IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 230 OF 2024 & IA NO. 2314 OF 2023 & IA NO. 363 OF 2024

Dated: 9th September, 2024

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)

In the matter of:

1. M/s DILIP BUILDCON LIMITED
Through its Authorized Signatory Mr. Arvind Singhal,
Having its registered office at Plot No. 5,
Inside Govind Narayan Singh Gate,
Kolar Road, Chunbhatti, Bhopal, MP – 400005. … Appellant No. 1

2. NATIONAL HIGHWAY AUTHORITY OF INDIA PIU, AURANGABAD
Through its authorised Signatory in terms of Policy Guidelines/ Dispute Resolution/ 2004 Policy Circular No. 2.1.70/ 2024 dated 25.01.2024, Shri Ravindra S. Ingole, PIU, Aurangabad, NHAI
Having its office at B-23, Near Kamgar Chowk,
N-4, CIDCO, New Aurangabad
Maharashtra, PIN – 431003. … Appellant No. 2

VERSUS

1. MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (MERC)
Through its Secretary,
World Trade Centre, Centre No. 1,
13th Floor, Cuffe Parade,
Mumbai – 400005. ... Respondent No.1

2. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD (MSEDCL)
Through its Executive Engineer (Admn.)
O & M, Rural Circle, Opposite Garware Stadium,
MIDC, Chikalthana, Aurangabad – 431210. ... Respondent No.2

Counsel on record for the Appellant(s)	:	Aakriti Dawar Harish Malik for Appellants 1 & 2
Counsel on record for the Respondent(s)	:	Pratiti Rungta for Res. 1 Shashwat Kumar Rahul Chouhan Shikha Sood Raghav Kapoor for Res.2

J U D G M E N T

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

I. INTRODUCTION:

The present appeal is filed both by M/s. Dilip Buildcon Limited (ie the Contractor) and the National Highway Authority of India requesting this Tribunal to set aside Clause 7.22.10 of the order passed by the MERC in Case No. 226 of 2022 dated 31.03.2023 to the extent "*Toll Collection plazas including lightings on Express / National / State Highways*" has been classified under category LT-II: LT Non-Residential or Commercial, instead of Category LT VI: Street Light.

The reliefs sought by the Appellants in this Appeal, whereby a limited challenge is mounted to the Impugned Order passed by the Maharashtra Electricity Regulatory Commission ("MERC" for short) in Case No. 226 of 2022 dated 31.03.2023, are to hold that: (i) LT II: Commercial/Non-Residential tariff category would apply only to *"Toll Collection plazas"* as per the Approved Tariff Schedule; (ii) street lighting on the Highway would be covered under LT VI: Street Light and not LT-II: Commercial/Non-Residential tariff category, as also held by the Bombay High Court that would squarely apply to the present case as well; (iii) the

words "…*including lightings on Express / National / State Highways*" have been added in Para 7.22.10 of the Impugned Order, under LT II: Commercial/Non-Residential tariff category, without assigning reasons and without furnishing any justification; and (iv) even otherwise, these words cannot have the effect of including all lighting on the entire Highway, but would be limited only to those lightings that are meant for the Toll Collection Plazas, but are located on the Highway.

II. RIVAL SUBMISSIONS:

Elaborate submissions, both oral and written, have been put forth by Sri. Saurav Aggarwal, Learned Counsel for the Appellant, Ms. Pratiti Rungta, Learned Counsel for the 1st Respondent-MERC, and Sri Shaswath Kumar, Learned Counsel for the 2nd Respondent-MSEDCL. It is convenient to examine the rival contentions, urged by Learned Counsel on either side, under different heads.

III. CONTRADICTIONS IN THE IMPUGNED ORDER REGARDING CATEGORISATION:

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would highlight the contrast between Para 7.22.4.2 and Para 7.22.10 of the Impugned Order passed by the MERC in Case No. 226 of 2022 dated 31.03.2023, to submit that, though MSEDCL had proposed to include only lightings on Express / National / State Highways, which were not included under any other categories under L.T.II: Non-Residential/Commercial category, apart from Toll Collection plazas, MERC had brought all lightings on Express / National / State Highways, (and not just lightings on Express / National / State Highways not included

under any other category) under L.T.II: Non-Residential/Commercial category; and no reasons are forthcoming as to why the MERC chose to go beyond even what MSEDCL had sought.

Sri Saurav Aggarwal, Learned Counsel, would further submit that, in the Approved Tariff Schedule- under LT II category, there is mention of only '*Toll Collection Plazas'* without the inclusive words "…*including lightings on Express / National / State Highways.*"; it is the Approved Tariff Schedule which ultimately applies; the mention of only 'Toll Collection Plazas' in the Tariff Schedule would mean that the intention of MERC was only to add Toll Collection Plazas; the words "…*including lightings on Express / National / State Highways*" after 'Toll Collection Plaza' were, thus, not intended to include all lightings on the Highways, as otherwise the entry in the Approved Tariff Schedule would have read so; as the above stated clarification at Para 7.22.10 is absent, the Approved Tariff Schedule, annexed to the Impugned Order, to the extent that "lightings on express/national/state highway" is omitted, it is only "*toll collection plazas*" at entry (e) which should be categorised under LT II: Commercial/Non-Residential tariff category*,* and not lightings on National Highways.

B. ANALYSIS:

As shall be detailed hereinafter, it is evident from the impugned order itself that the proposal submitted by MSEDCL, with respect to non-residential or commercial consumer category, was to include "*toll collection plazas including on Express/ National/ State Highways not included in any other categories"* under LT II category. What MSEDCL had sought was not inclusion of all lightings, on the entire stretch of the National Highways, in L,T II category but only such lighting which did not

form part of any other category i.e. any category other than LT-II non-residential or commercial consumer category. In effect, acceptance of the proposal of MERC would have resulted in street lighting, which hitherto were classified under LT VI category, being excluded from L.T.II category. Curiously the entry, as referred to in the impugned order passed by MERC, appears to have been erroneously understood by MSEDCL as bringing the entire lighting on the National Highways within the ambit of LT-II category. This understanding of MSEDCL, if accepted, would amount to the MERC having travelled even beyond the proposal submitted by MSEDCL. While it cannot be said that the MERC lacks power to do so, It cannot also be lost sight of that, in such an eventuality, the MERC was obliged to assign reasons as to why it chose to include street lights on the entire length on the National Highways, despite such a relief not even having been sought by MSEDCL. MERC has failed to assign reasons, for doing so, in the impugned order. But for the fact that lighting on Express/National/State Highway has been associated along with toll collection plazas, by use of the word "including", the appellants would have been justified in their submission that MSERC has granted MSEDCL a relief which they had themselves not sought.

Yet another contradiction is that in the tariff schedule, under LT-II: LT– non-residential or commercial, what is included is only "*toll collection plazas"* and not *"lighting on Express/National/State Highways"*. As is clear from what has been stated in the Tariff Schedule itself, the tariff referred to in the tariff schedule supersedes the tariff so far in force, and is subject only to the provisions of the Regulations and the directions issued by the Commission from time to time. If the tariff stipulated in the tariff schedule were alone to be taken into consideration, then it is only "*toll collection plazas*" which fall within LT-II Commercial category, and not "*street*

lighting on the National Highways". These contradictions in the impugned order would render implementation, of the tariff stipulated for different categories, by MSEDCL extremely difficult.

It is unnecessary for us to delve into these contradictions any further, as we are satisfied, for reasons stated later in this order, that it is only lighting on National Highway at, and in close proximity to, the Toll collection plazas which have been brought within the ambit of L.T.II category.

IV. ARE 'LIGHTINGS ON EXPRESS / NATIONAL / STATE HIGHWAYS' A STAND ALONE CATEGORY?

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would submit that insertion of "*Toll Collection Plazas including lightings on Express / National / State Highways*", in Para 7.22.10 of the impugned Tariff Order, is only an addition of the premises; the question is whether the entire Highway premises is included or only those relating to Toll Collection Plazas, since that is the place where toll fee is collected; the apparent attempt to misuse Para 7.22.10 is evident from the reply of MSEDCL which is interpreting this addition to mean as if the '*lightings on Express / National / State Highways'* is a stand-alone category; ideally, by applying the principles of *ejusdem generis*, the addition of the broad words, i.e., "*lightings on Express / National / State Highways*" after '*Toll Collection Plazas*' would be to include them in the specific meaning of '*Toll Collection Plaza*', and the same would qualify the said broad words; the *ejusdem generis* doctrine provides that the general words which follow the specified words will be restricted to the same class of the specified words; as held in **Maharashtra University of Health and others vs Satchikitsa**

Prasarak Mandal & Others, (2010) SCC 78, the doctrine of ejusdem generis is a facet of Noscitur a sociis, when general words are juxtaposed with specific words, general words cannot be read in isolation, and their colour and content should be derived from their context.

Sri Saurav Aggarwal, Learned Counsel, would further submit that use of "*including*", followed by a list, would mean that the items mentioned are part of a larger group or category; the items in the list, following the word "including" cannot travel beyond the category mentioned prior to the word "including"; otherwise, no purpose would be served in using the word "including"; therefore, if all "*lightings on Express / National / State Highways*" were to be covered, there was no need to first refer to "Toll Collection Plazas", and then include lightings on National Highways within it; instead it could straight away have been stated as *"all lightings on Express / National / State Highways";* applying the rule of e*jusdem generis,* would require the words, *"including lightings on Express / National / State Highways*" in Para 7.22.10 of the impugned Tariff Order, to take colour from the word "*Toll Collection Plazas"*; and it would then include not only lightings at the Toll Collection Plazas, but also those lightings meant for the Toll Collection Plaza located on the highway; however, it still cannot mean the entire National Highway.

