sought for by the petitioner, this Court without interfering with the impugned demands, grants liberty to the petitioner to approach the CGRF by way of making appropriate application within a period of two weeks from the date of receipt of a copy of this order.*
> *Upon receipt of such application, the CGRF shall consider the same on merits and in accordance with law and pass appropriate orders within a period of four weeks thereafter, after affording an opportunity of personal hearing to the petitioner."*

5.24 The Appellant has stated that Hon'ble Madras High Court had passed the order dated 27.08.2024 in the writ petition filed by the Appellant wherein the Appellant was granted liberty to approach CGRF within 2 weeks of the receipt of the certified copy of the order. I state that despite the certified copy having been applied for, the same has not yet been issued to the Appellant. However, owing to the urgency in the matter, the Appellant has CGRF seeking urgent relief, as the Respondents are attempting to include impugned demands in the Appellant's other service connections and disrupt their operation.

5.25 The Appellant has stated that herein then approached the Consumer Grievance Redressal Forum at Balammal Colony, Tirupattur and filed CGRF complaint no. 2709241245994 & 2709241243682 dated 27.09.2024 under the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004.

5.26 The Appellant has stated that the said complaint came to be numbered as CGRF/TPR/No. 50/2024 and came up for hearing on 25.10.2024, wherein the Appellant herein, through its authorised representative, made submissions before the Forum on the illegality of the demands raised by the Respondents herein and that the demands were to be set aside as contrary to the applicable Regulations, Tariff Orders and the spirit and scheme of the Electricity Act, 2003.

5.27 The Appellant has stated that the Forum passed order dated 29.10.2024 dismissing the CGRF petition filed by the Appellant herein. The order was received by the Appellant herein on 05.11.2024 by post.

5.28 The Appellant herein is filing the present appeal against the order of the CGRF, Balammal Colony, Tirupattur as the impugned order suffers from non-consideration of material facts and is contrary to settled law, and the said order is liable to be set aside.

5.29 The Appellant has stated that the appeal is being filed within the limitation period and with a deposit of 25% of the demand as specified in Regulation 8 of the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004.

5.30 The Appellant has stated that in addition to the contentions raised above submissions made by the Appellant herein before the CGRF Tirupattur, the Appellant assails the impugned order and the demand impugned in CGRF/TPR/No. 50/2024 on the following grounds, each of which are in the alternative to and without prejudice to each other.

Grounds of the Appeal:

5.31 (A) The Appellant has stated that the impugned demand is without the authority of law, and is entirely illegal, arbitrary and barred by limitation and deserves to be set aside. The Respondents have resorted to indiscriminate reclassification of the petitioner's and other units based on their self-serving interpretation, despite not having the power or jurisdiction to do so.

(B) The Appellant has stated that it is a settled position of law that the Electricity Board and authorities cannot unilaterally alter the Tariff Classifications of a consumer in contravention of the terms of the Tariff Order.

(C) The Appellant has submitted that the distribution licensee cannot retroactively apply a higher Tariff category, especially when the same is contrary to the express terms of the Tariff Order. The Hon'ble Commission's order in T.P. No. 1 of 2013

clearly categorises poultry farming, effluent treatment plants and cold storage facilities within the HT Tariff IA category.

(D) The Appellant has submitted that the distribution licensee does not have the power to unilaterally reclassify a consumer's tariff category. In case of any discrepancy, the licensee can only apply to the Commission for clarification of the Tariff Order as the procedure prescribed in the Electricity Act. The Hon'ble TNERC has held the same in M.P. No. 4 of 2021 and in order dated 02.03.2021 had ordered the following:

> *"4.4. The Commission after careful consideration of the submissions of both the side would like to refer the Commissions views in clause 5.2.2.15 in the Tariff Order in TP no 1 of 2017 dt 11.8.2017 wherein it is mentioned that, The commission is of the view.....In case TANGEDCO identifies the need for specifically excluding any other activity, then TANGEDCO should submit the necessary proposal for the same, along with necessary justification in its next tariff Petition. Any mid-course clarification to classify any type/group of activities, after 4 years from the issue of the Tariff Order may result in retrospective revision of tariff for that category."*

(E) The Appellant has stated that despite this and the binding terms of the HT Agreement dated 18.08.2011, the 2nd Respondent has retroactively revised the bills for the 3 previous years (2011- 2014) and sought to apply a higher Tariff to the Petitioner's service connection no. 109. This action is entirely lacking in legal basis and against the directions of the Hon'ble Commission and the Hon'ble Madras High Court.

(F) The Appellant has stated that they also places reliance on the Hon'ble TNERC's order in M.P. No. 28 of 2021, where the appellant therein had approached the Commission challenging the Board's application of the LT V commercial Tariff despite his having set up and operated the service connection for an industrial activity under the LT III B Tariff category. The relevant extract of the Commission's order states:

> *"3.11. However, the intention of TANGEDCO is aimed to deny tariffs LT II-B to the Petitioner on their own assumption without properly analyzing whether any manufacturing activity is carried on or not. Therefore, it involves a serious threat to the petitioner, which is already in the process of manufacturing activity since 2014 and importantly the service connections has been sanctioned to the Petitioner Industry by the Respondent TANGEDCO as early as 2014 under LT Tariff IIIB. The*

2nd Respondent has intentionally and deliberately has issued the demand notice on the Petitioner with a mala-fide intentions and ulterior motive.

As above, the Commission was not inclined for any reclassification / clarification in respect of the above categories from the existing one, as per the Order of the Commission in T.P.1 of 2017 dated 11.08.2017. Moreover the TANGEDCO was directed to file a comprehensive Tariff petition incorporating all its clarification for deciding the matter in ensuring tariff order after getting the comments of the stakeholders.

5.8. Having any doubt in its mind on applicability of tariff, the respondent cannot punish any consumer to the extreme of disconnection of supply/ level of compounding under Section 135 of the Electricity Act, 2003. Thus no clarification issued by the Commission as above, the applicability of the order in M.P.4 of 2021 cannot be interpreted as ex post facto or ex ante. The petitioner has clearly shown its activities carried out in its premises with the pictorial evidences (photos), whereas the respondent failed to do so. From these evidences, we have our opinion that the activities can be said to be as per the major activity defined under the EM / Udyog Aadhaar Registration certificate. In view of this the change of tariff to LT-V will not arise in the case of the petitioner.
(emphasis supplied)"

(G) The Appellant has stated that the position of law is settled that the licensee ought to apply the Tariff Orders passed by the State Commission and does not have the authority to transgress or reinterpret the Tariff Order.

(H) That the Appellant's appellant's sister concern, CP Aquaculture (India) Pvt. Ltd., had filed an appeal petition before the Hon'ble TN Electricity Ombudsman for a similar issue of arbitrary re-classification of tariff from HT IA to HT III Commercial. The Hon'ble TN Electricity Ombudsman in Appeal Petition No. 7 of 2020 in order dated 17.11.2020 had quashed the impugned demand, observing the following:

"7.9 On a careful reading of the above, TANGEDCO requested the Commission to omit the word 'Registered Factories' under HT Tariff IA. Hon'ble Commission rejected the TANGEDCO's proposal stating that omission of the term 'Registered Factories' under HT Tariff IA may have some unintended consequences. Further direction is that in case TANGEDCO identifies the need for specifically excluding any other activity, then TANGEDCO should submit the necessary proposal for the same, along with necessary justification, along with its next Tariff Petition.

7.10 With the above findings, I am of the view that if the respondent desires to categorize the appellant's industry under HT Tariff III (Commercial) from HT Tariff IA (Industry), they cannot make such conversion arbitrarily but should submit necessary proposal for the same to the Hon'ble TNERC with necessary justification, along with its next Tariff Petition as per the direction of the Hon'ble Commission. Therefore the order of CGRF of Villupuram Electricity Distribution Circle issued in

CGRF petition 03 of 2019, dated 30.11.2019 is quashed. Further, the respondent is directed;
i) to reinstate the appellant's HT SC No.46 under HT Tariff IA.
ii) to adjust the excess amount paid by the appellant on account of alleged tariff change and also the BOAB audit arrear amount which was paid by the appellant under protest. Further such refund shall be made in line with regulation 12(2) of TNE Supply Code Regulations, 2004.(emphasis supplied)"

(I) The Appellant has stated that the forum has failed to consider that the Respondent has retroactively reclassified the appellant's tariff and demanded arrears in December 2014 for the period commencing October 2011. It is submitted that such a demand is also barred by limitation under Section 56 (2) of the Electricity Act, 2003.

(J) The Appellant has stated that the Forum has ignored the settled position of law has been settled by several orders of the Hon'ble Commission and the Hon'ble Madras High Court. The Respondents have acted without authority of law and have arbitrarily reclassified the Petitioner's service connection in contravention of the Tariff Order.

