

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 83/07

Dated: 15th April, 2009

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member**

IN THE MATTER OF:

Maharashtra State Electricity Board & Anr. Appellant

Versus

Maharashtra Electricity Regulatory Commission Respondent

**Counsel for the Appellant(s): Ms. Deepa Chawan, Ms. Alpana Dhake,
Mr. Kiran Gandhi, Mr.H.S.Jaggi, Ms.Ugen Bhutia,
Ms. Amita Rajora, Mr.Anami Bhattacharya.
Mr.Anurag Sharma**

**Counsel for the Respondent(s): Mr.C.S.Vaidhyanathan, Senior Advocate
Mr.Rajeev Nayar, Sr.Advocate
Mr. Amit Jain, Mr. Manu Nayar, Mr.Anuj Berry
Mr.Mark D'Souza,Mr. Sulabh Rewari for Resp.-3**

JUDGMENT

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson

1. Maharashtra State Electricity Board & Anr. are the Appellants herein. Assailing the Order dated 2/9/04 passed by the Maharashtra State Commission declaring that M/s. Jain Irrigation Systems, the R-3 herein is entitled to the concessional category of SP-1 electricity tariff, the Appellants have filed this Appeal. Short facts are these:

2. M/s. Jain Irrigation Systems, R-3 herein owns eight units. The Appellant earlier charged R-3 the HTP category tariff for the power consumed at those eight units. On the basis of the policy enunciated by the State Government, a new tariff category namely SP-1 was sought to be carved out in respect of consumers engaged in High Tech agricultural activities.

After approval of the SP-1 tariff by the State Government, the Appellant issued a circular in 1998 intimating the revised tariffs in respect of the new SP-1 category of consumers. Immediately thereafter, M/s. Jain Irrigation Systems, R-3 applied to the Appellant seeking for the applicability of SP-1 tariff in respect of three of its units situated at Mohadi, Shirsoli and Bambhori in Maharashtra.

3. On these applications, the Appellant approved the above three units for being categorized under the SP-1 tariff category. On a further request made by R-3, SP-1 tariff was made applicable to these three units retrospectively from 1998. Thereafter, an agreement was also entered into in respect of the approval of SP-1 tariff between the Appellant and R-3.

4. Suddenly, the R-3 Jain Irrigation Systems received intimation forwarded by the Appellant regarding the objection notes sent by the Government Auditor in respect of applicability of SP-1 tariff to these three units. Thereafter, the Appellant took a decision to treat the activities in the three units as not falling under the SP-1 tariff, and sent the electricity bills for those three units of R-3 by withdrawing the concessional SP-1 tariff and charging him the old HTP tariff. Subsequent to this, the Appellant forwarded supplementary bills, retrospectively charging the R-3, older HTP rates for the three units i.e. from the year 1998 onwards.

5. Aggrieved by this, the R-3 filed a Petition before the State Commission, the R-1 herein seeking for the declaration to the effect that the activities at its three units as falling under High Tech agriculture and their consequent

entitlement to the SP-1 tariff category. This Petition was opposed by the Appellant. The Maharashtra State Commission, after hearing both parties, passed the final order on 2/9/04 declaring that the activities carried on in all the three units of R-3 as falling under High Tech agriculture and therefore, being entitled to the special concessional tariff category of SP-1.

6. Originally, this Order dated 2/9/04 was challenged by the Appellant in the Bombay High Court in a Writ Petition. Ultimately, the Bombay High Court directed the Appellant to approach this Tribunal by way of filing an Appeal. In pursuance of this Order, the Appellants have filed the present Appeal assailing the impugned order dated 2/9/04.