B. ANALYSIS:

Section 62 of the Electricity Act relates to determination of tariff. Section 62(3) enables the Appropriate Commission to differentiate between consumers according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is

required. Classification of consumers of electricity, on the basis of different parameters, is a power conferred on the Regulatory Commissions under Section 62(3) of the Electricity Act.

In the exercise of the powers conferred by clause (h), (i), (j), (l), (m), (o), (y), (zd), (ze), (zf), (zg), (zh) and (zp) of sub-section (2) of Section 181, read with the proviso to sub-section (1) of Section 36 and other provisions of the Electricity Act, the Maharashtra Electricity Regulatory Commission ("the MERC" for short") made the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 ("the 2019 Regulations" for short). The 2019 Regulations extend to the whole of the State of Maharashtra, and are applicable to existing and future Generation Companies, Transmission Licensees, Distribution Licensees, Maharashtra State Load Despatch Centre (MSLDC), and their successors for determination of Aggregate Revenue Requirement, Tariff, and Fees and Charges of MSLDC in all matters covered under these Regulations from April 1, 2020 up to March 31, 2025.

Clause 91 of the 2019 Regulations relates to determination of Retail Supply Tariff. Clause 91.1 (like Section 62(3) of the Electricity Act) enables the Commission to categorize consumers on the basis of their load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. Clause 91.3 stipulates that the retail supply tariff for different consumer categories shall be determined on the basis of the Average Cost of Supply, computed as the ratio of the Aggregate Revenue Requirement of the Distribution Licensee for the Year determined in accordance with Regulation 81. Clause 91.5 requires the Commission,

while determining the tariff, to also keep in view the cost of supply at different voltage levels and the need to minimise tariff shock to consumers.

In the exercise of the powers conferred by Section 43(1) read with Section 181(2)(t) and other provisions of the Electricity Act, the MERC made the "Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulation 2021 (the "Supply Code" for short). Clause 1.5 thereof makes the Supply Code applicable to all Distribution Licensees and all Consumers in the State of Maharashtra. Regulation 2.2(l) classifies consumers into three broad categories (i) Low Tension Consumers (ii) High Tension Consumers and (iii) Extra High-Tension Consumers. Regulation 2.2(q) defines "Designated Consumers" to mean consumers using or engaged in the processes mentioned in the said clause, which includes Malls, Hotels, Banking etc. and which are connected at a supply voltage of 11 kV and above.

Regulation 14 of the Supply code relates to classification and re-classification of consumers into tariff categories and, thereunder, Distribution Licensees may classify or reclassify a consumer into various Commission's approved tariff categories based on the purpose of usage of supply by such consumers. Under the proviso thereto, the Distribution Licensee shall not create any tariff category other than those approved by the Commission ie the MERC.

The power conferred by Regulation 14 on a Distribution Licensee, to classify or reclassify a consumer, is subject to MERC having approved such tariff categories. Classification of consumers into distinct tariff categories must also be based on the purpose of usage of supply by such

consumers. The test of classification/re-classification of a consumer, in different/distinct tariff categories, is the purpose for which supply of electricity is used by such a consumer.

Para 7 of the impugned order dated 31.03.2023 relates to tariff philosophy, tariff design and category-wise tariffs for FY 2023-24 and FY 2024-25. Para 7.1 details the overall approach for tariff design. Para 7.1.1 records that MERC had kept in view the objects of the Electricity Act, 2003, as set out in its Preamble, including protection of interests of consumers, supply of electricity to all areas and rationalisation of tariffs as also the principles of tariff determination set out in Sections 61 and 62 of the Electricity Act, 2003 and the 2019 Regulations prescribed in the tariff design. Para 7.1.3 states that a simpler and rationalised tariff structure helps easy understanding by consumers, and creation of many different categories gives discretionary power to Discoms while charging tariff. Para 7.1.5 states that, as a progressive step towards simpler and rationalized tariff structure, the Commission had, in the MYT Order, reduced the number of categories from the existing tariff structure; the Commission had, while retaining the existing tariff categories and slabs as notified under the MYT Order, reclassified certain categories of consumers, and clarifications, for applicability of tariff category for certain class of consumers, had been incorporated in the MTR Order upon considering the objections, comments and suggestions received through the public consultation process as also upon scrutiny of submissions made by MSEDCL in this respect; and the proposed categorisation and clarifications, regarding classification of certain consumers, were elaborated in paras 7.22 to para 7.24 of the impugned order.

After taking note of the order in Appeal No. 106 of 2008 wherein this Tribunal had recognized the Commission's power to design the tariff in its own wisdom, Para 7.1.7 of the impugned order records that, in the light of the said judgment, the Commission was proceeding with its intended approach of reducing the number of categories and slabs by merging similarly placed consumer categories while ensuring that the existing consumers in these categories are not significantly impacted.

The concepts of tariff categorization and applicability are addressed in Para 7.1.52. It is stated therein that merging or elimination of existing consumer categories, or classification or recategorization of certain class of consumers, would be done considering the End Use, Energy Consumption, Socio-Economic Profile, Consumption Pattern/ Loan Factor etc; these factors have been examined by the Commission while deciding on merging of categories; the Commission had significantly reduced tariff categories, upon merging/re-classification of certain class of consumers in Case 322 of 2019 ie the MYT Order; and a similar approach was being continued without creation of any new category or sub-class but, at the same time, addressing concerns of the consumers and MSEDCL through clarifications regarding applicability of tariff category and modifying the scope, coverage of classification of Tariff category as covered under the Tariff Schedule. What the MERC has conveyed, in Para 7.1.52 of the impugned order, is that, while no new categories have been created, the Commission has clarified regarding the tariff category applicable to a particular category of consumers; and to modify the scope and coverage of classification of a tariff category in terms of the tariff schedule.

Para 7.2.2 records the additional services and clarifications for tariff applicability. Para 7.22.1 records that MSEDCL had identified new usages

and had added them in the tariff applicability proposal. Para 7.22.4 are the proposals for L.T.II: non-residential or commercial consumers category and, thereunder, MSEDCL proposed, in Para 7.22.4.1, that the category of "Non-Residential, Commercial and Business premises, including Shopping Malls and Showrooms" be added to "Exhibition Centres, Ware Houses/Godowns, Resorts, Canteens/ Cafeterias, Tea shops, Logistics and Transportation services". Para 7.22.4.2 records the proposal of MSEDCL to include "*Toll Collection plazas including lightings on Express / National / State Highways not included under any other categories",* under this category ie under the category of L.T.II: non-residential or commercial consumers. Para 7.22.4.3 records the proposal of MSEDCL to include Mobile Shoppe's under this category and Para 7.22.4.4 records that MSEDCL proposed to include Training Centres under the category of "Separate Sports Clubs/facilities, Health Clubs/facilities, Gymnasiums, Swimming Pools not included in others to be included in this category".

Thereafter, from para 7.22.5 to 7.22.10, are the Commission's analysis and views. In Para 7.22.5 the Commission notes the submission of MSEDCL regarding applicability and classification of various classes of consumption as per usage as proposed under the residential or non-residential/commercial category, and that the Commission confirmed such classification based on usage as proposed by MSEDCL. The Commission further observed that necessary modifications in the Tariff Schedule, to reflect this classification of usage under respective consumer category, had been incorporated. Para 7.22.10 records that, in order to have clarity in applicability of non-residential or commercial tariff, the Commission approved inclusion of the Exhibition Centres, Ware Houses/Godowns, Resorts, Canteens/ Cafeterias, Tea shops, Logistics and Transportation services, ***Toll Collection plazas including lightings on Express /***

National / State Highways, Mobile Shoppes, Sports Clubs/facilities, Health Clubs/facilities, Gymnasiums, Swimming Pools and Training Centres under this category.

The tariff schedule for FY 2023-24 and FY 2024-25 is detailed in Annexure-I to the impugned order. Thereunder MERC, in the exercise of its powers under Section 61 and 62 of the Electricity Act, determined, by order dated 31.03.2023, the tariff for supply of electricity by the Distribution Licensees ie MSEDCL to various categories of consumers as applicable from 01.04.2023. The tariff schedule for "LT-II: LT-Non-Residential/ or Commercial" is stated to be appliable for electricity used at low/medium voltage in non-residential/non-residential/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, entertainment, leisure and water pumping in, but not limited to, the following premises. Among categories (a) to (k), detailed thereunder, is category (e) *"Toll Collection plazas"*. What is however missing in category (e) of the tariff schedule in *"LT-II: LT-Non-Residential/or Commercial"* are "*lightings on Express / National / State Highways"* which is the categorisation made under para 7.22.4.2 and 7.22.4.10 of the impugned order.