(K) The Appellant has submitted that the subsequent Tariff Orders have been consistent in placing poultry farms within the HT I category. The Hon'ble TNERC's order in T.P. No. 1 of 2017 dated 11.08.2017 states:

"6.1.2.1 This Tariff is applicable to:
1. *All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants. However, registered factories such as LPG bottling Units which are of non-manufacturing nature are not to be included in this tariff category.*
2. *Common effluent treatment plants, Industrial estate's water treatment/supply works,*
3. *Cold storage units"*

(emphasis supplied)

(L) The Appellant has stated that they also relies on the Tariff Order of 2022, in Order No. 7 of 2022 in T.P. No. 1 of 2022 dated 09.09.2022 of the Hon'ble Commission states:

"6.1.2.1 This Tariff is applicable to:
i. All manufacturing and industrial establishments and registered factories.

ii. *This tariff is also applicable for Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants, Industrial Workshops, Private Milk dairies, Rice Mills, Roller Flour Mills, News Papers Printing Press, Ice & Ice cream manufacturing units, Tannaries, Hatcheries, Poultry Farm, Floriculture, Poly House/Green House, Hybrid Seeds processing units, Centralised preparation units of Food/ sweets/bakery shops (provided sales counter is physically & electrically segregated & billed under respective HT-III/LT-V category), Packaging Units, Drug manufacturing units, Garment manufacturing units, Tyre retreading units, petroleum pipeline projects, Piggery farms, Analytical Lab for analysis of ore metals, Saw Mills, Toy/wood industries, Satellite communication centres, Mineral water processing plants attached with drinking water, Mineral water bottling plants and Solid Waste Processing Plant, concrete mixture (Ready Mix Concrete) units, Cutting of larger pipes and sheets into smaller one, Pumping of Oil and Gas units, RO plants Sea/hard water conversion done by Private / on behalf of CMWSS Board under Design Build and Operate (DBO), Tamil Nadu State Transport Corporation repair and Workshop and maintenance, Sericulture, Floriculture, Horticulture, Mushroom cultivation, cattle farming, Poultry & Bird farming and Fish/prawn/shrimp culture, Battery charging units.*

iii. *Common effluent treatment plants, Industrial estate's water treatment/supply works;*

iv. *Cold storage units;"*

(M) The Appellant has stated that the Forum has incorrectly emphasized on the industrial certificate despite the Appellant producing several documentation to show that it is an industrial unit, including inter alia, its pollution clearance certificate, industrial certificate as a hatchery dated 23.07.2010 and the Central government's notification allowing the appellant to set up industrial units in India for its poultry business.

(N) The Appellant has stated that the Forum has ignored the clear and binding terms of the 2013 and 2017 Tariff Orders which are applicable to 'all industrial units', despite which the Forum has wrongly held that the Appellant is carrying out a commercial activity.

(O) The Appellant has stated that the Forum has failed to consider the orders of the Hon'ble TNERC, clear provisions of the Tariff Orders and this Hon'ble Authority's order in the case of the prawn farms operated by the appellant's sister entity.

The Appellant has prayed to

i. Set aside the imputed order dated 29.10.2024 of the CGRF, Balammal Colony, Tirupattur in CGRF/TPR/No.50/2024 dismissing CGRF complaint No. 2709241245994 & 2709241243682 for its non-consideration of material facts and law and insufficient reasoning and thus render justice;

ii. Set aside the impugned demand notice bearing no. 002/SE/TEDC/FDC/TPR/RCS/AS/A2/F.HT.Sc.No.107/2015 Lr. No. dated 07.01.2015 and any and all consequent demand notices including but not limited to Lr. 331/SE/TEDC/DFC/TPR /RCS/AS/A2/F.HTSC.NO.107 / 2014 No. dated 12.11.2014, Lr. No. SE / TEDC /HT / Asst.2 /F.HTSC.No.107 /D03/2014 dated 07.01.2015, Lr. No. ACE/DFC/RCS/A2/F.HTSC No.089094130107/2022 dated 11.11.2022, Lr. No. SE/TEDC/HT/Asst.2/F.HTSC No.107/D03/2014 dated 08.12.2022 and Lr No. ACE/DFC/RCS/A2/F.htsc No.107&109/2023 dated 19.04.2023 for levy of consumption charges under the HT III Commercial Tariff category as illegal, arbitrary and contrary to the Tariff Order T.P. No. 1 of 2013 and the Electricity Act, 2003;

iii. to reinstate the appellant's HT SC No. 107 under HT Tariff IA; and pass such further or other orders that may be necessary in the interest of justice.

6.0 <u>Counter submitted by the Respondent</u>:

6.1 The Respondent has submitted that he has read the affidavit of the petitioner filed in support of the appeal petition and he denies all the averments there in except that are expressly admitted hereunder. He submitted that the above appeal petition filed against the order of the CGRF Tirupattur is not maintainable either in law or on facts.

6.2 The Respondent has submitted that the appellant being an agreement holder is bound by the Provisions of the Electricity Act 2003, Hon'ble Tamil Nadu Electricity Regulatory Commission's Supply code, Distribution code and Tariff Orders issued by the Hon'ble Commission from time to time and as such estopped from disputing the demand.

6.3 The Respondent has submitted that the new HT service connection was sanctioned vide Lr.No.SE / TEDC / TPR/DEV/JE/F.HT.New / D.887/10 dt.28.03.2011 with a sanctioned demand of 300 KVA to M/s Charoen Pokphand (India) Pvt.Ltd at Agaramchery Village, Ambur Taluk, Vellore District.

6.4 The Respondent has submitted that aggrieved by the above notices, the appellant had filed writ petition in the Hon'ble High court of Madras vide W.P.No.2239 of 2015 and obtained stay order. The Hon'ble High Court on 07.07.2022 has dismissed the above cases for non-prosecution due to no representation from the petitioner side.

6.5 The Respondent has submitted that consequent to the dismissal of the petition, in order to give opportunity to the appellant, show cause notices were issued to the consumer vide this office letter No.DFC/RCS/A2/F.HT Sc. No.089094130107/2022 dt.11.11.2022 towards payment of difference in Tariff rate amounting to Rs.3,22,05,106/- along with BPSC for the period from 11/2011 to 07/2022 in respect of HT Sc.No.107.

6.6 The Respondent has submitted that in response to the above show cause notice, the consumer has stated in the letter dt.28.11.2022, that restoration petition has already been filed and pending for directions and prayed for time to clear dues until writ petition is disposed off on merits.

6.7 Further, since no reply has been received from the consumer on merits and no orders restraining TNPDCL to claim the legitimate dues, a final notices was issued to the consumer vide this office letter No.ACE/DFC/RCS/A2/ F.HT Sc.No.107/D.No.184/dt.08.12.2022 to pay the dues within 15 days from the date of receipt of the letter failing which the service connections will be disconnected.

6.8 The Respondent has submitted that consumer has not paid the dues as demanded by this office within the prescribed period and hence the above service connection was disconnected on 26.12.2022. Subsequently, accounts of the service has been closed and intimated to the consumer for payment of the above demand vide this office letter dt.05.08.2024.

6.9 The Respondent has submitted that he denied averments made in para 4. It is respectfully submitted that no advise was given by the Respondent regarding applicable tariff to the above service Connection.

6.10 The Respondent has submitted that the HT Agreement dt.07.04.2021 was entered into Appellant. However, he denied the averments in para 5 that Agreement was entered under HT Tariff IA. It is clearly mentioned in the Agreement that consumer shall pay the Licensee, maximum demand charges, energy charges, surcharges, meter rents and other charges, if any in accordance with the tariff applicable and the terms and conditions of supply notified from time to time for the appropriate class of consumers to which such consumer belongs.

6.11 The Respondent has submitted that he denied the averments made in Para 6. As per the Tariff Order T.P.No.1 of 2013 issued by the Hon'be TNERC, it is submitted that poultry farming was not categorised under HT Tariff IA.

6.12 The Respondent has submitted that the appellant was requested vide this office letters dt.05.09.2014 and 10.10.2014 to produce the Industrial License obtained from the Inspector of factories for billing under HT Tariff 1A. But the appellant has not produced the Industrial license obtained from the Inspector of Factories. As such the CC bills of HT Sc.No.107 were billed under HT Tariff III from 10/2014 and the CC charges under HT Tariff III had been paid by the consumer up to December 2014.

6.13 The Respondent has submitted that CC bills from 05/2011 to 09/2014 were revised under HT Tariff III and informed to the consumer to pay the difference in tariff amount of Rs.31,84,192/- vide Lr.No.331/SE/TEDC /DFC/TPR/RCS/AS/ F.HT/ SC.No.107/ 2014 DT.12.11.2014. Since the above amount has not been paid by the consumer, a fifteen days notice was issued on 07.01.2015.

6.14 The Respondent has submitted that the Hon'ble High Court of Madras has reopened the case and disposed the case on 22.08.2024 by directing the appellant to seek remedy in the CGRF Forum at Tirupattur.

6.15 The Respondent has submitted that accordingly, the appellant has filed petition before the Consumer Grievance Redressal Forum, Tirupattur vide application No. CGRF/TPR/No.50/2024. The case came up for hearing on 25.10.2024. After hearing both sides, the CGRF has dismissed the above petition on 29.10.2024 and asked the consumer to pay the difference in tariff rates with applicable belated payment surcharge. The findings of the CGRF is submitted below.