7. Ms. Deepa Chawan, Learned Counsel for the Appellants would make the following contention in order to show that the Order impugned is liable to be set aside:

i. The declaration by the State Commission that the activities of R-3 herein, M/s. Jain Irrigation Systems amount to High Tech agriculture is not valid in law in as much as the proposal in respect of the tariff provision for a new category namely SP-1 would apply only to the agricultural consumers engaged in cultivation and not to those consumers like the R-3, who carried on activities of manufacturing implements and tools to be used for High Tech agricultural purposes.

ii. Vegetables/fruits, even without being processed are readily and widely available in the market. The processing of such vegetables/fruits is not a basic operation necessary for rendering

these products fit to be taken to the markets. These units have been involved only in the processing activity and not involved in agricultural production. The processing activity is only in the nature of a business activity. If SP-1 tariff is made applicable to business centers like that of R-3 engaged in the manufacture of agricultural implements, tools, equipments etc. it will result in disastrous financial consequences to the Appellants. Further, the illustration mentioned in Item 12-B of the tariff heading such as tissue culture, greenhouse, mushroom etc. have to be read as 'ejusdem generis'.

iii. Originally, the Appellant on the erroneous belief, on the basis of the representation and other information given to it by R-3 herein, permitted M/s. Jain Irrigation Systems to avail of the concessional SP-1 tariff. Only upon due objection by the Audit Office as well as the Accountant General, the Appellant considered all aspects, forwarded the comments of objection to R-3 and after thorough verification, concluded that R-3 is not eligible to the SP-1 tariff category. Consequently, the concessional SP-1 tariff was withdrawn with retrospective effect and bills were sent at the rates originally applicable to the R-3. This withdrawal is perfectly justified. Hence, the impugned order is wrong.

8. Shri C.S.Vaidyanathan, the Learned Senior Counsel appearing on behalf of M/s. Jain Irrigation Systems, the R-3 herein would make the following reply:

a. The Appellant extended the concessional SP-1 tariff to R-3 by the orders dated 3/5/99, 8/1/01 and 17/2/01 respectively, only after several physical inspections and deliberations by their officials and also acting upon the various certificates issued by Government agencies, such as the certificate from the Commissioner (Horticulture), Government of India and also the Executive Engineer and Superintendent Engineer of the Appellants certifying that the activities carried on at the three units of R-3 at Mohadi, Shirsolli and Bambhori in Maharashtra would fall under High Tech agricultural activities. As such, the withdrawal of the said concessional SP-1 tariff category without any justifiable reason is bad in law.

b. The contention of the Appellant that the SP-1 category is applicable only to the agriculturists or cultivators is untenable. The tariff category of SP-1 is to include all activities falling under the broad head of High Tech agriculture. This means that the tariff category of SP-1 would not restrict its applicability to the consumers actually engaged in cultivation alone. HTP-2 tariff is applicable to the High Tension Industries and High Tension consumers. Similarly, HTP-7 which has been recently created is applicable only to agricultural consumers. If the contention of the Appellant that SP-1 tariff category is restricted in its applicability only to cultivators, then the tariff category of HTP-7 which would apply to the cultivators alone would become redundant.

c. The tariff category of SP-1 is applicable to High Tech agriculture i.e. tissue culture, greenhouse, mushroom etc. for power supply. The heading SP-1 contains an illustrative definition of High Tech agriculture. Use of the term 'etc.' makes it clear that the list is illustrative and not exhaustive. The activity like tissue culture, which has been expressly indicated under the tariff heading of SP-1 cannot be the one that is carried out by the cultivators. The new tariff category of HTP-7, which was created on 1/1/02 is not applicable for HT agricultural pumping loads and for poultry and High Tech agricultural practices including greenhouse, tissue culture and mushroom etc. The use of the words 'High Tech' agricultural purposes lays further credence to the interpretation that the erstwhile category of SP-1 which preceded the tariff category of HTP-7 was never intended to be applicable to cultivators alone.

d. The Appellant withdrew the concessional SP-1 tariff, that too retrospectively. This is in violation of the agreement entered into between the Appellant and R-3 Jain Irrigation Systems. This withdrawal was purely on account of the Audit objection. The Audit objection forwarded to R-3 would indicate that the Auditor gave his own opinion that the activities of processing undertaken by R-3 do not fall within the head of agricultural activities. Even though the Auditor does not have the requisite expertise to give the said opinion, the same has been acted upon by withdrawing the concession without considering the report of the officials of the Appellant sent to the Appellant after inspection expressing their view that their

activities are High Tech agriculture and that the Audit objection is not correct and the same should be dropped.

e. The State Commission discussed the details of the activities in each of the three units of M/s. Jain Irrigation Systems, the R-3 herein separately with reference to the applicability of concessional tariff SP-1 on them and correctly concluded that the activities undertaken by R-3 would fall under the heading High Tech agriculture. The State Commission gave a categorical finding to the effect that without any material whatsoever to hold that those activities do not fall within the ambit of the term 'High Tech agriculture', the Appellant hastily withdrew the concessional tariff merely on account of the Audit objection and due to the pressure from the Government Auditor to withdraw the concession, as is evident from the materials available on record. In such circumstances, the order impugned passed, by the State Commission does not suffer from any infirmity.