As stated in the tariff schedule, "*category LT-II : LT-Non-Residential or Commercial*" is applicable to premises which (i) use electricity at low/medium voltage in non-residential, non-industrial and or commercial premises, (ii) such usage of electricity is for commercial consumption meant for operating various appliances, and (iii) usage of electricity for operation of various appliances is for purposes such as (a) lighting, (b) heating (c) cooling (d) cooking (e) entertainment/leisure and (f) water

pumping. It is, however, made clear that the tariff category is not limited to the premises referred to in clauses (a) to (k) thereunder. What is sought to be conveyed thereby is that, as so long as the aforesaid criteria is satisfied, other premises may also fall within *"LT-II: LT-Non-Residential or Commercial"* category.

The question which necessitates examination is whether (i) "Toll Collection plazas" and (ii) "lighting on Express/National/State Highways" satisfy the aforesaid test, and thereby fall within *"LT-II : LT - Non-Residential or Commercial"* category. It is only if the premises is used for consumption of electricity for commercial use can it be said to satisfy the afore-said requirements. "Commercial use" would mean the use of certain mercantile products, tools or intellectual property for financial gain. It is only if "Toll Collection plazas" and "lighting on Express/National/State Highways" are used for commercial purposes, ie to make financial gain, can their classification under *"LT-II : LT - Non-Residential or Commercial"* category be justified.

In this context, it is useful to take note of the contents of the agreement entered into between the first and the second Appellants.

C. RELEVANT CLAUSES OF THE AGREEMENT:

An Engineering, Procurement and Construction Agreement was entered into between the Chairman, National Highways Authority of India and the first Appellant. Article 2 of the said Agreement relates to the scope of the Project. Article 2.1 provides that, under this Agreement, the scope of the Project shall mean and include (a) construction of the Project Highway on the site set forth in Schedule-A and as specified in Schedule-B together with provision of project facilities as specified in Schedule-C, and in conformity with the specifications and standards set forth in

Schedule-D; (b) maintenance of the Project Highway in accordance with the provisions of this Agreement, and in conformity with the requirements set forth in Schedule-E; and (c) performance and fulfilment of all other obligations of the contractor in accordance with the provisions of this Agreement. Article 3 of the Agreement relates to the obligations of the Contractor. Article 3.1.1 stipulates that, subject to and on the terms and conditions of this Agreement, the Contractor shall undertake survey, investigation, design, engineering, procurement, construction, and maintenance of the Project Highway and observe, fulfill, comply with and perform all its obligations set out in this Agreement.

The project facilities, referred to in Clause 2.1 of the Agreement, are detailed in Schedule-C and, there-under, the contractor is required to construct the Project Facilities in accordance with the provisions of this Agreement; and such Project Facilities shall include, among others, (a) toll plaza(s), and (h) street lighting. Clause 2 of Schedule-C contains the description of the project facilities. The description of “toll plazas” is given in Clause 2.1 of Schedule-C. Clause 2.8 relates to lighting and, there-under, the lighting facilities shall be provided as per Schedule “B” and Schedule “D” including but not limited to (a) high mast lighting and (b) street lighting for service road/ slip road. The total length of street lighting is stipulated as 20.506 kilometers, and the Note there-under stipulates that street lights should also to be provided at Road Over Bridge, Major Bridge, Toll Plaza, Bus bays, Track lay-bys locations, Minor junctions and built up area along the project road; and the lightings shall be as per Schedule-D and other relevant IRC codes.

It is clear from the afore-said provisions of the Agreement that, as against the total length of the highway, the Agreement requires only a part

thereof to be provided with street lights. The stipulation in the agreement, of the places where such lighting should be provided, also makes it clear that the object of providing lighting at such places is to ensure safety and avoid accidents. Provision of lighting at places such as major bridges, major bridges, junctions etc is evidently not for any commercial purpose.

As noted hereinabove, Para 7.22.10 of the impugned order not only brings within LT-II category *"toll collection plazas including lightings on Express/ National/ State Highways.",* but also several other premises. such as exhibition centres, warehouses/ godowns, resorts, canteens/ cafeterias etc. If the intention was to bring all street lightings on National Highways within LT-II category, MERC would have treated *"lightings on Express/ National/ State Highways"* as a separate entry under LT-II, similar to exhibition centres, warehouses/ godowns, resorts, canteens/ cafeterias, and would not have clubbed it with "*toll collection plazas"* by use of the conjunction "including".

D. USE OF THE WORD "INCLUDING": ITS SCOPE:

Black's Law Dictionary defines the word "include" to mean: "To contain as a part of something. The participle *including* typically indicates a partial list". Use of word "include" enlarges the scope of the definition (**Municipal Corpn. of Greater Bombay v. Indian Oil Corpn. Ltd., 1991 Supp (2) SCC 18 : AIR 1991 SC 686),** and when it is so used, the words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include (**ESI Corpn. v. High Land Coffee Works, (1991) 3 SCC 617; Oswal Fats & Oils Ltd. v. Commr. (Admn.), (2010) 4 SCC 728; CTO v. Rajasthan Taxchem Ltd., (2007) 3 SCC 124; Associated Indem Mechanical (P)**

Ltd. v. W.B. Small Industries Development Corpn. Ltd., (2007) 3 SCC 607).

The word "include" is generally used as a word of extension. (**Forest Range Officer v. P. Mohammed Ali, 1993 Supp (3) SCC 627)** It is an inclusive definition and expands the meaning (**Doypack Systems (P) Ltd. v. Union of India, (1988) 2 SCC 299).** When the word "includes" is used in a phrase or sentence, it makes the phrase/ sentence enumerative but not exhaustive. The term defined will retain its ordinary meaning, but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise (**Mamta Surgical Cotton Industries v. Commr. (Anti-Evasion), (2014) 4 SCC 87).**

The words *"toll collection plazas"* would, ordinarily, not be understood as encompassing within its scope *"lighting on National Highways".* While the words *"toll collection plaza"* continues to retain its ordinary meaning, its scope is extended, by use of the word "including", to bring within it *"lighting on National Highway"* also, which would otherwise not have comprised within its ordinary meaning. By the use of the word *"including",* the scope of *"toll collection plaza"*, inserted in L.T.II category, has been expanded to also include, within its ambit, *"lightings on National Highways"*. Consequently, it is only such lightings on National Highways which are associated with or form part of *"toll collection plazas"* which fall within LT-II category, and not lighting on the entire stretch of the National Highway as, otherwise, there was no justification in including *"lightings on National Highways"* along with *"toll collection plaza"*, and *"lightings on National Highways"* could well have been inserted as a separate and distinct entry similar to exhibition centres, warehouses/ godowns, resorts, and canteens/ cafeterias.

E. DOCTRINE OF EJUSDEM GENERIS AND NOSCITUR A SOCIIS:

In Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal, (2010) 3 SCC 786, on which reliance is placed on behalf of appellant, the Supreme Court held that the Latin expression **"ejusdem generis",** which means "of the same kind or nature", is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words; this is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context"; it may be regarded as an instance of ellipsis, or reliance on implication; this principle is presumed to apply unless there is some contrary indication; this ejusdem generis principle is a facet of the principle of ***noscitur a sociis***; the Latin maxim *noscitur a sociis* contemplates that a statutory term is recognised by its associated words; the Latin word "sociis" means "society"; therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation; and their colour and their contents are to be derived from their context.

The Rule 'Noscitur a sociis', according to Maxwell, means that where two or more words which are susceptible of analogus meaning are coupled together they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general. **(*State of Bombay* v. *Hospital Mazdoor Sabha, AIR 1960 SC 610*; *Lokmat Newspapers Pvt. Ltd.* v. *Shankar Prasad, (1999) 6 SCC 275*; *Bharat Heavy Electricals Ltd.* v. *Globe Hi Fabs Ltd., (2015) 5 SCC***

***718*; *Brindavan Bangles Stores* v. *Asst. Commissioner of Commercial Taxes, (2000) 1 SCC 674*).** The term *"ejusdem generis"*, a facet of Noscitur a Sociis, means that the general words following certain specific words would take colour from the specific words. **(*Commissioner of Trade Tax, U.P.* v. *M/s. Kartos International, (Judgment in Civil Appeal Nos. 2983-2988 of 2011 dated 06.04.2011)*).** Some articles are taken separately, and some articles are grouped together. When they are found grouped together, each word in the entry draws colour from the other words therein. **[*Paradeep Aggarbatti, Ludhiana* v. *State of Punjab, (1997) 96 ELT 219*; *M/s. Kartos International, (Judgment in Civil Appeal Nos. 2983-2988 of 2011 dated 06.04.2011)*].**

The Latin words "***ejusdem generis"*** (of the same kind or nature) are attached to a principle of construction whereby wide words, associated in the text with more limited words, are taken to be restricted by implication to matters of the same limited character. The doctrine of ejusdem generis applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; and (iv) there is no indication of a different intent. General words must ordinarily bear their natural and larger meaning, and need not be confined *"ejusdem generis"* to things previously enumerated unless the language of the statute spells out an intention to that effect. **(*GMR Energy Limited* v. *Government of Karnataka, 2010 LAWS (KAR) (3) 40*; *M/s. Siddeshwari Cotton Mills (P) Ltd.* v. *Union of India, (1989) 2 SCC 458 : AIR 1989 SC 1019*).**