> *"In view of the above findings the Forum decides that the absence of categorization of Hatcheries and Poultry Farms activities under HT Tariff 1A in the tariff orders issued by the Hon'ble TNERC for the period before 10.09.2022 the claim of respondent to bill under HT Tariff III is in order. Further the Forum directs the petitioner M/s Charoen Pokphand (India) Pvt Ltd., is liable to pay the difference in tariff rate for the period from 06/2011 to 07/2022 with BPSC till the date of payment for the HT Sc.No. 107. "*

6.16 The Respondent has submitted that as per the prevailing Tariff Orders issued by the Hon'ble TNERC, the Poultry farming/Hatcheries categories were not classified under HT Tariff 1A. Further, the registered factories are covered under the Industrial Tariff. Hence, the appellant was called for Industrial Certificate issued by the Inspector of factories. However, due to non productions of the said certificate, the respondent had billed the service under HT Tariff III.

6.17 The Respondent has submitted that as per the Tariff orders, the definition of HT Tariff III is "All Commercial Establishments and other categories of consumers not covered under High Tension Tariff 1A, 1B, IIA and IV.

6.18 The Respondent has submitted that in the Tariff Order issued by the Hon'ble TNERC vide Order No. 7 of 2022 T.P.No.1 of 2022 dt.09.09.2022 with effect from 10.09.2022, the Hatcheries and Poultry Farms have been categorised as HT Tariff 1A. Hence, the petitioner service is eligible for billing under HT Tariff 1A with effect from 10.09.2022 only.

6.19 The Respondent has submitted that in view of the foregoing points that in absence of categorization of Hatcheries and Poultry Farms activities under HT Tariff 1A in the tariff orders issued by Hon'ble TNERC for the period before 10.09.2022 the

claim of appellant to bill under HT Tariff 1A is not in order. It is respectfully prayed that the appeal petition to be dismissed and thus render justice.

7.0 Additional Affidavit Submitted by the Respondents:

7.1 The Respondent has submitted that averments made in para 2 is denied. The CC bills for the above services were billed, inadvertently, under HT Tariff IA for the period from 11/2011 to 09/2014 though the appellant's industry not covered under said tariff category. Moreover, the appellant had not produced factory license (obtained from the Inspector of Factories) to establish the appellant's industry as registered manufacturing industries. Hence, the bills were revised under HT Tariff III.

7.2 The Respondent has submitted that averments made in para 3 is denied. As per the prevailing Tariff order, the approval from the Ministry of Industry's notification is not adequate to classify under HT Tariff 1A.

7.3 The Respondent has submitted that the averments made in para 4 is incorrect as no advice had been issued by the Respondent with regard to applicability of tariff to the above service connection.

7.4 The Respondent has submitted that the averments made in para 5 is incorrect. The HT Agreement dt. 07.04.2011 had been entered by the appellant with 2nd respondent and nowhere the applicability of the tariff was mentioned. It is clearly mentioned in the Agreement that consumer shall pay the Licensee, maximum demand charges, energy charges, surcharges, meter rents and other charges, if any in accordance with the tariff applicable and the terms and conditions of supply notified from time to time for the appropriate category of consumers to which such consumer belongs.

7.5 The Respondent has submitted that the averments made by the appellant in Para 6 is incorrect. As per the Tariff Order T.P.No.1 of 2013 issued by the Hon'be TNERC, it is submitted that poultry farming was not categorised under HT Tariff IA. Moreover, in order to ascertain any manufacturing activity had been involved in the

appellant's premises, the appellant had been requested; vide this office letters dt.05.09.2014 and 10.10.2014, to produce the Factory License obtained from the Inspector of Factories. But, the appellant had not produced said document. Hence, the CC bills of HT SC.No.107 were billed under HT Tariff III from 10/2014 and the CC charges under HT Tariff III had been paid by the consumer up to December 2014.

7.6 The Respondent has submitted that the averments made in para 7,8 and 9 are incorrect. The CC bills for the above services were billed, inadvertently, under HT Tariff IA for the period from 11/2011 to 09/2014 though the appellant's Industry not covered under said tariff category. Moreover, the appellant had not produced factory license (obtained from the Inspector of Factories) to establish the appellant's industry as registered manufacturing industries. Hence, the bills were revised under HT Tariff III.

7.7 The Respondent has submitted that the averments made in para 10 is incorrect. The Certificate issued from the Pollution Control Board cannot be taken for consideration for applicability of Tariff.

7.8 The Respondent has submitted that averments made by the appellant in Para 11 & 12 is incorrect. The certificate issued from the Department of Industries and Commerce, Government of Tamil Nadu is taken into consideration only for MSME industries under LT tariff category. The above certificate is not taken into consideration for applicability of Tariff in HT category.

7.9 The Respondent has submitted that averments made by the appellant in Para 13 is incorrect. It is submitted that nowhere the applicability of the tariff was mentioned in the HT Agreement entered by the appellant with 2nd respondent. Further as per the Tariff Order issued by the Hon'ble TNERC at the time of effecting the above service, the Poultry farms had not been classified under HT tariff 1A.

7.10 The Respondent has submitted that averments made in Paras 14 to 30 are related subsequent developments of the case. Hence, no remarks offered.

7.11 The Respondent has submitted that averments made by the appellant in Paras A, B of Grounds are incorrect. It is submitted that the tariff of the petitioner service was revised from HT Tariff 1A to HT tariff III was due to non production of Factory licence from Inspector of factories and non classification of Poultry farms under HT Tariff 1A as per the prevailing Tariff order issued by the TNERC. Further, due notices were issued to the appellant by the respondent regarding revision of bills.

7.12 The Respondent has submitted that averments made by the appellant in Para C of Grounds are incorrect. As per the Tariff Order T.P.No.1 of 2013 issued by the Hon'be TNERC, it is submitted that poultry farming was not categorised under HT Tariff IA.

7.13 The Respondent has submitted that as regards the averments contained in para (I) of the grounds of the petition filed by the Petitioner is concerned, it is respectfully submitted the Hon'ble Supreme Court of India passed an order on 05.10.2021 in C.A.No. 7235 of 2009, the relevant portion which held as follows:

"xxxx

4. *After 3 years of the grant of extension, the appellant was served with a memo dated 11.09.2009 by the third respondent herein, under the caption "short assessment notice", claiming that though the multiply factor (MF) is 10, it was wrongly recorded in the bills for the period from 3.08.2006 to 8/09 as 5 and that as a consequence there was short billing to the tune of Rs.1,35,06,585/. The notice called upon the appellant to pay the amount as demanded, failing which certain consequences would follow.*

5. Aggrieved by the said notice, the appellant gave a representation on 22.09.2009 and then filed a consumer complaint before the National Commission, contending inter alla that the demand made by the respondents is the outcome of a glaring mistake and gross negligence on their part and that under Section 56 of the Electricity Act, 2003 (for short "the Act"), no amount due from a customer is recoverable after a period of two years from the date on which it became first due.

6. By an Order dated 1.10.2009, the National Commission dismissed the complaint on the ground that it is a case of "escaped assessment and not a case of "deficiency in service". Aggrieved by the said Order, the appellant is before us.

7. While ordering notice in the above appeal on 13.11.2009, this Court granted interim stay of the impugned order. However, on an application filed on behalf of the respondents for vacating the interim order, this Court modified the stay Order on 19.08.2014 directing the appellant to pay to the first respondent herein, 50% of the demand amount within six weeks with a condition that in case the appellant succeeded, the said amount shall be refunded with interest 9% p.a. Accordingly, the appellant has paid a sum of Rs.54,03,293/, on 24.09.2014. The appellant claims to have already paid a sum of Rs.13,50,000/on 9.10.2009 itself and this amount, together with the amount deposited on 24.09.2014 pursuant to the interim order of this Court, constituted 50% of the amount as demanded in short assessment notice dated 11.09.2009.

8. The sheet anchor of the case of the appellant is Section 56(2) of the Act and the exposition of law made by this Court in the decision in Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam limited and Anr. vs. Rahamatullah Khan alias Rahamjulla.

9. Before we proceed to consider the statutory provision and the decision of this Court relied upon by the appellant, it is relevant to take note of the fact that the appellant never disputed the correctness of the claim of the respondents that the multiply factor (MF) to be applied was 10, but it was wrongly applied as 5. The only grievance raised by the appellant both in their representation and in their consumer complaint was that they cannot be made to suffer on account of the negligence on the part of the respondents and that on the basis of the bill already raised, they have charged their customers and that it may not be possible for them to go back to their customers with an additional demand now. In addition, the bar under Section 56 was also pleaded.

10. Section 56 of the Electricity Act, 2003 reads as under: "56. Disconnection of supply in default of payment.

Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, an amount equal to the sum claimed from him, or the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2). Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

11. Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term "first due" in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.

12. On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in Rahamatullah Khan (supra), that "the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)".

This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in Mahabir Kishore & Ors. vs. State of Madhya Pradesh.

13. Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available

in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).

14. But a careful reading of Section 56(2) would show that the bar contained therein is not merely with respect to disconnection of supply but also with respect to recovery. If Subsection (2) of Section 56 is dissected into two parts it will read as follows: No sum due from any consumer under this Section shall be recoverable after the period of two years from the date when such sum became first due; and the licensee shall not cut off the supply of electricity.

15. Therefore, the bar actually operates on two distinct rights of the licensee, namely, (i) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect, is actually an exception to the law of limitation. Under the law of limitation, what is extinguished is the remedy and not the right. To be precise, what is extinguished by the law of limitation, is the remedy through a court of law and not a remedy available, if any, de hors through a court of law. However, section 56(2) bars not merely the normal remedy of recovery but also bars the remedy of disconnection. This is why we think that the second part of Section 56(2) is an exception to the law of limitation.