9. We have heard the Learned Counsel for the parties and we have given our careful consideration to their rival contention. The main question that arises for consideration is this:

Whether the three units of R-3 located at Mohadi, Shirsoli and Bambhori for which approval of concessional tariff categorization of SP- 1 was granted by the Appellant, carried out the activities which would amount to high tech agriculture, so as to derive the said benefit?

10. Before dealing with this question, it would be necessary to refer to the chronological events that led to the filing of this Appeal before this Tribunal:

a. M/s. Jain Irrigation Systems, R-3 herein is owning eight units at the electricity tariff applicable to HT consumers. In pursuance of the change in policy made by the State Government, the tariff proposal in respect of a new category namely High Tech agriculture was forwarded by the Appellant for approval. Accordingly, the same was approved by the State Government creating a special category of consumers undertaking High Tech agriculture being SP-1 category. On this basis, the Appellant issued a departmental circular in 1998 inviting the revised tariffs in respect of SP-1 tariff category.

b. On 8/9/98, R-3 applied to the Appellant seeking for the applicability of concessional SP-1 tariff for its unit at Mohadi. He also sent several certificates issued by the various Government agencies to the effect that the R-3 was carrying on High Tech Agriculture activity. After receipt of this application, the officials of the Appellant inspected the unit at Mohadi and gave a Report that the activities being carried on in this unit are High Tech Agriculture. On this basis, on 24/11/1998, the Appellant extended the benefit of concessional SP-1 tariff to the Mohadi unit of R-3. At that stage, R-3 applied to the Appellant seeking applicability of SP-1 tariff to its other two units at Shirsoli and Bambhori also. Accordingly, the concession was extended to those other units approving for their being categorized as SP-1. This was done only

after consultations, verification, deliberation and due inspection by the officials of the Appellant. Later, R-3 sent an application to the Appellant seeking retrospective application of SP-1 tariff to all its three units. Accordingly, on 17/2/01, the Appellant approved grant of concessional SP-1 tariff retrospectively, to all the three units of the Appellant. In pursuance of the said development, both the Appellant and R-3 entered into an agreement, on 7/3/01 endorsing the SP-1 tariff category extended to the three units of R-3.

c. Thereafter, on 12/4/01, the Appellant received a note from the Government Auditor raising objection with respect to the applicability of SP-1 tariff to its Shirsoli unit. Similarly, on 19/11/01, the Accountant General also sent an objection note in respect of the applicability of concessional tariff to the units of R-3 at Shirsoli and Bambhori. This was forwarded by the Appellant to the R-3 who in turn sent a reply to the Appellant stating that the said Audit objection was not valid in as much as they were not made on the basis of any material. In addition to this, on 19/1/02, the Managing Director of R-3 met the Member (Accounts) of the Appellant and explained the matter. The Accounts Member assured R-3 that the said issue would be re-examined relating to the grant of concessional tariff. Thereafter, the officers of the Appellant came and again visited the three units and sent a Report stating that the activities of R-3 at these three units would fall under High Tech agriculture and that the Audit objection can be dropped. Despite this, in July 2002, the Appellant withdrew the concessional tariff and forwarded the bills to R-3 applying the HTP-2 tariff in respect of the three units. On receipt of the bills, M/s. Jain Irrigation Systems the R-3 herein, addressed a letter seeking for the

stay of the withdrawal of concessional tariff through a detailed representation, on 5/8/02. Thereafter, on 31/8/02, the officers of the Appellant again came and inspected all the three units and sent a Report on 11/9/02 stating that the activities carried on by R-3 would still fall under High Tech Agriculture. In spite of this Report, the Appellant on 11/9/02 issued a supplementary bill retrospectively from the period September 1998 to June 2002 as per the HTP-2 tariff. On 17/9/02, the R-3 once again sent a detailed reply protesting the raising of the bills that too retrospectively without giving any opportunity to R-3. There was no response. Instead, on 1/10/02, the Appellant issued disconnection notice on the ground of non-payment of bills as per the old rates. Finding no other alternative, the R-3 filed a Petition on 7/10/02 before the State Commission of Maharashtra, seeking for declaration that the activities in the three units of R-3 amount to High Tech Agriculture. The Appellant opposed this Petition before the Commission stating that the withdrawal of the SP-1 category is valid since the activities of the three units of R-3 would not involve High Tech Agriculture technology and therefore, his application is liable to be dismissed.