The general expression has to be read to comprehend things of the same kind as those referred to by the preceding specific things

constituting a genus. **(*Asstt. C.C.E.* v. *Ramdev Tobacco Company, (1991) 2 SCC 119 : AIR 1991 SC 506*; *Tribhuban Parkash Nayyar* v. *Union of India, (1969) 3 SCC 99 : AIR 1970 SC 540*; *GMR Energy Limited, 2010 LAWS (KAR) (3) 40*).** The preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. **(*GMR Energy Limited, 2010 LAWS (KAR) (3) 40*; *Statutory Interpretation Rupert Cross (p.116); Amar Chandra Chakraborty* v. *The Collector of Excise, Tripura, (1972) 2 SCC 442 : AIR 1972 SC 1863*; *UPSEB* v. *Hari Shankar, (1978) 4 SCC 16 : AIR 1979 SC 65*).**

For the ejusdem generis principle to apply there must be sufficient indication of a category that can properly be described as a class or genus. (**Francis Bennion: Statutory Construction [pgs 830-831).** 'Unless you can find a category' 'there is no room for the application of the ejusdem generis doctrine'. The only test is whether the specified things which precede the general words can be placed under some common category. This means that the specified things must possess some common and dominant feature. **(*S.S. Magnhild* v. *McIntyre Bros. & Co.* (1920) 3 KB 321).**

To invoke the ejusdem generis rule, there must be a distinct genus or category running through the bodies already named. The specific words must apply not to different objects of a widely differing character, but to something which can be called a class or kind of objects. (***Rajasthan State Electricity Board* v. *Mohan LaL, AIR 1967 SC 1857*; Maxwell: *'Interpretation of Statutes'*; *United Town Electric Co., Ltd.* v. *Attorney-General for Newfoundland, (1939) 1 ALLER 423 (PC)*).** The nature of the special words and the general words must be

considered before the rule is applied. (***Jagdish Chander Gupta* v. *Kajaria Traders (India) Ltd., AIR 1964 SC 1882***). It is a requisite that there must be a distinct genus, which must comprise more than one species, before this rule can be applied. **(State of Bombay v. Ali Gulshan, AIR 1955 SC 810).**

As noted hereinabove, the principle of *ejusdem generis* means that, where general words follow enumeration of persons or things by particular and specific words, the general words must be understood as applying to persons or things of the same general kind or those specifically enumerated. The genus, or the common thread running through all the entries in L.T.II category, is that they are premises where electricity is consumed for a commercial purpose. All the specified words in Clause 7.22.10 are premises where commercial activities are carried on or, in other words, premises which are put to commercial use. Toll Collection Plazas are places/premises where toll is collected for the use of the Highway by different kinds of motor vehicles which can, possibly, be held to be a commercial activity. However "lighting on National Highway", if disassociated with "toll collection plazas", would not fit in with other entries in L.T.II category, as the entire stretch of the National Highway would not constitute premises where commercial activity is carried on.

Collection of toll is a compensatory measure for construction of the road and other associated infrastructural facilities thereat, and not for the purpose of gain. It is, however, possible to contend (though such a contention is not free from doubt) that commercial activities are carried on at the toll collection plaza, since user charges are collected thereat. In any event, as the Appellants have chosen not to question inclusion of "toll

collection plazas" in L.T.II category, it is unnecessary for us to dwell on this aspect any further.

By use of the word *"including"* between *"toll collection plazas"* and *"lighting on National Highways",* MERC must be understood to have brought within the ambit of L.T. II category only such lighting on the National Highways which either form part of or are associated with toll collection plazas i.e. toll collection plazas and places adjacent thereto, where lighting is provided for commercial activities being carried on thereat, such as restaurants, shops etc located near the toll collection plazas. That does not, however, mean that street lighting provided at a fair distance from the toll collection plaza, where such lighting is provided not for carrying on any commercial activity, would also fall within LT-II category. The submission of MSEDCL that all street lightings, on the entire stretch of the National Highways, would fall within LT-II category does not, therefore, merit acceptance. Street lighting on the National Highway, other than those where some form of commercial activities are carried on in proximity to the toll collection plazas, would therefore not fall within LT-II category.

V. DO STREETLIGHTS ON THE ENTIRE STRETCH OF THE NATIONAL HIGHWAY MEET THE CONDITIONS STIPULATED FOR LT II CATEGORY?

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would submit that the main body of what type of connections would be covered under LT II has remained the same over the past tariff orders:

MERC's Order dated 17.08.2012 in Case No. 12 of 2011	**MERC's Order dated 30.03.2020 in Case No. 322 of 2019**	**MERC's Order dated 30.03.2023 in Case No. 226 of 2022**
(A) 0-20 kW Electricity used at Low/Medium Voltage in all non-residential, non-industrial premises and/or commercial premises for **commercial consumption** meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/ cleaning, entertainment/ leisure, pumping in following (but not limited to) places:	Applicability: This tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/ cleaning, entertainment/ leisure and water pumping in, but not limited to, the following premises:	**A) 0-20kW** This tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, entertainment/ leisure and water pumping in, but not limited to, the following premises:

Learned Counsel would submit that, from the above extracted table, it is clear that the LT II: Commercial/Non-Residential tariff category is applicable in respect of the following : (i) Electricity used at Low/Medium voltage, (ii) in non-residential, non-industrial and/or commercial premises and other specified premises, and (iii) for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, entertainment/ leisure and water pumping;

Clause (e) has been added to the definition of LT II tariff category; it is only an addition of the premises; even if the entire Highway is included in LT II, it would only be an inclusion of the premises; it would not, by itself, mean that all lighting on the Highway would be under LT II connection; for any connection to be under LT II, even on a Highway (assuming that the entire Highway has been included in LT II by the Impugned Order), it has to be "for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, entertainment/ leisure and water pumping"; as per Schedule C of the Contract between DBL and NHAI, lighting (called as street lighting) is not to be provided for the entire length of the Highway, but the lighting is to be provided at specific points such as major junctions (such as village intersections, Vehicular Under-Passes (VUPs), Road over Bridge (ROB) – through High Mast lighting; and for minor junctions such as service roads for villages or colleges - through street lighting; and slip roads, truck lay-bys and bus bays – through street lighting.

Sri Saurav Aggarwal, Learned Counsel, would further submit that there is no requirement of having lighting throughout the Highway; per se the Highway does not require street lighting; the Highway can be operated without lighting; however, they are provided at specified points for safety purposes because the Highway is adjacent to a village or town or there is an inter-section with other roads etc; many of these lightings are not even used by the Highway users, but by others; lighting on the Highway does not, in any manner, contribute to the activity of operating the Highway and/or revenues being received; thus, the street lights on the Highway are not for use for commercial purposes; a comparison can be made with electricity consumed for lighting a hotel or restaurant or club or bank or showroom etc; without the lighting, such establishments cannot operate;

this would apply to all premises enlisted in the LT II category; the consumer categories included under LT II are those wherein electricity usage is directly correlated with the facilitation of some commercial activity, resulting in profit generation for the consumer i.e., the sole purpose of using electricity is to generate profits; this is not so in the case of the National Highway; lightings on Highways are neither similarly placed with any of the consumer category enumerated under LT-II category, nor is there any overlap/similarity based on the nature of their usage (being the main criteria for re-classification of the appellant's street light connections); and there is no link between the lighting and commercial activity on the Highway.

B. SUBMISSIONS URGED ON BEHALF OF MERC:

Ms. Pratiti Rungta, Learned Counsel appearing on behalf of MERC, would submit that the tariff category LT-II has to be read in its entirety, and the terms included in item (e) cannot be ignored or rendered otiose or nugatory; further, with no challenge to the tariff category *"Toll Collection Plaza"*, its explanation is being impugned which could render portions of the Tariff Category otiose; (Refer: ***State of T.N. Vs. K. Shobana*, (2021) 4 SCC 686, Para 12; and *Union of India Versus Hansoli Devi, (2002) 7 SCC 273***, **Para 9);** Paragraph 7.22.10, impugned to the extent of explanation to the Tariff Category LT II, and item (e) of the tariff schedule, has to be seen in the light of the wording in the Tariff Category; the term "Plaza" cannot be equated with Toll Collection booth alone, as sought to be espoused by the Appellant; the word ***"Plaza"*** incorporated in the tariff entry gives it a wider import; and the definition of the term ***"Plaza"*** as defined in the Merriam Webster Dictionary is as under:

*"**Plaza:***

1a: a public square in a city or town
b: an open area usually located near urban buildings and often featuring walkways, trees and shrubs, places to sit, and sometimes shops

2: a place on a thoroughfare (such as a turnpike) at which all traffic must temporarily stop (as to pay tolls)
3: ***an area adjacent to an expressway which has service facilities (such as a restaurant, gas station, and restrooms)***
4: SHOPPING CENTER"

(relevant extract)

Ms. Pratiti Rungta, Learned Counsel, would further submit that the tariff entry "Toll Collection Plaza" is clear and unambiguous; the impugned Paragraph 7.22.10, in the new tariff order dated 31.03.2023, which stipulates inclusion of lightings on Express/National/State Highways, is merely an explanation of the tariff entry; as per the new tariff order dated 31.03.2023, LT-II Commercial Tariff will apply to all Toll Collection Plazas and also to lightings on Express/ National/ State Highways, which are specifically toll roads; also, all the lightings installed on service roads, inter-sections of villages or towns, to the extent the same form part of any Express/ National/ State Highway, will be charged LT-II Commercial Tariff; and Express/National/State Highways or any other roads built by local bodies which are not toll roads, and give its access to the general public free of charge, are not included in the Tariff Entry / Tariff Categorization, LT II - Commercial Tariff.