16. Be that as it may, once it is held that the term "first due" would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But Rahamatullah Khan says in the penultimate paragraph that "the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under subsection (2) of section 56 of the Act".

17. It appears from the narration of facts in paragraph 2 of Rahamatullah Khan (supra) that this Court was persuaded to take the view that it did, on account of certain peculiar facts. The consumer in that case was billed under a particular tariff code for the period from July2009 to September2011. But after audit, it was discovered that a different tariff code should have been applied

Therefore, a show cause notice was issued on 18.03.2014 raising an additional demand for the period from July 2009 to September2011. Then a bill was raised on 25.05.2015 for the aforesaid period. Therefore, the consumer successfully challenged the demand before the District Consumer Forum, but the Order of the District Forum was reversed by the State Commission on an appeal by the licensee. The National Commission on a revision filed by the consumer, set aside the order of

the State Commission and restored the order of the District Forum. It was this Order of the National Commission that was under challenge before this Court in Rahamatullah Khan (supra).

18. Eventually, this Court disposed of the appeals, preventing the licensee from taking recourse to disconnection of supply, but giving them liberty to take recourse to any remedy available in law for recovery of the additional demand. Therefore, the decision in Rahamatullah Khan (supra) is distinguishable on facts.

19. Even otherwise there are two things in this case, which we cannot overlook. The first is that the question whether the raising of an additional demand, by itself would tantamount to any deficiency in service, clothing the consumer fora with a power to deal with the dispute, was not raised or considered in Rahamatullah Khan (supra). The second is the impact of Subsection (1) of Section 56 on Subsection (2) thereto.

20. The fora constituted under the Consumer Protection Act, 1986 is entitled to deal with the complaint of a consumer, either in relation to defective goods or in relation to deficiency in services. The word "deficiency" is defined in Section 2(1)(g) of the Consumer Protection Act, 1986 as follows:

"2(1)(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

21. The raising of an additional demand in the form of "short assessment notice", on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of "escaped assessment" and not "deficiency in service".

22. In fact, even before going into the question of Section 56(2), the consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only then that the recourse taken by the licensee for recovery of the amount, can be put to test in terms of Section 56. If the case on hand is tested on this parameter, it will be clear that the respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

23. Coming to the second aspect, namely, the impact of Subsection (1) on Subsection (2) of Section 56, it is seen that the bottom line of Sub section (1) is the negligence of any person to pay any charge for electricity. Subsection (1) starts with the words "where any person neglects to pay any charge for electricity or any some other than a charge for electricity due from him".

24. Subsection (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Subsection (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer under this Section", appearing in Subsection (2).

26. The matter can be examined from another angle as well. Sub section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Subsection (2) of Section 56 has a nonobstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Subsection (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in Rahamatullah Khan and Section 56(2) will not go to the rescue of the appellant.

27. Therefore, we are of the view that the National Commission was justified in rejecting the complaint and we find no reason to interfere with the Order of the National Commission. Accordingly, the appeal is dismissed. However, since the appellant has already paid 50% of the demand amount pursuant to an interim order passed by this Court on 19.08.2014, we give eight weeks time to the appellant to make payment of the balance amount. There shall be no order as to costs.''

7.14 The Respondent has submitted that from conjoint reading of the above mentioned the Hon'ble Supreme Court orders, Sub section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Subsection (2) of Section 56 has a non obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Subsection (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence, the contentions of the petitioner are not sustainable one.

7.15 The Respondent has submitted that in nutshell, the Supreme Court of India has held that Section 56(2) of the Electricity Act, 2003 does not apply in the case where a licensed Electricity Distribution Company under the Electricity Act, 2003 raises an additional bill after detecting a mistake. Therefore the law of limitation would commence from the date of 05.09.2014 i.e the date of discovery of mistake. Pursuant to the above, the respondent issued impugned demand notice on 12.11.2014. The said impugned order/supplementary bill/ additional bill/short assessment notice was issued within the limitation period of two years as per the Section 56 (2) of the Electricity Act, 2003. Hence, the contention of the appellant is misconceived one.

7.16 The Respondent has submitted that in absence of factory licence issued by the Inspector of Factories and non-categorisation of Hatcheries and Poultry Farms activities under HT Tariff 1A in the tariff orders issued by Hon'ble TNERC for the period before 10.09.2022 the claim of appellant to bill under HT Tariff 1A is not in order. It is respectfully prayed that the appeal petition to be dismissed and thus render justice.

8.0 Findings of the Electricity Ombudsman:

8.1 Based on the prayer, counter and subsequent arguments at the time of hearing the following are the issues to be decided;

1. What is the nature of activity in the appellant HT service?
2. What is the disputed period for the claim?
3. What are the activities defined in HT tariff IA & III over the above period?
4. Whether the Appellant's claim to remain under HT Tariff IA, asserting that their activity was of an industrial nature during the disputed period, is valid?
5. Whether the Appellant's claim to set aside the demand notice, reinstate Tariff IA, and determine if the claim is barred by limitation under Section 56(2) of the Electricity Act, 2003, is valid?

9.0 Findings on the first issue:

9.1 Upon scrutiny of the documents submitted by the Applicant, it was ascertained that the Appellant requested an HT service connection with a demand of 300 KVA on 18-03-2011 from SE/Thirupattur EDC, mentioning the activity as a hatchery. Furthermore, during the hearing, it was confirmed that the activity involved both a hatchery and a poultry farm.

10.0 Findings on the second issue:

10.1 As per the documents, it was observed that the HT tariff was changed from HT Tariff IA to III for the period from 05/2011 to 09/2014, resulting in a revised arrear payment demand of Rs.31,84,192/-. In October 2014, the bill was issued under HT Tariff III. Following this, the Appellant obtained an interim stay in W.P. Nos. 2238 & 2239 of 2015 on 30-01-2015. Subsequently, the Respondent billed under HT Tariff IA until the dismissal of W.P. Nos. 2238 & 2239 of 2015 on 07-07-2022.

10.2 The Respondent revised the bill for the period from June 2011 to July 2022 under Tariff III and claimed the shortfall amount from the Appellant. Upon non-payment of the amount, the Respondent disconnected the service on 26-11-2022.

10.3 It is further understood that the Appellant restored W.P. No. 2239 of 2015 on 18-08-2023, and the Hon'ble High Court directed the Appellant to approach the CGRF on 22-08-2024. Dissatisfied with the CGRF's order, the Appellant filed the present appeal before the Electricity Ombudsman.

10.4 From the above, it is understood that the adoption of the tariff and the subsequent claim of demand pertained to the disputed period was from June 2011 to July 2022.

11.0 Findings on the third issue:

11.1 In order to ascertain the applicable tariff for the Appellant's HT service connections during the disputed period, I would like to refer to the relevant Tariff Order for HT IA and III right from 2010 Tariff Order.

Order No. 3 of 2010 dated 31.07.2010.

"9.11.2 High Tension Tariff IA:

9.11.2.1 This tariff is applicable to all industrial establishments and registered factories which includes Tea Estates, Textiles, Fertilizers, Salem Steel Plant, Heavy Water Plant, Chemical Plant, common effluent treatment plant, Cold storage units, Information Technology Services.

Information Technology Services as defined in the Information Communication Policy (ICT Policy) 2008 of Government of Tamil Nadu. The definition is reproduced below:

"IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation.

9.11.7 High Tension Tariff III

9.11.7.1 This tariff is applicable to all commercial establishments and other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IIB, IIC and IV.

9.11.7.2 IT Enabled services / private communication providers will be charged under this tariff.

9.11.7.3 Industries requiring HT supply shall be charged under the tariff during construction period.

Order No. 1 of 2012 dated 30.03.2012.

10.0 High Tension Tariff IA:

10.2.1 This Tariff is applicable to all manufacturing and industrial establishments and registered factories including Tea Estates, textiles, fertilizers, Salem Steel Plant, Heavy Water Plant, chemical plant, common effluent treatment

plant, Cold storage units, Industrial estates water works, water Supply Works by new Tirupur Area Development Corporation.

10.2.2 Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu.

*10.2.3 ****

10.6 High Tension Tariff III

10.6.1 All Commercial Establishments and other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IIB and IV.

10.6.2 Private Communication providers, Cinema Studios and Cinema Theatres.

Order No. 1 of 2013, dated 20.06.2013.

6.2 High Tension Tariff IA:

a) All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants,

b) Common effluent treatment plants, Industrial estate's water treatment/supply works,

c) Cold storage units

ii. This tariff is also applicable to Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:

*"IT services are broadly defined as systems integration, processing services, information services outsourcing packaged software support installation, hardware support and installation. ****

6.6 High Tension Tariff III:

i. This tariff is applicable to all other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IV and V.

Order No. 9 of 2014 dated 11.12.2014.

6.4 High Tension Tariff II-A

i. This Tariff is applicable to:

a) All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants,

b) Common effluent treatment plants, Industrial estate's water treatment/supply works,

c) Cold storage units

ii. *This tariff is also applicable to Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:*
"IT services are broadly defined as systems integration, processing servicex, information services outsourcing, packaged software support and installation, hardware support and installation ***

6.6 High Tension Tariff III:

i. This tariff is applicable to all other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IIB, IV and V.