d. The State Commission, after hearing the parties and perusing the records passed the final order dated 2/9/04 granting relief to R-3 by declaring that R-3 is entitled to concessional tariff category of SP-1 as the activities of R-3 at all the three units would fall under High Tech agriculture.

e. Challenging this Order, the Appellant filed a Writ Petition before the Bombay High Court which in turn directed the Appellant to prefer an

Appeal before this Tribunal. That is how the Appellant is before this Tribunal through this Appeal.

11. According to Ms. Deepa Chavan, the Learned Counsel appearing for the Appellant, the activities being carried on in the three units belonging to R-3 would not fall under High Tech Agriculture, and therefore, the declaration made by the State Commission to the effect that R-3 is entitled to derive the benefit of concessional SP-1 tariff category is wrong.

12. On the other hand, Shri C.S.Vaidyanathan, the Learned Senior Counsel appearing for R-3 Jain Irrigation Systems strenuously contended that the details of the activities which are admittedly carried on in these three units would clearly indicate as correctly found by the Commission that they fall under High Tech Agriculture activities and therefore, the Order impugned is perfectly justified.

13. Both the Counsels have cited several authorities in support of their contention. Some of the relevant authorities cited by the Appellant are:

(i) 1990 (47) ELT 161 SC, Akbar Badruddin Jivani vs. Collector of Customs;

(ii) 1987 (30) ELT 463 (Tribunal), National Organic Chemical Industries Ltd. vs. Collector of Central Excise;

(iii) 1993 66 ELT 37 (SC) Oswal Agro Mills Ltd. vs. Collector of Central Excise;

The relevant authorities cited by Counsel for the Respondent No.3 are as follows:

(i) 1979 Vol.4 SCC 248, Indian and Eastern Newspaper Society vs. Commissioner of Income-Tax.

(ii) 1992 Vol.1 SCC 659, Radha Soami Satsang, Agra vs. Commissioner of Income-Tax

(iv) 1977 Vol.I SCC 408, Parashuram Pottery Work Co.Ltd. vs. Income Tax Office.

14. Let us now discuss the main issue raised in this case:

i. M/s. Jain Irrigation Systems, R-3 herein is engaged in the activities of tissue culture, greenhouse, shed houses, High Tech farming of vegetables, dehydration, fruit processing and micro (drip) irrigation systems at its three units in Mohadi, Shirsoli and Bambhori. It is an admitted case that the tariff category SP-1 is applicable for the High Tech tissue culture, greenhouse, mushroom etc. for power supply at HT and LT.

ii. It cannot be debated that the concession to R-3 as SP-1 was extended only after due deliberations, verification and inspection by the officials of the Appellant. On numerous occasions, before

granting approval, they physically inspected and examined the activities undertaken at the three units to determine the applicability of SP-1 tariff to these three units. Ultimately, officials of the Appellant were fully satisfied that the activities carried on in all the three units of R-3 would fall under High Tech Agriculture and only thereafter, they recommended the SP-1 category tariff to R-3.

iii. The consumers actually engaged in cultivation would fall under tariff category HTP-7. The contention of the Appellant that the tariff category SP-1 was restricted in its applicability to cultivators alone cannot be countenanced as it would render the tariff category HTP-7 which is exclusively for cultivators, redundant. In other words, the tariff category SP-1 would include all activities falling under the broad head of high tech agriculture whereas the tariff category HTP-7 would confine to the consumers actually engaged in cultivation. The tariff heading SP-1 and the conscious departure from the original proposal and the creation of new tariff category HTP-7 would lead to the conclusion that High Tech Agriculture was not intended to be restricted only to persons engaged in cultivation.