C. JUDGEMENTS RELIED ON BEHALF OF MERC:

In **Union of India v. Hansoli Devi, (2002) 7 SCC 273,** the Supreme Court held that, if the words of the statute are in themselves precise and

unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense; the words themselves alone do, in such case, best declare the intention of the lawgiver; it is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute, and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act; a provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings; it would be hard to find anywhere a sentence of any length which does not contain such a word; a provision is ambiguous only if it contains a word or phrase which, in that particular context, is capable of having more than one meaning; if, on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute; it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute; the legislature is deemed not to waste its words or to say anything in vain, and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons; similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless; but before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn

to the omission before the Bill had passed into a law; at times, the intention of the legislature is found to be clear but the lack of skill of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language; and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective.

In **STATE OF TAMIL NADU & ORS. V. K. SHOBANA, (2021) 4 SCC 686,** the Supreme Court held that, if an interpretation leads to a conclusion that the word used by the legislature is redundant, that should be avoided as the presumption is that the legislature has deliberately and consciously used the word for carrying out the purpose of the Act; the legal maxim *a verbis legis non est recedendum* which means, "from the words of law, there must be no departure" has to be kept in mind; there could be no assumption that a legislature committed a mistake when the language of the statute was plain and ambiguous; and no word in a statute has to be construed as a surplusage nor could any word be rendered ineffective or purposeless if the Court is required to carry out the legislative intent fully and completely.

D. ANALYSIS:

The MERC, in its order in Case No. 12 of 2011 dated 17.08.2012, Case No. 322 of 2019 dated 30.03.2020 and in Case No. 226 of 2022 dated 30.03.2023, has classified commercial premises, used for commercial consumption, under LT-II category. While a toll collection plaza can, possibly, be held to be a commercial premises, since toll is collected there at towards user charges and, by use of the word "including", lighting on National Highway in proximity to the toll collection plaza (where commercial activities can be said to be carried on) would

also constitute a commercial premises used for commercial purposes, it is difficult to hold that the entire stretch of the National Highway, where street lighting is provided, would also constitute a commercial premises where electricity is consumed for a commercial purpose.

As noted hereinabove, the agreement, between the first and the second appellants, does not require street lighting to be provided for the entire length of the National Highway, but only for a part thereof such as major junctions, road over bridges etc. Such lightings are required to be provided for the purposes of safety and to avoid accidents, and not for carrying on any commercial activity.

Para 7.22.10 of the impugned order brings within the ambit of L.T.II category "***Toll Collection plazas including lightings on Express / National / State Highways".*** Reading the afore-extracted portion in its entirety would not bring within its fold the entire stretch of the National Highway. The words *"lighting on Express/National/State Highway"* is not an explanation to *"Toll collection plaza",* for a toll collection plaza can, in no circumstances, be understood to mean "lighting on Express/National/State Highway".

As is clear from Para 7.22.10 of the impugned order, the words *"toll collection plazas"* are connected, by the word *"including",* with the words *"lighting on Express/ National/ State Highways".* Lest lighting on National Highways, even if it be in close proximity thereto, be excluded from the ambit of *"toll collection plaza"*, Para 7.22.10 of the impugned order makes it clear that the toll collection plaza along with lighting on National Highways, would fall within LT-II tariff category. In other words, lighting on national highway in and around the toll collection plaza have also been categorised under LT-II tariff category.

Reliance placed on behalf of the MERC on the judgments of the Supreme Court in **K. Shobana** and **Hansoli Devi,** as referred to hereinabove, is misplaced as the said judgments relate to interpretation of statutes and require a literal construction to be placed in interpretation of statutory provisions. Para 7.22.10 is merely a part of the tariff order passed by the MERC in the exercise of its regulatory powers under Section 62 of the Electricity Act, and cannot be equated to the provisions of a statute. The said tariff order is subject to appeal under Section 111 of the Electricity Act, and it is open to this Tribunal, in the exercise of its appellate jurisdiction, to examine not only the scope and purport of the words used therein, ie *"toll collection plaza including lightings on Express/ National/ State Highways"*, but also to consider whether its inclusion under LT-II category is justified.

The word "plaza" cannot be read divorced from the preceding words *"toll collection"* used in Para 7.22.10 of the impugned order. Consequently, a plaza must be understood as a place where traffic is temporarily stopped for payment of tolls or, in other words, a place where toll is collected by temporarily stopping vehicular traffic. Even if an expanded meaning of *"plaza"* is applied to the said entry, it would only include lighting in premises located on the National Highway adjoining the toll collection plaza such as restaurants, ice-cream parlours, tea shops, guest houses etc in which places electricity is used for commercial purposes. A literal reading of the said entry would only bring within the ambit of L.T.II category, lighting on national highway in and around the toll collection plaza, and not lighting on National highway located at a fair distance therefrom. Lighting on inter-sections of villages and towns, though forming part of the National Highway, does not involve any commercial activity, since such lighting is provided to ensure safety, of

passers-by and all those living adjacent to such inter-sections, and to avoid accidents at such places.

The submission that it is only the roads built by local bodies which would not fall within LT-II category necessitates rejection, since no such restriction is placed by the parameters prescribed either for L.T. II or L.T.VI Category. The requirement of such roads being used free of charge is also not stipulated with respect to street lighting. Street lights on the National Highways, which are provided for safety purposes and to prevent accidents, do not consume electricity for commercial purposes nor can such lighting be equated to consumption of electricity for operating various appliances used for commercial purposes such as cooling, cooking, washing etc. We are satisfied, therefore, that street lights on the National Highway, other than those in close proximity to the toll collection plazas and at places where commercial activity is being carried on, do not fulfil the conditions stipulated for premises falling within LT-II category

VI. JUDGEMENT OF THE BOMBAY HIGH COURT IN WRIT PETITION NO. 7504 OF 2022 DATED 23.10.20:

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would further submit that the Bombay High Court, vide its judgment in ***Maharashtra State Electricity Distribution Company Limited v. DBL Mahagaon, Kinhi*** (Judgement in Writ Petition (WP) No. 7504/2022 dated 23.10.2023), held that MSEDCL had not pointed out anything to show that usage of electricity for street lighting on the National Highway was commercial or was meant for operating various appliances used for the purposes specified in LT-II, which is the pre-requisite to apply LT-II category i.e. the commercial category tariff; and the purpose of

highways is for benefitting the general public at large, and not to earn profits but to provide connectivity and facilities to the citizens of India.

Sri Saurav Aggarwal, Learned Counsel, would further submit that the Bombay High Court, in W.P. 7504 of 2022, was faced with a similar question, albeit in an earlier Tariff Order of the year 2020; however, there is no difference between the categorisation of LT II: Commercial/Non-Residential category in the earlier Tariff Order of 2020 and the Impugned Tariff Order, except for addition of "Toll Collection Plazas" in the current Tariff Schedule, and the purported 'clarification' at Para 7.22.10; as the Bombay High Court, in W.P. 7504 of 2022, has already held that certain consumers definitively fall under the LT VI: Street Light tariff category, MERC cannot pass a Tariff Order contrary thereto; the Bombay High Court judgment is binding on this Tribunal, on the parties to the case, and is a declaration of law *in rem*; the basis of the Bombay High Court judgment has not been removed, which, even otherwise, cannot be done away with by an adjudicatory or a regulatory order; MERC has contended that the Regulatory Commission was not negating the principles of the Bombay High Court; and the Respondents have not responded to the reasons given by the Bombay High Court for concluding that all such street lights should not fall within LT II.

B. SUBMISSIONS URGED ON BEHALF OF MERC:

Ms. Pratiti Rungta, Learned Counsel appearing on behalf of MERC, would submit that the judgement dated 23.10.2023 of the Bombay High Court arises from an order dated 27.05.2022 passed by the CGRF in Representation No. 16 of 2022; therefore, that matter relates to the interpretation of the tariff category / classification reflected in the earlier tariff order dated 30.03.2020 in Case No. 322 of 2019; the said tariff

category / classification is in the earlier tariff order dated 30.03.2020; the judgement of the Bombay High Court interprets, inter alia, the tariff category LT II titled ***"LT II: LT – Non-Residential or Commercial"***; this category does not include the term ***"Toll Collection Plazas"*** which was added for the first time in the impugned new tariff order dated 31.03.2023 in Case No. 226 of 2022; the judgement of the Bombay High Court also considers the tariff category LT-VI titled ***"LT VI: LT – Street Light"***; the said tariff category/ classification in the earlier tariff order dated 30.03.2020; thus, the Bombay High Court was seized of a tariff order dated 30.03.2020, which did not include the term *"Toll Collection Plazas"*; presently, the impugned tariff order dated 31.03.2023 in Case No. 226 of 2022 specifically includes the term *"Toll Collection Plazas"* in the tariff entry *"LT II: LT – Non-Residential or Commercial"*, as item (e) inserted therein; the MERC, in its new tariff order dated 31.03.2023, has created a specific tariff categorisation in "*LT II: LT- Non-Residential or Commercial Tariff "* category; the Appellant has not challenged inclusion of *"Toll Collection Plazas"* in the LT-II tariff category, by MERC; further, in the said order, MERC has, in *Paragraph 7.22.10,* clearly stipulated that the Toll Collection Plazas would include lightings on Express/ National / State Highways; it is only inclusion of lightings on Express / National / State Highways, which has been impugned in the present Appeal; therefore, the judgement of the Bombay High Court is not relevant for interpretation of the new tariff order dated 31.03.2023, which is markedly different in terms of the description of the tariff category "*LT II: LT - Non-Residential or Commercial".*