Order No. 1 of 2017 dated 11.08.2017.

6.1.2 HT Tariff I A:

6.1.2.1 This Tariff is applicable to:

1. *All manufacturing and industrial establishments and registered factories including Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants. However, registered factories such as LPG bottling Units which are of non-manufacturing nature are not to be included in this tariff category.*
2. *Common effluent treatment plants, Industrial estate's water treatment/supply works,*
3. *Cold storage units*

6.1.2.2 This tariff is also applicable to Information Technology services as defined the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:
*"IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation"****
Information Technology Services includes:

(a) Systems integration includes:

i. *Network Management Services*
ii. *Applications Integration*

(b) Processing services includes:

i. *Outsourced Services in Banking, HR, finance, Technology and other areas*
ii. *Outsourced Back office support or Business transformation and Process Consulting Services.*

(c) Information Services Outsourcing includes:

i. *Outsourced Global Information Support Services*
ii. *Knowledge Process Outsourcing*
iii. *Outsourced Global Contact Centre Operations*
iv. *Outsourced Process Consulting Services.*

(d) Packaged Software Support and Installation includes:

i. *Software Design and Development, Support and Maintenance*
ii. *Application installation, support and maintenance*
iii. *Application testing.*

(e) Hardware Support and Installation includes:

i. *Technical and network operations support*

ii. Hardware installation, administration and management
iii. Hardware Infrastructure maintenance and support

(f) *This tariff is also applicable to Aeronautical services provided by the Airports under Airports Authority of India. The Non-Aeronautical services provided shall be categorised under HT III Commercial/Miscellaneous category.*

(g) *This tariff is also applicable to start-up power provided to generators. The generators are eligible to get start-up power under this tariff after declaration of CoD. The demand shall be limited to 10% of the highest capacity of the generating unit of the generating station or the percentage auxiliary consumption as specified in the Tariff Regulations, whichever is less. The supply shall be restricted to 42 days in a year. Drawal of power for a day or part thereof shall be accounted as a day for this purpose. Power factor compensation charges are not applicable for start-up power.*

(h) The HT Industrial consumers (HT IA) shall be billed at 20% extra on the energy charges for the energy recorded during peak hours. The duration of peak hours shall be 6.00 A.M. to 9.00 AM and 6.00 P.M to 9.00 P.M.

(i) The HT Industrial Consumers (HT IA) shall be allowed a reduction of 5% on the energy charges for the consumption recorded during 10.00 P.M to 5.00 A.M as an incentive for night consumption."

6.1.6 High Tension Tariff III:

This tariff is applicable to all other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IIB, IV and V.

Order No. 7 of 2022 dated 09.09.2022.

6.1.2 High Tension Tariff I: *(Industries, Factories, Information Technology Services) for FY 2022-23*

For FY 2023-24 to FY 2026-27
The applicable tariff (both fixed and energy charge) for FY 2022-23 shall undergo an inflation based adjustment, as per para 6.1.1.13. The revision will be effective from 01 July of each of the subsequent years of the control period.

6.1.2.1 This Tariff is applicable to:
i. All manufacturing and industrial establishments and registered factories

ii. This tariff is also applicable for Tea Estates, Textiles, Fertilizer Plants, Steel Plants, Heavy Water Plants, Chemical plants, Industrial Workshops, Private Milk dairies, Rice Mills, Roller Flour Mills, News Papers Printing Press, Ice & Ice-cream manufacturing units, Tanneries, Hatcheries, Poultry Farm, Floriculture, Poly House/Green House, Hybrid Seeds processing units, Centralised preparation units of Food/sweets/bakery shops (provided sales counter is physically & electrically segregated & billed under respective HT-III/LT-V category), Packaging Units, Drug manufacturing units, Garment

manufacturing units, Tyre retreading units, petroleum pipeline projects, Piggery farms, Analytical Lab for analysis of ore metals, Saw Mills, Toy/wood industries, Satellite communication centres, Mineral water processing plants attached with drinking water, Mineral water bottling plants and Solid Waste Processing Plant, concrete mixture (Ready Mix Concrete) units, Cutting of larger pipes and sheets into smaller one, Pumping of Oil and Gas units, RO plants Sea/hard water conversion done by Private/ on behalf of CMWSS Board under Design Build and Operate (DBO), Tamil Nadu (v) State Transport Corporation repair and Workshop and maintenance, Sericulture, Floriculture, Horticulture, Mushroom cultivation, cattle farming, Poultry & Bird farming and Fish/prawn/shrimp culture, Battery charging units.

iii. Common effluent treatment plants, Industrial estate's water treatment / supply works;

iv. Cold Storage units;

v. This tariff is also applicable to the Research & Development Centre/Lab attached therein to the activities mentioned under (i) to (iv) above.

6.1.2.2 This tariff is also applicable to Information Technology services as defined in the ICT Policy 2008 of Government of Tamil Nadu. The definition is reproduced below:
*"IT services are broadly defined as systems integration, processing services, information services outsourcing, packaged software support and installation, hardware support and installation."****
6.1.2.3 This tariff is also applicable to Aeronautical services provided by the Airports under Airports Authority of India. The Non-Aeronautical services provided shall be categorised under HT III/ LT V Commercial / Miscellaneous category.

6.1.2.4 This tariff is also applicable to start-up power provided to generators. The generators are eligible to get start-up power under this tariff after declaration of CoD. The demand shall be limited to 10% of the highest capacity of the generating unit of the generating station of the percentage auxiliary consumption as specified in the 'TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005, whichever is less. As the generator is paying the MD charges for the entire year, the restriction on the days of usage is removed. The restriction on number of days as specified in TN Grid Code will be applicable only when demand equated energy charge is fixed by the Commission.

6.1.5 ***High Tension Tariff III: (Miscellaneous categories)***
For FY 2023-24 to FY 2026-27
The applicable tariff (both fixed and energy charge) for FY 2022-23 shall undergo an inflation based adjustment, as per para 6.1.1.13. The revision will be effective from 01" July of each of the subsequent years of the control period.

6.1.5.1 This tariff is applicable to Commercial Complexes/Malls/Business premises, Super market/Departmental stores, Cinema theatres/Multiplex, Private hospitals, Hotels, Restaurants, Private Guest Houses, Boarding-Lodging Homes, All Government/Private/Local body offices, Banks, Telephone Exchanges, T.V. Station, All India Radio, Railway Stations, MRTS stations, Transport Corporation bus stations, Private bus stations, LPG bottling plants, Stadiums other than those maintained by

Government and Local Bodies. Petrol Diesel and Oil storage plants, Oil /Petroleum projects, Petrol/Gas bunks, Diagnostic/scan centres. Marriage halls, convention centres, Service Stations/ Garages, Tyre vulcanizing centres, Gym/Fitness centres, Race Course Clubs, Amusement Parks, Centralised preparation unit of food with Sales counter/ selling activity Yoga/Meditation centres, Ashrams, Mutts, Air Port (other than Aeronautical activities), Private hospitals and all other categories of consumers and usages not covered under High Tension Tariff 1. II(A). II(B), IV and V.

6.1.5.2 In respect of Marriage Hall/Convention centre, commercial establishment 5% extra on the energy charges for the entire consumption will be collected as a component of lavish illumination on usage. For the installations where a separate service connection is available for the exclusive purpose of lavish illumination, this 5% extra charges shall not be applicable. The status of usage of lavish illumination shall be assessed and recorded on regular interval."

11.2 From the above, it is noted that the HT Tariff IA benefit was extended over a period to various activities, which are discussed below:

As per 2010 Tariff order under HT Tariff IA is applicable to all industrial establishments and registered factories which includes Tea Estates, Textiles, Fertilizers, Salem Steel Plant, Heavy Water Plant, Chemical Plant, common effluent treatment plant, Cold storage units, Information Technology Services.

In the tariff order issued during 2012, the following activities were additionally included such as Industrial estates water works, water Supply Works by new Tirupur Area Development Corporation and new classification in Information Technology services viz. software design support, outsourced global information support service, Technical and network operations support. There were no changes in the tariff order issued during 2013 and 2014.

In the tariff order issued during 2017, the activities of Aeronautical services provided by the Airports under Airports Authority of India and start-up power to generators had been included. Further, in the said tariff order it has provided that the registered factories such as LPG bottling Units which are of non-manufacturing nature are not to be included in this tariff category.

11.3 During the period from 2010 to 2017 (Order No.3 of 2010, dated 31.07.2010 to Order No.1 of 2017, dated 11.08.2017), the Hon'ble TNERC added certain activities under Tariff IA and excluded non-manufacturing activities such as LPG

bottling units. Furthermore, it is clarified that Tariff IA is not exclusively for industrial and manufacturing activities. It encompasses a variety of activities, which have been discussed above.

12.0 Findings on the fourth issue:

12.1 The Appellant has stated that the Forum incorrectly emphasized the industrial certificate, despite the Appellant producing several documents to demonstrate that it is an industrial unit. These documents include, among others, the pollution clearance certificate, an industrial certificate as a hatchery dated 23.07.2010, and the Central Government's notification allowing the Appellant to set up industrial units in India for its poultry business.

12.2 The Appellant has stated that the Forum has ignored the clear and binding terms of the 2013 and 2017 Tariff Orders, which are applicable to 'all industrial units'. Despite this, the Forum has wrongly concluded that the Appellant is engaged in a commercial activity.