iv. Admittedly, after approval, there was an agreement entered into between the Appellant and the R-3 on 7/3/01 which refers to the grant of special category to the R-3 on the acceptance that the activities being undertaken in the three units of R-3 would fall under High Tech Agriculture. Even after approval in 1999 and 2001, various inspections were made by the officials of the

Appellant. On various dates, the Executive Engineers and other officials who inspected the units sent several letters to the Superintendent Engineers pursuant to the physical verification intimating that R-3 was engaged in the activities which would fall under High Tech agriculture. The above fact would reveal that both prior to and after the approval, periodical verifications and inspections were made by the officials of the Appellant and the Reports were sent to the effect that all the three units of R-3 have been undertaking activities of High Tech agriculture without any change. As such, it cannot be the case of the Appellant that there was any misrepresentation on the part of R-3 with reference to the activities carried out in these three units, either prior to the approval or after the same.

v. The main reason for withdrawal is the objection raised by the Audit. It is to be noted that even after objection by the Government Audit, the officers of the Appellant inspected the units and sent a communication on 1/2/01 stating that the activities carried on at the three units of R-3 would fall under High Tech agriculture. That apart, by the communication dated 14/5/01, the Superintendent Engineer sent a letter to the Chief Engineer of the Appellant requesting him to send a reply to the Government Audit requesting for withdrawal of the audit objection since the activities at the units continued to be High Tech agricultural activities. It is also mentioned in this letter that all the relevant facts were already examined by the Chief Engineer (Commercial) and only thereafter, the concessional tariff was granted and therefore, the Audit

objections must be dropped. Again, the Superintendent Engineer sent a Report to the Chief Engineer (Commercial) enclosing the physical verification reports dated 31/8/02 stating that all the activities carried out by R-3 were for promoting High Tech Agriculture. Despite these, without giving any further notice to the Respondent No.3 Jain Irrigation Systems, the Appellant hastened to withdraw the concessional tariff rate SP-1 by issuing the bills on 11/9/02 for the normal rates that too retrospectively from 1998 onwards.

vi. The Government Auditor has sought to insert his own opinion with regard to the applicability of the concessional SP-1 tariff. The Government Auditor does not have the requisite expertise to substitute his own view for that of the Appellant, who earlier took the view that the R-3 is entitled to SP-1 category. Thus, a change in the decision of the Appellant is based solely on the Audit objection even though the activities undertaken by R-3 at its units, while the approval was granted, continued to be the same without any change. As a matter of fact, the actual reason for the withdrawal of the SP-1 category tariff are recorded in a note dated 25/4/02 prepared by the Assistant Engineer of the Appellant, which would show that its withdrawal was only under the compulsion of the Government Auditor. The exact words are these:

“Moreover, the Director of Internal Audit is constantly pressing for compliance of the Audit objections”.

vii. It is an established position of law that the authorities to make the decision with reference to the category vests with the

Appellant and not with the Government Auditor. The substitution by the Appellant of its decision with that of a Government Auditor is bad in law. This is laid down in 1979 4 SCC 248, Indian and Eastern Newspaper Society vs. Commissioner of Income-Tax, the relevant extracts of the decision in this case are as under:

“In every case, the Income-Tax Officer must determine for himself, what is the effect and consequence of the law mentioned in the Audit Note and as to whether in consequence of the law which has come to his notice, he can reasonably believe that income has escaped assessment. The basis of his belief must be the law of which he has now become aware. The opinion rendered by the Audit party in regard to the law cannot, for the purpose of such belief, add to or colour the significance of such law. In short, the true evaluation of the law in its bearing on the assessment must be made directly and solely by the Income-Tax Officer.

viii. Let us now come to the details of the reasons given by the State Commission in the impugned order as to why all the three units have to be declared as units carrying on the activities which would be categorized as High Tech Agriculture activities. The State Commission has dealt with each unit in separate paragraphs. We will quote the relevant paragraphs in the Impugned Order one by one:

The findings given in respect of the Mohadi Unit are as follows:

A. “JIS have filed an affidavit confirming that the activities undertaken at the Mohadi unit are essentially those of greenhouse and tissue culture on the basis of information verified by the MSEB themselves. Further, MSEB had vide letter dated 24/11/98, granted approval to the application of SP-1 tariff to the Mohadi unit. However, MSEB had subsequently contended that upon examination of the activities carried out at the units of the Petitioner, it was observed that there was a change in activity and hence, the SP-1 tariff was withdrawn. The MSEB have failed to produce the internal report which evidences the change in activity. In order to effect the change in a tariff classification, it is necessary to provide evidence and material establishing that such change is merited. From the record, the MSEB does not appear to have produced any material or evidence which would make such a change in classification sustainable in law. The list of activities enumerated in the affidavit of the Petitioners would appear to fall within the meaning of the term ‘High Tech agriculture activities’ as interpreted earlier and even expressly mentioned by MSEB while illustrating the applicability of the tariff category itself. Thus, the contention of the SP-1 tariff already approved in respect of the Mohadi unit required to be changed, cannot be sustained.”

The gist of the findings rendered by the State Commission in the above paragraphs is as follows:

“The original stand that was taken by the Maharashtra State Electricity Board that upon examination of the activities carried on at the three units of R-3, Jain Irrigation Systems, it was found out that there was a change in activity and hence, SP-1 tariff was withdrawn. But the Electricity Board have failed to produce any material or evidence to show that such a change has taken place in the Mohadi unit. On the other hand, the Report submitted by the Officers of the Electricity Board did not indicate any change in activities in respect of these units, and the list of activities submitted by the Jain Irrigation Systems, R-3 herein, would fall within the meaning of the term High Tech Agriculture”.

The findings given in respect of the Shirsolli unit are given below:

B. “The Commission finds that the activities carried out at the Shirsolli unit are activities which constitute High Tech Agriculture for the purposes of tariff categorization. Dehydration of quickly perishable agricultural products such as vegetables, onions and processing of the quickly perishable agricultural products such as mango, guava etc. extends their shelf life and facilitates their marketing. So, from the very nature of such agro-products (onions and mangoes etc.) if they are not properly stored in cold storage etc. and if they are not quickly processed by way of dehydration, pulping etc. their shelf life will not increase, perishability will not reduce and consequently, the marketing of such produce will become difficult.

Hence, these activities of High Tech processing and specialized storages at the Shirsolli unit will be legitimately considered as part of High Tech agriculture. These activities facilitated processing and preservation of agricultural produce and in the currently held High Tech Agriculture, definition, such aspects do form part of High Tech agriculture. These activities essentially add to the quality and improve the endurance of agricultural produce through means of artificial methods employing high technology. MSEB's letter dated 14/8/1999 to Government of Maharashtra in the note of the Cabinet Committee also makes it clear that the concessional tariff category would be applicable to farming/cultivation and the production of agricultural produce which result from such methods of high technology. Production of agricultural produce is not possible without some kind of processing employing high technology. It must also be noted that no chemicals or preservatives are added, nor is the natural form of fruits and vegetables changed during processing of these items. This will distinguish these products and processes from other general food products or industrial products made from agricultural raw materials. Hence, the contention that the SP-1 tariff already approved in respect of the Shirsolli unit is required to be changed, cannot be sustained".

The gist of findings given by the State Commission in the above paragraph is as follows:

“Dehydration of perishable agricultural products including vegetables like onions and processing of perishable agricultural products such as mango, guava etc. extends their shelf life and facilitate their marketing. If they are not properly stored in cold

storage and not quickly processed by way of dehydration, their shelf life will not increase. As a result, the marketing of such produce will become difficult. So the activities of processing and specialized storages at the Shirsoli unit facilitate the processing and preservation of the agricultural produce. These activities add to the quality and improve the endurance of agricultural produce through the means of artificial methods employing high technology. The production of agricultural produce is not possible unless some kind of processing is employed through high technology. Hence, these activities of High Tech processing and specialized storages at the Shirsoli unit are considered as a part of High Tech Agriculture”.

C. The findings of the Commission in respect of the Bambhori unit are as follows:

“Jain Irrigation Systems have produced material in support of their stand that the manufacture of micro (drip) irrigation systems falls within the meaning of ‘High Tech Agriculture’. To a query of the Commission, the Petitioner submitted that whereas the actual process of farming itself does not require any electricity, it is the technology that goes into improving the agricultural productivity and the manufacture of such implements and equipment that requires electricity. Hence, the special incentives through concessional tariff. Jain Irrigation Systems further submitted that if such benefit is not passed on to them, being engaged in the manufacture of High Tech components used in micro irrigation systems, the very

purpose of creating a new tariff category would be defeated.