Ms. Pratiti Rungta, Learned Counsel, would further submit that, from Paragraph 23 of the judgement of the Bombay High Court, it is evident that it relates to a factual matrix wherein street lights were not provided on

the entire stretch of the Highway; street lights were provided at certain specific places like service roads, inter-sections of villages and towns; street lights were installed for local residents free of charge, as recorded in the said judgement; paragraph 5 of the judgement refers to some further locations including on certain Highways; however, the present tariff entry LT-II (New tariff order dated 31.03.2023) does not include service roads, inter-section of villages and towns or other locations, but should be strictly construed as including lightings on Express/ National/ State Highways; another important factual distinction is that the Bombay High Court had recorded, in Paragraph 23 of the said judgement, that street lights are installed for use of local residents free of charge; in the present case, however, the factual position differs on the charges levied by the Appellants; the contents of the Appeal, at ***Page 38, Para (III),*** reveal payment of charges; this factual position is repeated and reiterated in ***Para (VII), Page 45 of the Memo of Appeal and Para (XV) on Pg. 50***; and, therefore, the judgement of the Bombay High Court *(supra)* is distinguishable on law as well as on facts.

C. ANALYSIS:

In **Maharashtra State Electricity Distribution Company Limited vs DBL Mahagaon, Kinhi & others:** (Judgement of the Bombay High Court in W.P. No. 7504 of 2022 dated 23.10.2023), the order under challenge was passed by the Consumer Grievance Redressal Forum, Amravati, in Representation No.16/2022 dated 27.05.2022 allowing the representation, and thereby directing the petitioner-MSEDCL to retain the category of connection in respect of the respondent to ‘street light’ category and adjust the difference of amount collected from the respondent on account of re-classification of category in their ensuing bills.

The respondent was the concessionaire, incorporated solely for the purpose of executing the concession agreement with NHAI, and to discharge the obligations of the works provided therein i.e. four-laning of a road on hybrid annuity mode. The respondent secured electricity connection for installment of street lights on the said road and it was granted under tariff LT-VI(A) category for the purpose of street lights on the national highway project.

However, the petitioner-MSEDCL made reclassification from LT-VI(A) category to LT-II(B) category and thereby made upward revision of electricity bills. Aggrieved thereby, the respondent approached the Consumer Grievance Redressal Forum, Amravati challenging the reclassification. The said representation came to be allowed directing the petitioner-MSEDCL to retain the category of connection i.e. ‘street light’ category, and adjust the difference of amount collected from the respondent by the petitioner on account of reclassification.

It was contended, on behalf of MSERCL, that the connection for the street lights on the national highway was provided to the private agency i.e. the respondent and the use of these highway lights were not for people to carry out their daily work, but mainly for vehicles passing through the highway which were paying the charges at the Toll Plaza; it was a commercial activity and could not be categorized in LT-VI(A) category i.e. ‘street light’; the activity of the respondent was purely commercial, and reclassification was rightly done.

It was contended on behalf of the respondent-concessionaire that the street lights installed on the highways were part of the project facility as defined in the EPC agreement; the project facility included provision of street light in clause 2.1 and schedule ‘C’ of the agreement; NHAI

exercised proprietary and controlling right over the project facility including street lights; they were merely a concessionaire in respect of the project and its facilities; they were liable only for maintenance of the project, and not for collection of user fee from the users of the National Highway; the street lights installed by them render the function of municipal category, as there was no revenue generated from such usage of street lights; and rather the connection was for services only for general public use.

It is in this context that the Bombay High Court held that the street light category tariff i.e. LT-VI was applicable for the electricity used for lighting of public streets, thorough fares which were open for use by the general public at Low/Medium Voltage and at High Voltage; street lights in residential complexes, commercial complexes, industrial premises etc. are billed at the tariff of the respective applicable categories; whereas, LT-II i.e. the non-residential/commercial tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating cooling, cooking, washing/cleaning, entertainment/leisure and water pumping in, but not limited to, the premises enumerated under the said category; it was apparent that usage of electricity was relevant; it was not the case of MSEDCL that street lights were provided for the entire stretch of the Highway; from the record, it could be seen that street lights were provided at certain specific places like service roads, intersection of villages and towns; the photographs filed by the respondent showed that street lights were installed for use of local residents free of charge; MSEDCL had not pointed out anything to show that the usage was commercial, and was meant for operating various appliances used for the purposes specified in LT-II, which was a pre- requisite to apply LT-II

category i.e. the commercial category tariff; the mere fact that street lights were installed on over bridges and under bridges or at bus bay and bus shelter locations, built up sections on the project highways, was not sufficient to arrive at the conclusion that the use of electricity was for commercial consumption; and, similarly, the fact that street lights were installed on certain highways was not sufficient to hold that it was for commercial consumption and not for use of the general public.

The Bombay High Court further held that NHAI comes under the Ministry of Roadways under the Government of India; the Highway is for the purpose of benefiting the general public at large, and the purpose of streets is not to earn profit but to provide connectivity and facilities to citizens of India; a huge investment was required for such construction of highways, and therefore toll was being collected; however, it would not make the activity commercial; the respondent was merely a concessionaire in respect of the project and its facilities, and did not exercise any proprietary, operational and commercial control over the project facilities; the respondent, as a contractor, had handed over the project facilities to NHAI for operation of Toll Plaza, and the respondent was liable only towards maintenance of the project and not for collection of user fee from the users of the national highways; and it was, thus, difficult to accept that it was a commercial activity for which LT-II tariff will apply.

The afore-said judgement of the Bombay High Court has attained finality, as no appeal is said to have been preferred there-against. The law declared in the said judgment would, therefore, not only be binding on the parties thereto ie MSEDCL and MERC, but would constitute a precedent binding on this Tribunal.

D. RELEVANT PARAGRAPHS OF THE APPEAL:

Since reliance is placed on behalf of the MERC on certain paragraphs of the Appeal, filed by the Appellant, to contend that use of the National Highways is not free of charge, it is useful to take note of the contents of these paragraphs.

Para 9 of the Appeal are the grounds raised with legal provisions. Para 9(III), on which reliance is placed on behalf of MERC, states that parts of the National Highway, like slip roads, service roads, pedestrian under-passes, vehicular under-passes and intersections of villages and towns, are available for use without charge; most of the lighting installed are in the above-mentioned places; even the lighting on the main National Highway is on a road open for public use, albeit at a charge, which is payable only towards development and construction cost of the National Highways by the Government of India, and not for any other purpose.

In Para 9 (VII) of the Appeal, it is stated that the classification between a street lighting and lighting on national highway suffers from arbitrariness as there is no intelligible differentia between the two for classifying them differently, merely because there is a toll charge to enter some specific parts of the National Highway; and the impugned tariff order overlooks that the citizens have to pay various municipal and other taxes such as road taxes, for the street light facility.

Again at Para 9 (XV), it is stated by the Appellant that the National Highways are open to the general public and are built for the purpose of public welfare; NHAI is a statutory organization and the work carried out by it is for the convenience of the public at large, and not for any commercial purpose; the lighting put up under the connections are in fact

serving the purpose of municipalities; the user fee collected is for the purpose of compensating and recovering the money spent in the construction, building, maintenance and management of the National Highway, and not for any commercial/ profitable purpose; besides, toll fee is not collected by the Appellant; neither of the Appellants are carrying on any trade or commerce in general for the purpose of which it can be defined as a commercial establishment; the lightings are not installed on the entire stretch of the highway, but only in certain specific places like service roads and intersections of villages and towns etc. which are open for use by local residents free of charge; and the main purpose is to prevent and avoid accidents and mishaps to the general public at large.

It is clear, from the afore-said paragraphs of the Appeal, that, while toll is collected towards user fee, such collection is merely compensatory in nature and is meant for recovery of the money spent in the construction and management of the National Highway. It is not meant to be a profit generation exercise. While slip roads can possibly be held to be partly used by vehicular traffic to get on to, or get off from, the National Highway, lighting at village/town inter-sections, road over bridges and other similar locations, are meant only for the safety of people living adjacent thereto and to prevent accidents, and nothing more. Further, village inter-sections, used by villagers living nearby the highway, are not subject to payment of toll charges. In other words, such inter-sections are used by villagers and people living in towns without paying any user charge whatsoever. It is difficult, therefore, to hold that street lightings on the National Highway, at village/town intersections or on road over bridges etc, are street lights meant for a commercial purpose. Classifying them under LT-II category is, therefore, wholly unjustified.

It is true that the judgment of the Bombay High Court dated 23.10.2023 arose on a challenge mounted to the order passed by the Consumer Grievances Redressal Forum in Representation No. 16 of 2023 dated 27.05.2023. It is also true that what fell for consideration in the said judgment is the tariff reflected in the tariff order in Case No. 322 of 2019 dated 30.03.2020. Even though LT-II category did not then specifically include "toll collection plazas", the attempt to bring "toll collection plazas" within the ambit of LT-II category was rejected, in the said judgement, holding that no commercial activity was being carried on thereat, and street lights were installed at service roads and village and town intersections for the benefit of local residents free of charge.