12.3 The Appellant has stated that the Forum has failed to consider the orders of the Hon'ble TNERC, the clear provisions of the Tariff Orders, and this Hon'ble Authority's order in the case of the prawn farms operated by the Appellant's sister entity.

12.4 The Respondent has submitted that the Appellant was requested, via office letters dated 05.09.2014 and 10.10.2014, to provide the Industrial License obtained from the Inspector of Factories for billing under HT Tariff IA. However, the Appellant did not produce the required Industrial License. As a result, the CC bills for HT Service Connection No. 107 were billed under HT Tariff III starting from October 2014, and the CC charges under HT Tariff III were paid by the consumer until December 2014.

12.5 The Respondent has submitted that the CC bills from May 2011 to September 2014 were revised under HT Tariff III, and the consumer was informed to pay the difference in the tariff amount of Rs.31,84,192/- via Lr. No. 331/SE/TEDC/DFC/TPR/ RCS/AS/F.HT/ SC.No.107/2014 dated 12.11.2014. Since

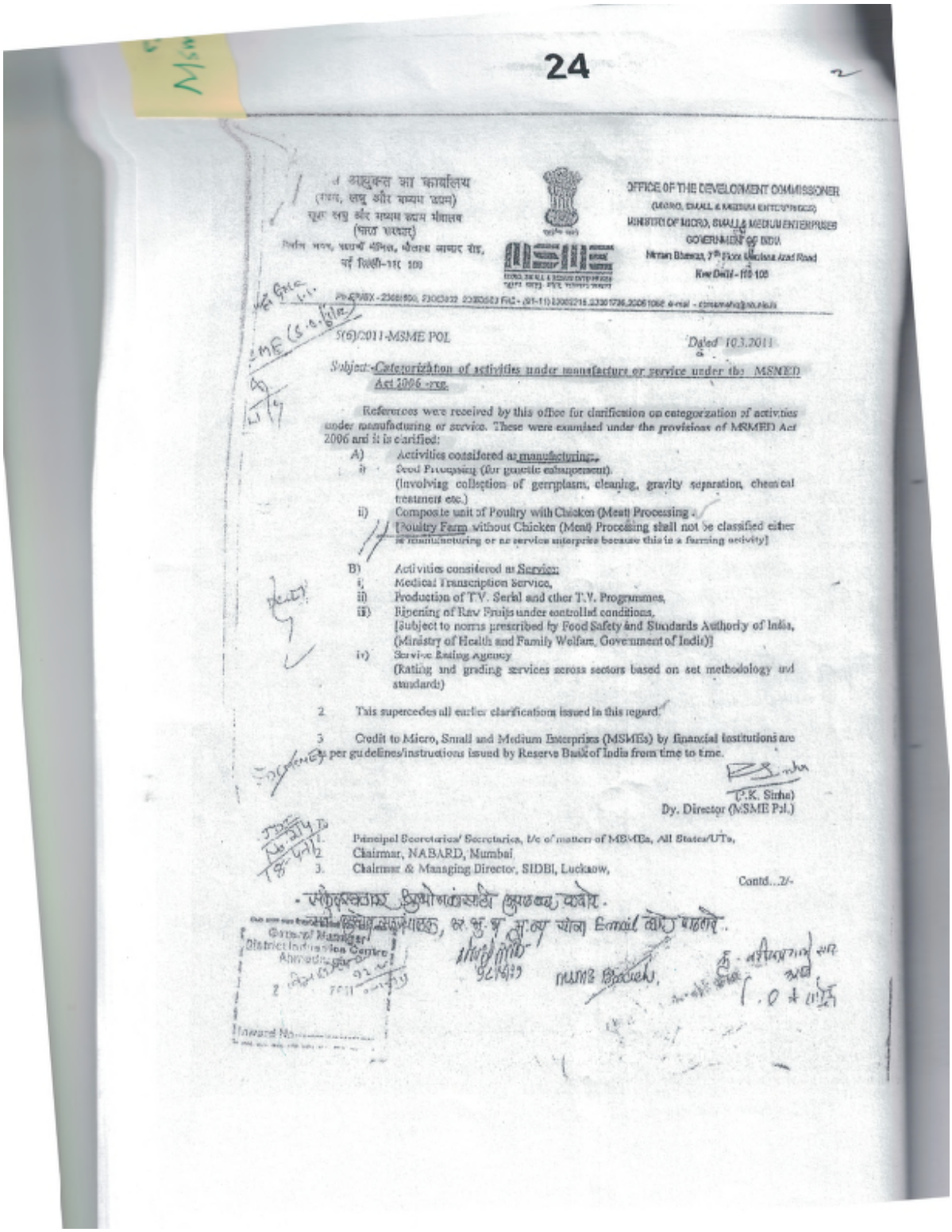
the above amount was not paid by the consumer, a fifteen-day notice was issued on 07.01.2015.

12.6 The Respondent has submitted that, as per the prevailing Tariff Orders issued by the Hon'ble TNERC, poultry farming and hatchery activities were not classified under HT Tariff IA. Furthermore, only registered factories are covered under the Industrial Tariff. As a result, the Appellant was asked to provide the Industrial Certificate issued by the Inspector of Factories. However, due to the non-production of the said certificate, the Respondent service billed under HT Tariff III.

12.7 The Respondent has submitted that the certificate issued by the Department of Industries and Commerce, Government of Tamil Nadu, is considered only for MSME industries under the LT tariff category and is not applicable for determining tariff under the HT category. Further, the Respondent has submitted that the certificate issued by the Pollution Control Board cannot be considered for determining tariff applicability.

12.8 The Respondent has submitted that in the absence of a factory license issued by the Inspector of Factories and the non-categorization of hatcheries and poultry farming activities under HT Tariff 1A in the tariff orders issued by the Hon'ble TNERC for the period before 10.09.2022, the claim of the Appellant to be billed under HT Tariff 1A is not valid.

12.9 In view of the above arguments, I would like to refer to the MSME letter dated 10.03.2011, submitted by the Appellant, for the categorization of activities under manufacturing or services as per the MSME Act, 2006, which is reproduced below:



अपर आयुक्त का कार्यालय
(लघु, लघु और मध्यम उद्यम)
सूक्ष्म लघु और मध्यम उद्यम मंत्रालय
(भारत सरकार)
निर्माण भवन, पश्चिमी ब्लॉक, वैलिंगडन क्रिसेन्ट रोड,
नई दिल्ली-110 001

OFFICE OF THE DEVELOPMENT COMMISSIONER
(MICRO, SMALL & MEDIUM ENTERPRISES)
MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES
GOVERNMENT OF INDIA
Nirman Bhawan, 7th Floor, Maulana Azad Road
New Delhi - 110 108

PBX-23061500, 23063932 23330563 FAX - (91-11) 23001715,23301736,23061088 e-mail - dcmsme@nic.in

5(6)/2011-MSME POL

Dated 10.3.2011

Subject:-Categorization of activities under manufacture or service under the MSMED Act 2006 -reg.

References were received by this office for clarification on categorization of activities under manufacturing or service. These were examined under the provisions of MSMED Act 2006 and it is clarified:

A) Activities considered as manufacturing:-

i) Seed Processing (for genetic enhancement).
(Involving collection of germplasm, cleaning, gravity separation, chemical treatment etc.)

ii) Composite unit of Poultry with Chicken (Meat) Processing.
[Poultry Farm without Chicken (Meat) Processing shall not be classified either as manufacturing or as service enterprise because this is a farming activity]

B) Activities considered as Service:

i. Medical Transcription Service,
ii) Production of T.V. Serial and other T.V. Programmes,
iii) Ripening of Raw Fruits under controlled conditions,
[Subject to norms prescribed by Food Safety and Standards Authority of India, (Ministry of Health and Family Welfare, Government of India)]
iv) Service Rating Agency
(Rating and grading services across sectors based on set methodology and standards)

2. This supercedes all earlier clarifications issued in this regard.

3. Credit to Micro, Small and Medium Enterprises (MSMEs) by financial institutions are as per guidelines/instructions issued by Reserve Bank of India from time to time.

(P.K. Sinha)
Dy. Director (MSME Pol.)

1. Principal Secretaries/ Secretaries, I/c of matters of MSMEs, All States/UTs,
2. Chairman, NABARD, Mumbai.
3. Chairman & Managing Director, SIDBI, Lucknow,

Contd...2/-

General Manager
District Industries Centre
Ahmedabad

Inward No.

12.10 It is categorically stated that poultry farming, without chicken (meat) processing, shall not be classified either as a manufacturing or as a service enterprise, as it is considered a farming activity. Therefore, based on the above, the Appellant's HT service was not classified as manufacturing but rather as poultry farming. Furthermore, as per the Factories Act, 1948, which is defined below,

"xxx

58.(k) "manufacturing process" means any process for—
59.(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning,
60. breaking up, demolishing, or otherwise treating or adapting any article or substance with a view
61. to its use, sale, transport, delivery or disposal; or

62. 1[(ii) pumping oil, water, sewage or any other substance; or]
63. (iii) generating, transforming or transmitting power; or
64. 2[(iv) composing types for printing, printing by letter press, lithography, photogravure or
65. other similar process or book binding; 3[or]]
66. (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or
67. vessels; 3[or]
68. 3[(vi) preserving or storing any article in cold storage;]"

12.11 Hence, as per the MSME letter and as per the Factories Act, 1948, the activities in the Appellant's HT service connection was not in the nature of manufacturing activity.