It is clear to the Commission that the use of customized drip equipment and techniques for irrigation in agriculture is a high tech agriculture activity, since it specifies the essentials as stated above. Conversely, it is equally clear that from what has been stated earlier that High Tech agriculture is to include only the use of such high tech equipment or inputs for producing an agricultural product or any add-in value to such produce in the process of its cultivation”.

The gist of the findings given by the State Commission with regard to the Bambhori unit are as follows:

“The Jain Irrigation Systems have produced the materials to show that the manufacture of micro (drip) irrigation systems falls within the meaning of High Tech agriculture. The actual process of farming itself does not require any electricity, but it is the technology that goes into the improving of agricultural productivity that requires electricity. The manufacture of such implements and equipments to apply the said technology requires electricity. Therefore, the use of customized drip equipment and techniques for irrigation in agriculture is a High Tech agriculture activity”.

14. From the materials available on record and the findings rendered by the Commission, it is clear that it has not been established by the Appellant, that the approval for concessional tariff SP-1 was obtained only on the basis of misrepresentation by the R-3 herein. Similarly, it has not been established by the Appellant by producing any other material whatsoever, that the activities undertaken by R-3 in its three units at the time of grant of approval had undergone any change thereafter. On the other hand, all the Officers of the Appellant who inspected the units both after grant of approval as well as after Audit objection had categorically mentioned in their Report that the activities of these units had not undergone any change. Further, the Assistant Engineer of the Appellant prepared a note on 25/4/02 indicating therein that the reason for withdrawal of the concessional SP-1 tariff was because of the pressure

brought upon by the Director of Internal Audit for compliance of Audit objections.

15. Thus, the opinion of the Government Auditor alone has played a major role in this case. It may be true that the moment the Appellant received the objection note sent by the Government Auditor, the same was forwarded to R-3 on 12/4/01. It is equally true that after the receipt of the said Audit objections, the Appellant sent its Officers to the units, who inspected the units and sent a communication dated 14/5/01, stating that the activities carried out at the three units of R-3 would fall under the High Tech agriculture. Further, through the communication, the Superintendent Engineer specifically requested Chief Engineer of the Appellant, to send a reply to the Government auditor seeking for the withdrawal of the Audit objections since the activities of the unit were found to be the High Tech agriculture activities. Accordingly, the same was sent to the Govt. Auditor. Without considering all these things, the Appellant hastened to withdraw the concessional tariff under the head SP-1 granted to R-3, by issuing the bills on 11/9/02 and that too, retrospectively, from 1998 onwards.

16. There is no explanation from the Appellant as to why the Audit objection was given preference over the Report submitted by the officers of the Appellant, intimating that the Audit objection is wrong as in their inspection, it was found that the activities carried on at the three units of R-3 would fall under High Tech agriculture and there is no change. When there is no change in the activities of the three units of R-3 as found by the officers of the Appellant in their Report after the Audit objection, there is

no reason as to why the concessional SP-1 tariff has to be withdrawn merely on the basis of the Audit objection and that too without any further notice to R-3.

18. From the above discussions on the basis of the materials available on record, it is apparent that the Appellant wanted to take shelter for the reasons for withdrawal of the concessional tariff, behind the Audit objection and not on the basis of any other material. As indicated above, not only R-3 has produced the materials to show that they are undertaking the activities falling under High Tech agriculture, but also the officers of the Appellant themselves have sent a Report, even after Audit objection, to the effect that there is no change in their activities which fall under High Tech agriculture. These materials have been completely and conveniently ignored by the Appellant for the reasons best known to them.

19. Under the above circumstances, we find it difficult to hold that the findings rendered by the State Commission are wrong, particularly, when those findings were rendered on the basis of the materials available on record.

20. In view of the above, the Appeal is dismissed as being devoid of merits. No costs.

(A.A. Khan)
Technical Member

(Justice M.Karpaga Vinayagam)
Chairperson

Dated: 15th April, 2009.

REPORTABLE / NON – REPORTABLE