The submission made on behalf of MERC, that the entry now made in LT-II category is with a view to remove the basis of the said judgment, is difficult to accept, since the regulatory order passed by the MERC does not have statutory sanction, and cannot be equated to legislation made by the competent legislature to remove the basis of judicial pronouncements of superior courts. The very fact that "lightings on national highways" has been associated with "toll collection plazas", by use of the word "including", would go to show that "lighting on national highways" was not intended to be treated as an independent entry. It is clear, therefore, that only lighting on national highways, in and around the toll collection plazas, would alone fall under LT-II category, and not street lights on the National Highway located at a fair distance therefrom.

VII. DO STREETLIGHTS ON THE NATIONAL HIGHWAY MEET THE CONDITIONS STIPULATED FOR LT VI CATEGORY?

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the

appellant, would submit that the main body of what type of connections would be covered under LT VI, across the past tariff orders, are as under:

MERC's Order dated 17.08.2012 in Case No. 12 of 2011	**MERC's Order dated 30.03.2020 in Case No. 322 of 2019**	**MERC's Order dated 30.03.2023 in Case No. 226 of 2022**
Applicability:	Applicability:	Applicability:
Applicable for use of Electricity / Power Supply at Low / Medium Voltage exclusively for the purpose of Street Light Services. This Tariff shall also be applicable for use of Electricity / Power Supply at Low / Medium Voltage for following (but not limited to) purposes, **irrespective of whether such facilities are owned, operated and maintained by the local self-Government body**; a) Lighting in Public Garden (should be open for general public free of charge and, will not cover gardens in private township or amusement parks); b) Traffic Signals & Traffic Islands; c) State Transport Bus Shelters;	This tariff category is applicable for the electricity used for lighting of public streets/ thoroughfares which are open for use by the general public, at Low/ Medium Voltage, and at High Voltage. Street-lights in residential complexes, commercial complexes, industrial premises, etc. will be billed at the tariff of the respective applicable categories. This category is also applicable for use of electricity/ power supply at Low/ Medium Voltage or at High Voltage for (but not limited to) the following purposes,	This tariff category is applicable for the electricity used for lighting of public streets/ thoroughfares which are open for use by the general public, at Low / Medium Voltage, and at High Voltage. Street-lights in residential complexes, commercial complexes, industrial premises, etc. will be billed at the tariff of the respective applicable categories. This category is also applicable for use of electricity / power supply at Low / Medium Voltage or at High Voltage for (but not limited to) the following purposes,

d) Public Sanitary Conveniences; and e) Public Water Fountain & such other Public Places open for general public free of charge.	**irrespective of who owns, operates or maintains these facilities**:	**irrespective of who owns, operates or maintains these facilities**:
This category shall be applicable for public lighting for those streets **which are open for use by the general public.** Streets under residential complexes, commercial complexes, industrial premises, etc. will be billed under the Tariff of respective categories.	a. Lighting in Public Gardens (i.e., which are open to the general public free of charge); b. Traffic Signals and Traffic Islands; c. Public Water Fountains; and d. Such other public places open to the general public free of charge.	a. Lighting in Public Gardens (i.e., which are open to the general public free of charge); b. Traffic Signals and Traffic Islands; c. Public Water Fountains; and d. Such other public places open to the general public free of charge.

Learned Counsel would submit that the two changes that are apparent when compared to the 2012 Tariff order are: (i) the earlier requirement that the highway should be owned by a Panchayat or local self-Government body has been now given a go by; in LT VI category, it is provided that it applies "*irrespective of who owns, operates or maintains these facilities.*"; (ii) In the 2012 Tariff order, LT VI had the 'free' requirement if public lighting had to be brought under LT VI as follows: *"This category shall be applicable for public lighting for those streets which are open for use by the general public free";* now, the word 'free' does not occur in respect of public lighting on the streets; the words 'free of charge' occur in respect of 'other public places'; as per the 2020 or 2023 tariff schedules, LT VI Street Light tariff category is applicable in respect of the following : (i) electricity used for lighting of public streets/

thoroughfares which are open for use by the general public; and (ii) such other public places open to the general public free of charge, irrespective of who owns, operates or maintains these facilities; in case of another NHAI Highway, operated by the first appellant, the CGRF has held that "*National Highway is a Public Street."* (Refer: order of the CGRF, in *M/s Dilip Buildcon Mayur Layout Yamatval v. Executive Engineer MSEDCL, Yamatval Circle, I(Order* in Representation No. 12 to 24 of 2022 dated 27.05.2022)**;** for electricity, used in lighting of public streets or thoroughfares, there is a specific entry where the only requirement is that it should be open for use by the general public; it is not necessary that such use should be free of charge; levy of toll would not mean that the highway is not open for use by the general public; and, as held by the Bombay High Court in ***Maharashtra State Electricity Distribution Company Limited v. DBL Mahagaon, Kinhi*** (Judgement in Writ Petition (WP) No. 7504/2022 dated 23.10.2023), the toll fee charged is only towards recovery of the costs incurred in the construction of such express/national/state highways, and would not change the character from LT VI to LT II. Reliance is also placed on **MSK PROJECTS (I) (JV) LTD. vs. STATE OF RAJASTHAN, (2011) 10 SCC 573** in this regard.

B. SUBMISSIONS URGED ON BEHALF OF MERC:

Ms. Pratiti Rungta, Learned Counsel appearing on behalf of MERC, would submit that the tariff order, in Case No. 226 of 2022 dated 31.03.2023, has another tariff category LT VI: LT - Street Light; this tariff entry relates to streets wherein public makes use of the facilities, as mentioned in the tariff entry/category LT-VI, free of charge; and with the specific inclusion of Toll Collection Plazas with the explanation as contained in Para 7.22.10 of the New Tariff Order, as including lighting on

Express / National/ State Highways, wherein an amount is admittedly charged to the public, the facilities of the Appellant cannot be included in tariff category LT VI : LT – Street Light.

C. ANALYSIS:

As noted hereinabove, Annexure-1 of the impugned order is the Tariff Schedule for FY 2023-24 and FY 2024-25 which the MERC, in the exercise of its powers under Section 61 and 62 of the Electricity Act, approved with effect from 01.04.2023. LT-VI tariff category, which relates to LT VI - Street Light, is applicable for electricity used for lighting of public streets/ thoroughfares which are open for use by the general public, at low/ medium voltage, and at high voltage. Street lights in residential complexes, commercial complexes, industrial premises etc. are to be billed at the tariff of the respective applicable categories. The L.T.VI category is also applicable for use of electricity/power supply at low/ medium voltage or at high voltage for (but not limited to) the following purposes, irrespective of who owns, operates or maintains these facilities: (a) lighting in public gardens (i.e. which are open to the general public free of charge); (b) traffic signals and traffic islands; (c) public water fountains; and (d) such other public places open to the general public free of charge.

It is evident from the Tariff Schedule that LT-VI Street Light category is applicable, among others, for lighting in public streets/ thorough fares which are open to the general public. An exception to this category are streetlights in residential complexes, commercial complexes, industrial premises etc. to which the tariff applicable to L.T.VI category is not applicable, and they are to be billed at the tariff applicable to the other categories in which they fall. The National Highway does not fall within any of the afore-said excepted categories as it is neither a residential

complex nor a commercial complex or even an industrial premises. National Highways are open for use by the public (albeit on payment of user charges). The requirement of usage being free of charge is applicable only to lighting in public gardens and such other places which are open to the general public free of charge. There is no requirement that lighting on public streets/ thoroughfares should be used free of charge, for it to be held to fall within LT-VI Street Light category. Consequently, streetlights on the National Highway would fall within LT-VI category.

The changes brought about from the tariff order passed by MERC in Case No. 12 of 2011 to Case No. 322 of 2019 and thereafter to Case No. 226 of 2022 is also of significance. LT-VI category, in terms of Case No. 12 of 2011, was applicable for use of electricity for the purpose of street lighting services irrespective of whether such facilities were owned, operated and maintained by the local self-governing body. The requirement of usage by the public free of charge was confined to lighting in public gardens, public water fountains, and other public places open for the general public free of charge. The said order further made it clear that LT-VI category was applicable for public lighting for those streets which were open for use by the general public. The requirement of such usage of streets, (where public lighting is provided), being free of charge was not stipulated in the said tariff order.

In the tariff order, passed in Case No. 322 of 2019, LT-VI category was applicable for electricity used for lighting of public streets/ thoroughfare which are open for use by the general public. The requirement of such usage being free of charge was also not stipulated in the said Tariff Order. It was also made clear therein that this category

would be applicable irrespective of who owned, operated or maintained these facilities. The requirement of usage free of charge was confined only to public gardens and such other public places open to the general public and not to street lighting. Even in the tariff order in Case No. 226 of 2022, LT-VI category is available for use of electricity for street lighting irrespective of who owns, operates or maintains this facility. Again, it is only lighting in public gardens and other public places open to the general public which is required to be free of charge for it to fall within LT-VI category.