12.12 Further, the Appellant argued that the poultry farm was an industrial service, citing the production of a pollution certificate and a Department of Industry certificate. However, the Department of Industry certificate was never produced by the Appellant, which was the main contention of the Respondent for changing the tariff from HT Tariff IA to III. The Appellant's additional contention that they have enclosed a pollution certificate, which categorizes their HT service as an industrial unit, is not applicable in this case.

12.13 In this context, I would like to discuss the provisions under the Water Act of 1974 and the Air Act of 1981. In Tamil Nadu, a poultry farm, especially a medium or large-scale one, is required to obtain a pollution certificate, also known as "Consent to Establish" (CTE) and "Consent to Operate" (CTO), from the State Pollution Control Board (TNPCB) to operate legally. This is based on the provisions of the Water Act, 1974 and the Air Act, 1981.

12.14 Further, the issuance of a pollution control certificate does not classify the activity as an industrial one; it is classified as a farming activity, as per the MSME letter dated 10.03.2011. Furthermore, it should be noted that the Department of Industries and Commerce issued an acknowledgement certificate to the Appellant's premises as a hatchery for chicks only. This certificate also includes a note stating: *"The issue of this acknowledgement does not bestow any legal right. The enterprise is required to seek requisite clearance/ Licence/Permit required under statutory obligation stipulated under the Law of Central Government/State Government/UT Administrations/Court Orders."*

12.15 Further, the Appellant referred to M.P. No. 4 of 2021, which advised TANGEDCO to seek proper clarification regarding the activities, and M.P. No. 28 of 2021, which issued an order against the misuse of tariff claimed by the licensee under Sections 126 & 135 of the Electricity Act, 2003. However, the above Commission's order cannot be applicable to the present case. This is because the nature of the Appellant's poultry farm activities is neither manufacturing nor industrial, and it is not classified as any other category of activities that have been added over the period in various Tariff Orders.

12.16 However, the Appellant's main contention is that the Forum has ignored the clear and binding terms of the 2013 and 2017 Tariff Orders, which are applicable to all industrial units. On perusal, it is noted that Hon'ble Commission used the term "*all industrial establishments and registered factories"* in 2010 tariff order and *"All manufacturing and industrial establishments and registered factories"* in 2012 to 2017 tariff orders. In my view, in order to qualify under HT Tariff IA as per the provisions in the Tariff orders, the industrial units should have manufacturing activities as mentioned in the First schedule of The Industries (Development and Regulation) Act, 1951 and should also be a Registered Factory.

12.17 From the above findings, it is noted that as per the MSME letter, the activities in the appellant's HT service is not to be considered as 'manufacturing' as such activity has not been included as manufacturing activity in the Factories Act, 1948 as well as in the First schedule of The Industries (Development and

Regulation) Act, 1951. Therefore, non production of factory license as per Factories Act, 1948 and also non fulfillment of terms mentioned in the Tariff orders issued during the period from 2010 to 2017, it is concluded that Appellant's unit was not eligible to be categorised under HT Tariff IA for the disputed period. As the said activity does not fall under High Tension Tariff IA, IB, IIA, IIB, IV and V, will have to be billed only under HT Tariff III as per the provisions in the Tariff Order for the disputed period. Therefore, the prayer of the appellant to reinstate the appellant's HT SC No.107 under HT Tariff 1A is rejected. Accordingly, the prayer of the appellant in A.P.No.86 of 2024, to reinstate the appellant's HT SC No.107 under HT Tariff 1A is also rejected.

13.0 <u>Finding on the fifth issue:</u>

13.1 The Appellant has stated that they received a notice dated 08.10.2014 bearing Lr. No. 286-1/SE/TEDC/DFC/TPR/RCS/AS/A2/F.HT.SC.No.107/14, informing them that a copy of the industrial license had not been received and calling upon the Appellant to produce the same. The notice further stated that, failing the production of the license, the 2nd Respondent would change the tariff category from HT IA to HT III (Commercial).

13.2 The Appellant has stated that the 2nd Respondent then unilaterally changed the tariff in the bill for October 2014 and billed the Appellant under the HT III category. Despite sending several representations to the Respondent clarifying that HT III was not applicable to poultry farming, the change was made.

13.3 The Appellant has stated that they then received Lr.No.331/SE/TEDC/ DFC/TPR/RCS/AS/A2/F.HT.SC.No.107/14, dated 12.11.2014, revising the bills from setting up of the service connection in December 2011 to September 2014 and demanding payment of Rs.31,84,192/- as alleged shortfall. The said amount was included in the subsequent current consumption bill for December 2014 in HTSC No. 107, issued to the Petitioner on 31.12.2014, with the due date being 06.01.2015.

13.4 The Appellant has stated that they received notice bearing Lr. No. 002/ SE/TEDC/FDC/TPR/RCS/AS/A2/F.HT.sc.No.107/2014 dated 07.01.2015 from the

2nd Respondent, threatening to disconnect HT Sc. No. 107 in case of failure to pay the revised amount including BPSC, amounting to a total demand of Rs.31,84,192/-.

13.5 The Appellant has stated that fearing disconnection, they filed W.P. No. 2239 of 2015 and obtained an interim stay on 30.01.2015, which was extended subsequently. However, due to the ill health of the Appellant's counsel, the writ petition No. 2239 of 2015 was dismissed for non-prosecution on 07.07.2022. Taking advantage of the inadvertent dismissal of the writ petition, the Respondents disconnected HT Sc. No. 107 on 27.12.2022.

13.6 The Respondent has submitted that the Appellant was requested by their office letters dated 05.09.2014 and 10.10.2014 to produce the industrial license obtained from the Inspector of Factories for billing under HT Tariff 1A. But the Appellant has not produced the industrial license obtained from the Inspector of Factories. As such, the CC bills of HT Sc. No. 107 were billed under HT Tariff III from 10/2014, and the CC charges under HT Tariff III had been paid by the consumer up to December 2014.

13.7 The Respondent has submitted that CC bills from 05/2011 to 09/2014 were revised under HT Tariff III and informed to the consumer to pay the difference in tariff amount of Rs.31,84,192/- vide letter dated 12.11.2014. Since the above amount has not been paid by the consumer, a fifteen-day notice was issued on 07.01.2015.

13.8 The Respondent has submitted that aggrieved by the above notices, the Appellant had filed writ petition in the Hon'ble High Court of Madras vide W.P. No. 2239 of 2015 and obtained a stay order. The Hon'ble High Court on 07.07.2022 dismissed the case for non-prosecution from the petitioner side.

13.9 The Respondent has submitted that consequent to the dismissal of the petition, in order to give the Appellant an opportunity, a show-cause notice was issued to the consumer vide letter No. DFC/RCS/A2/F.HT Sc. No. 089094130107/2022, dated 11.11.2022 towards payment of the difference in tariff

rate amounting to Rs.3,22,05,106/- along with BPSC for the period from 11/2011 to 07/2022 in respect of HT Sc. No. 107.

13.10 The Respondent has submitted that in response to the above show-cause notice, the consumer has stated in the letter dated 28.11.2022 that the restoration petition has already been filed and is pending for directions and prayed for time to clear dues until the writ petition is disposed of on merits. Since no reply has been received from the consumer on merits and no orders restraining from claiming the legitimate dues, a final notice was issued to the consumer vide letter No. ACE/DFC/RCS/A2/F.HT Sc. No. 107/D. No. 184/dt. 08.12.2022 to pay the dues within 15 days from the date of receipt of the letter, failing which the service connection will be disconnected.

13.11 The Respondent has submitted that the consumer has not paid the dues as demanded by this office within the prescribed period, and hence the above service connection was disconnected on 26.12.2022. Subsequently, the accounts of the service have been closed and intimated to the consumer for payment of the above demand vide letter dated 05.08.2024.

13.12 The Appellant's service (poultry farm) was initially provided with HT Tariff IA during the agreement executed on 07-04-2011, the Respondent subsequently found that the Appellant's service was not eligible to be categorized under HT Tariff IA during 2014. After noticing this, the Respondent issued notice.

13.13 In this regard, I would like to refer to the Regulation 12 of Tamilnadu Electricity Supply Code which is reproduced as follows:

> *"12. Errors in billing*
>
> *(1) In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Licensee, the Licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in the case of overcharging.*
>
> *(2) Where it is found that the consumer has been over-charged, the excess amount paid by such consumer shall be computed from the date on which the excess amount was paid. Such excess amount with interest may be paid by cheque in the month subsequent to the detection of excess recovery or may be adjusted in the future current consumption bills upto two assessments at the option of the consumer. The*

sum which remains to be recovered after two assessments any be paid by cheque. Interest shall be upto the date of last payment.

(3) Wherever the Licensees receive complaints from consumers that there is error in billing, etc. the Licensee shall resolve such disputes regarding quantum of commercial transaction involved within the due date for payment, provided the complaint is lodged three days prior to the due date for payment. Such of those complaints received during the last three days period shall be resolved before the next billing along with refunds / adjustments if any. However, the consumer shall not, on the plea of incorrectness of the charges, with hold any portion of the charges."