The mere fact that a toll is collected towards usage charges of the National Highway would not oust streetlights on National Highways from LT-VI category, nor would it bring such street lighting within LT-II category, since no commercial activity is carried on in a substantial stretch of the National Highway. It is only where electricity is provided for consumption for commercial purposes such as in and around the toll plaza, or in places adjacent thereto on the National Highway, ie where electricity is consumed by hotels, shops, malls etc. for a commercial purpose, would it fall within LT-II category and not otherwise.

VIII. STREET LIGHTING ON SERVICE ROADS AND VILLAGE INTER-SECTIONS:

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would submit that, even though use of express/national/state highways incurs a toll fee, locations such as service roads and village inter-sections do not incur any toll fee; service roads, constructed near the

main carriageway of the highways, are meant for the use of local residents/villagers, and no toll fee is charged for their usage; during the course of hearing of the present Appeal on 28.05.2024, MERC had conceded to the fact that, since service roads are not a part of the main carriageway of the Project Highway, street lighting installed on such roads must be charged under LT VI: Street Light tariff category; and, similarly, at village inter-sections, villagers do not pay toll.

B. ANALYSIS:

While service roads are used by those living nearby, they are also used by vehicular traffic either to get on to, or get off from, the National Highway. Street lighting at village/ town intersections is provided for safety of people living in villages/ towns adjacent to the National Highway, to enable them to cross over from one part of the National Highway to another, and to prevent accidents. Such use of the National Highway at the village/town intersections is free of cost, and no toll fee is required to be paid by the villagers concerned as they merely cross over from one part of the National Highway to another, and do not use the National Highway.

IX. WERE THE EARLIER CONNECTIONS, UNDER LT VI CATEGORY, GIVEN INADVERTENTLY?

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would submit that the appellant had applied for 27 connections in LT VI category for the Highway, and MSEDCL had granted 26 connections in LT VI and one connection (for the Toll collection plaza) as LT II; this was between 14.09.2020 and 08.03.2021; a year later,

MSEDCL unilaterally changed the category from LT VI to LT II; in the reply filed before APTEL, in this Appeal, MSEDCL contends that "…*after analysing the Application which stated that the electricity would be used for Streetlights, the Section Officer of MSEDCL inadvertently granted NHAI the connection in LT VI: LT streetlight category…"*; no such plea was taken before the CGRF or the Ombudsman; moreover, when the appellant asked for 27 connections in LT VI, but was given 26 connections in LT VI and one in LT II, the plea that 26 connections were given inadvertently in LT VI is liable to be rejected; besides, in law, an unilateral mistake does not give the option to MSEDCL to avoid the contract under Section 22 of the Indian Contract Act, 1872, particularly when the other party has already acted upon it; MSEDCL has stated, in their Reply, that their intention was to change the tariff category based on the change in the purpose of usage of supply on the basis of Regulation 14 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 ("**MERC Supply Code**"); re-classification should be based on the purpose of usage of electricity supply of the Appellant; the purpose of LT II is not satisfied by the lighting on the Highway, as also held in the Bombay High Court judgment; the inclusion of Toll Collection Plaza or even the entire Highway would not, by itself, mean that the lighting on it was for commercial consumption; thus, MSEDCL has not complied with the requirements set out under Regulation 14 of the MERC Supply Code; as per the Impugned Order, the rationale governing the need for clarification, under Para 7.22.10, emanates from Clauses 7.1.7 and 7.1.52**;** the intended approach of merging/elimination/classification/recategorization of certain class of consumers was by reducing the existing number of categories and slabs

by *"merging similarly placed consumer categories while ensuring that the existing consumers in these categories are not significantly impacted…"*; and thus, neither was there an intention to change the categorization under Regulation 14 of the MERC Supply Code, nor were the pre-requisites fulfille**d.**

B. ANALYSIS:

While we find considerable force in the submission, urged on behalf of the Appellants, that MSEDCL, having provided them with 27 connections of which 26 were in LT-VI and only one i.e. the toll collection plaza was in LT-II, cannot turn around and now contend that such connections were provided by mistake, it is unnecessary for us to delve into this aspect as we have now held that it is only street lighting provided in and around the toll plaza which would fall within LT-II category, and that street lighting on other parts of the National Highway including at village/ town intersections, road over bridges etc, where no commercial activities are carried on, would only fall within LT-VI category, and cannot be brought under LT-II category.

X. ABSENCE OF REASONS IN THE IMPUGNED ORDER:

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would submit that there is no reasoning from the Respondents' side; the Impugned Order does not reflect why MERC has accepted MSEDCL's proposal, nor has MSEDCL explained why it proposed such an addition; MERC has failed to show the precise rationale for the clarification issued under Clause 7.22.10, in as much as no reason has been provided; an order bereft of reasons cannot be sustained; and no

reason can be supplemented by way of affidavits.

B. ANALYSIS:

While an order passed by the Commission, in the exercise of its adjudicatory powers or in the discharge of its quasi-judicial functions, must contain reasons, the impugned tariff order is an order passed by the Commission under Section 62 of the Electricity Act in the exercise of its regulatory power. We do not, in the present case, propose to examine whether the same test, as is applicable to an adjudicatory order, should be applied even to a regulatory order. Suffice it to observe that, while it would be appropriate for the Commission to at least briefly state the reasons which weighed with it in classifying consumers into different categories, failure to do so may not, by itself, justify the impugned order being set aside.

XI. DOCTRINE OF STARE DECISIS:

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellants, would submit that, from out of the various State Electricity Regulatory Commissions that have classified lighting on express/national/state highways, MERC alone has classified them under commercial category; for instance, in the Schedule of Tariff of Punjab, lighting on national highways including those on toll plazas, are categorised under the "*SVIII: Public Light Supply*" tariff category; a similar categorization is provided by the Rajasthan SERC which has categorized the component under the "*Public Street Light Service*" tariff category; therefore, the 'clarification' under Para 7.22.10, violates the principle of *stare decisis* which has been brought within the domain of tariff fixation by

way of the judgment rendered in **Bharti Airtel Ltd. v. Maharashtra ElectricityRegulatory Commission (2020 SCC OnLine APTEL 30).**

B. ANALYSIS:

Relying on **Union of India v. Azadi Bachao Andolan, (2004) 10 SCC 1, State of Gujarat v. Mirzapur Moti Kuresh, (2005) 8 SCC 534, and Maganlal Chaganlal v. Municipal Corporation of Greater Bombay, (1974) 2 SCC 402,** this Tribunal, in **Bharti Airtel Ltd. v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 30,** held that the State Commission has since the year 2008 taken a conscious view that the Mobile/Broadcasting Towers would be placed under the Industrial category without going into whether they would fall under the Government of Maharashtra Policy or not; the said position has held forth for a very long time namely more than 10 years, and there is no change whatsoever in the factual or legal position; the principle of stare decisis applies squarely; as held in ***Indian Metal and Ferro Alloys Ltd. v. Collector of Central Excise, 1991 Supp (1) SCC 125,*** a consistent practice followed should not be changed; in *Spencers' Retail Limited* v. *MERC*, (Appeal No. 146 of 2007 dated 19.12.2007) it has been held that regulatory certainty should be maintained; and when the State Commission has given a dispensation for all these years which has been fully accepted by the licensee, there being no change in the factual or legal position, there was no occasion for the State Commission to hold to the contrary.

The doctrine of stare decides is expressed in the maxim stare decisis et non quieta movere, which means “to stand by decisions and not to disturb what is settled”. The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that

a view which has held the field for a long time should not be disturbed only because another view is possible. (**Shankar Raju v. Union of India, (2011) 2 SCC 1329; Bharti Airtel Ltd. v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 30).** A decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs, should not lightly be disturbed by a superior court not strictly bound itself by the decision. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transaction which might have been entered into in faith of these decisions. (**Rajarai Pandey v. Sant Prasad Tiwari, (1973) 2 SCC 35; Bharti Airtel Ltd. v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 30).**

While the Appellant seeks application of the doctrine of *stare decisis* (i.e. the need to maintain consistency and avoid uncertainty in judicial pronouncements) to the impugned order, comparing it with the orders passed by other State Commissions such as Punjab and Rajasthan, it must be borne in mind that the power to determine tariff and to classify consumers of the electricity into different categories is conferred, with respect to consumers of electricity supplied by distribution licensees, only on the State Commissions under Section 62(3) of the Electricity Act. The fact that some other State Commissions have chosen not to treat street lights on National Highways under LT-II category would not disable MERC from including it in the said category, provided such inclusion is justified on the criteria stipulated for classifying consumers of electricity under LT-II category.

It is un-necessary for us to analyse this issue any further, since we have already held that, except for lighting on the National Highway in and

around the toll collection plazas and in areas where commercial activities are being carried on, street lights on other parts of the National Highways would not fall under LT-II category, and would continue to be governed under LT-VI category.

XII. CONCLUSION

For the reasons afore-mentioned, we are of the view that MSEDCL was not justified in treating street lighting on the National Highway, other than those in and around the toll collection plazas and in places where commercial activities are carried on, as falling under LT-II category, and that such lighting on the National Highway would continue to be governed under the LT-VI category. The impugned order, to this limited extent, is clarified. The Appeal is allowed, and all the I.As therein stand disposed of.

Pronounced in the open court on this the **9th day of September, 2024**.

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

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