13.14 Further, I would like refer HT agreement Clause 6 and 7 made by the appellant with respondent on 07.04.2011.

"6. Obligation of consumer to pay all charges levied by licensee
From the date this agreement comes into force the consumer shall be bound by and shall pay the Licensee, maximum demand charges, energy charges, surcharges, meter rents and other charges, if any in accordance with the tariffs applicable and the terms and conditions of supply notified from time to time for the appropriate class of consumers to which such consumer belongs.

7. Licensee's right to vary terms of agreement
The consumer agrees that the Licensee shall have the right to vary from time to time, tariffs, general and miscellaneous charges and the terms and conditions of supply under the directions/regulations or by special or general proceedings of Tamil Nadu Electricity Regulatory Commission. The consumer, in partivular, agrees that the Licensee shall have the right to enhance the rates etc. chargeable for supply of electricity according to exigencies again with the approval of Tamil Nadu Electricity Regulatory Commission. It is also open to Licensee to restrict or impose power cuts totally or partially at any time as it deems fit."

13.15 From the co-joint of the above, it is clear that the licensee was entitled to reclassify the incorrectly applied HT Tariff IA to the appropriate category for the Appellant's service. In this context, I would like to refer the TNERC regulation 14,(5) and 21 which is given below:

*"**14. Due dates and notice periods***
xxx
xxx

5) If the amount of any bill remains unpaid beyond the period specified, the Licensee may also, without prejudice to any of its rights under the agreement entered into by the consumer with the Licensee, order supply of electricity to the consumer to be discontinued forthwith without further notice and keep the service connection disconnected until full payment for all obligations pending and the charge for the work of disconnection and reconnection has been paid. Such discontinuance of supply of electricity shall not relieve the consumer of his liability to pay the minimum

monthly charges nor shall such discontinuance affect any right, claim, demand or power which may have accrued to the Licensee hereunder."

*****

*"**21. Disconnection of supply***

Section 56 of the Act with regard to disconnection of supply in default of payment reads as follows :

" (1).Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a Licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the Licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such Licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

a) An amount equal to the sum claimed from him or
b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months. Whichever is less, pending disposal of any dispute between him and the Licensee."

13.16 The Respondent issued notices on 05-09-2014 and 10-10-2014 requesting the production of an industrial license. A notice on 12-11-2014 was issued to pay the difference in tariff arrears amount. A fifteen-day notice was then issued on 07-01-2015. The Appellant obtained a stay in WP No. 2238 & 2239 of 2015 and M.P.Nos.2 & 2 of 2015 on 30-01-2015. Subsequently, the Appellant's writ petitions were dismissed on 07-07-2022. Following the dismissal, a show-cause notice was issued on 11-11-2022 to pay the difference in tariff due to the incorrect tariff adoption for the period from 06/2011 to 07/2022. A final fifteen-day notice was issued on 08-12-2022, and the service connection was disconnected on 26-12-2022.

13.17 As per the above regulations, the Respondent's action in taking corrective measures for the incorrect adoption of the Tariff from HT Tariff IA to III for the poultry farm was in order. The failure on the part of the Appellant to pay the amount led to disconnection, with the Respondent following due procedures. Therefore, the Respondent's action to disconnect the service is justified.

13.18 Regarding the Appellant's argument that the Respondent is barred from claiming the bill under Section 56(2) of the Electricity Act 2003, I would like to refer to Section 56(2) of the Electricity Act 2003.

> *"Sec. 56(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the Licensee shall not cut off the supply of the electricity."*

This clause stipulates that no sum due from any person under this section shall be recoverable after a period of two years from the date when such sum becomes first due. In this context, I would like to refer to the recent orders of the Hon'ble Supreme Court in Civil Appeal No. 1672/2020, dated 18.02.2020, and Civil Appeal No. 7235 of 2009, dated 05.10.2021. The relevant paragraphs of the orders are reproduced below:

> *"Civil appeal No.1672/2020 issued on 18.02.2020*
>
> *Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes or recovery which may be initiated by the licensee company for recovery of a supplementary demand.*
>
> *****
>
> *Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bonafide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand."*
>
> *Civil appeal No.7235 of 2009 issued on 05.10.2021*

"21) The raising of an additional demand in the form of "Short assessment notice" on the ground that the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of "escaped assessment" and not "deficiency in service".

22) In fact, even before going to the question of Section 56(2), the Consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only and then that the recourse taken by the licensee for recovery of the amount, can be put to best in terms of Section 56. If the case on hand is tested on this parameter, it will be clear that the Respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

23) Coming to the second aspect named the impact of Sub-section (1) on Sub-section (2) of Section 56, it is seen that the bottom line of Sub- section (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words ***"where any person neglects to pay*** *any charge for electricity or any some other than a charge for electricity due from him".*

24) Sub-section (2) uses the words "no sum due from any consumer ***under this Section".*** *Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with the negligence on the Part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.*

25) In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer ***under this Section****, appearing in Sub-section (2).*

26) The matter can be examined from another angle as well. Sub-section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensees. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of

limitation prescribed under Sub- section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in ***Rahamatullah khan*** *and Section 56 (2) will not go to the rescue of the Appellant."*

13.19 It is seen from the above two court orders that the Respondent can invoke Section 56(2) for escaped assessment. Furthermore, Section 56(2) does not prevent the licensee from raising an additional or supplementary demand after the expiry of the limitation period, in the case of a mistake or bona fide error.

13.20 Further, the liability to pay energy charges is created on the day electricity is consumed; however, the charge becomes first due only after a bill or demand notice is served. Therefore, the limitation in the present case would also run from the date of the demand notice. Any demand involving short levy, incorrect billing, wrong application of the multiplying factor, audit objections, etc., made after two years is considered a supplementary bill for the unbilled energy. There is no bar in the Electricity Act to raise a supplementary bill.

13.21 Upon examining the documents submitted, it is established that the Respondent noticed the mistake on 05-09-2014, reminded the appellant on 10-10-2014, and issued further notices on 12-11-2014 and 07-01-2015. The Appellant filed for a stay order from the Hon'ble High Court on 30-01-2015, which was subsequently dismissed on 07-07-2022. Further, a show cause notice was issued on 11-11-2022, followed by a final 15-day notice on 08-12-2022, and the service connection was disconnected on 26-12-2022.

13.22 This sequence of actions reflects the Respondent's continued efforts, with the restoration petition allowed on 18-08-2023 in W.M.P 32634 of 2022 & 2719 of 2023, regarding WP No. 2038 & 2239 of 2015, and the subsequent order on 22-08-2024 to take up the matter by CGRF on merits. Therefore, it is established that the supplementary bill raised continuously treated as outstanding arrears, and hence the period of limitation has not lapsed. In view of the above, the respondent's claim is not barred by limitation.

13.23 With respect to the restoration of supply, the respondent is directed to take necessary action as per Regulation 22 of TNE Supply Code Regulations. The respondent is also instructed to adjust the 25% of the amount that has already been paid by the appellant from the outstanding dues to be collected from the appellant.

14.0 <u>Conclusion</u>:

14.1 In view of the above findings, the appellant's prayer to set aside the demand notices issued in respect of HT SC No.107, after the correction of the wrong tariff by the respondent for the period from 06/2011 to 07/2022 is rejected. Accordingly, the prayer of the appellant in A.P.No.86 of 2024 and A.P.No.87 of 2024, to reinstate the appellant's HT SC No.107 and 109 under HT Tariff 1A is rejected.

14.2 With the above findings A.P.No.86 of 2024 and A.P.No.87 of 2024 is disposed of by the Electricity Ombudsman.

(N. Kannan)
Electricity Ombudsman

"நுகர்வோர் இல்லையேல், நிறுவனம் இல்லை"
"No Consumer, No Utility"

To

1. M/s. Charoen Pokphand (India) Pvt. Ltd. - By RPAD
Pallikuppam Road,
Agaramcheri Village,
Vellore District – 635 826.

2. The Chairman & Managing Director, – By Email
TNPDCL,
144, Anna Salai, Chennai -600 002.

3. The Superintending Engineer, – By Email
Tirupattur Electricity Distribution Circle,
TNPDCL,
2, 4B, Balammal Colony, Tirupattur-635 601.

4. The Deputy Financial Controller,
Tirupattur Electricity Distribution Circle,
TNPDCL,
2, 4B, Balammal Colony, Tirupattur-635 601.

5. The Executive Engineer/O&M/Pallikonda,
Tirupattur Electricity Distribution Circle,
TNPDCL,
No.7 Kothaval Street, Pallikonda, Vellore DT -635809.

6. The Assistant Executive Engineer/O&M/Vadakathipatty, – By Email
Tirupattur Electricity Distribution Circle,
TNPDCL,
110 KV Vadakathipatty SS, Vadakathipatty,
Madanoor Post 635802.

7. The Assistant Engineer/O&M/ Agaramcheri, – By Email
Tirupattur Electricity Distribution Circle,
TNPDCL,
No.4, 8 E, MC Road, Agaramchery,
Vellore (Dt) 635804.

8. The Secretary, – By Email
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate, Guindy, Chennai – 600 032.

9. The Assistant Director (Computer) – **For Hosting in the TNERC Website**
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate, Guindy, Chennai – 600 032.