

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Appeal No. 169 of 2012 &
IA No. 288 of 2012**

Dated: 21st February, 2013

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

In the matter of:

Wockhardt Limited,

Having its registered office at
Wockhardt Towers,
Bandra-Kurla Complex,
Mumbai-400 051

... Appellant (s)

Versus

1. **Maharashtra Electricity Regulatory Commission,**
World Trade Centre, Centre No. 1,
13th Floor, Cuffe Parade,
Mumbai-400 005
(Through its Secretary)

2. **Mahatrashttra State Electricity
Distribution Company Limited,**
Hongkong Bank Building, M.G. Road, Fort,
Mumbai-400 001. ...Respondent(s)

Counsel for Appellant(s) : Mr. M.G. Ramachandran,
Ms. Ranjitha Ramachandran

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan,
Ms. Richa Bhardwaja for R-1
Mr. Parag Tripathy, Sr. Adv.
Ms. Swati Sharma and
Mr. Abhishek Mitra for R-2

JUDGMENT

RAKESH NATH, TEHNICAL MEMBER

This Appeal has been filed by M/s. Wockhardt
Ltd. against the order dated 16.08.2012 passed by

Maharashtra Electricity Regulatory Commission ('State Commission') regarding true up for FY 2010-11, Aggregate Revenue Requirement for FY 2011-12 and FY 2012-13 and Tariff Determination for FY 2012-13 in respect of Maharashtra State Electricity Distribution Company Limited, the Respondent no. 2 herein.

2. The Appellant is a consumer. The State Commission is Respondent no. 1. MSEDCL, the Distribution Licensee, is the Respondent no. 2.

3. The brief facts of the case are as under:

3.1 The Appellant is a global pharmaceutical and biotechnology company involved in the manufacturing of medicines and Research and Development in various life saving medicines and pharmaceutical products. The Appellant has its manufacturing units at various places, including at MIDC, Chikalthana,

Aurangabad, Maharashtra which is supported by a Research and Development Centre which is also housed in the MIDC, Chikalthana. The Research & Development Centre of the Appellant is carrying out research and development for various life saving medicines and pharmaceutical products which are ultimately manufactured in the manufacturing units of the Appellant.

3.2 The Research & Development Centre of the Appellant is an independent consumer being supplied electricity by the Distribution Licensee, the Respondent no. 2 through a 11 kV feeder.

3.3 The State Commission vide its order dated 17.8.2009 stated that the categorization of industry is applicable to such activities which entail manufacture,

irrespective of the classification for tax purposes and other purposes by the Central or State Governments.

3.4 The Research and Development Centre of the Appellant was treated as High Tension (HT)-I Industrial Category of Consumers since their inception till June 2009 and as HT-I Express Feeder from June 2009 till March 2011 and the Appellant had consistently been making the payment of its electricity dues.

3.5 On 25.03.2011, a flying squad of the Respondent no. 2 visited the premises of the Appellant and conducted an inspection and submitted a Report recommending levying of electricity charges on the Research and Development Centre under the head 'Commercial Category' in place of 'Industrial Category'. Thereafter, the Respondent no. 2 raised a bill dated

19.4.2011 against the Research and Development Centre for HT-II Commercial category for the period 16.3.2011 to 15.4.2011 followed by a supplementary bill dated 25.4.2011 for the period June 2008 to March 2011 due to change of tariff category from HT-I Industrial to HT-II Commercial.

3.6 The Appellant filed a complaint against the issuance of the Supplementary Bill before the Consumer Grievance Redressal Forum('CGRF'). By order dated 13.12.2011, the CGRF rejected the complaint preferred by the Appellant. Thereafter, the Appellant filed a representation before the Ombudsman. However, the Ombudsman also held that the categorization of the Appellant's Research and Development Unit in Commercial Category was rightly done. Aggrieved by the order of the Ombudsman, the

Appellant filed a Writ Petition before the High Court and the same is pending.

3.7 In the meantime, the Respondent no. 2 filed a petition for approval of its true up of FY 2010-11, Annual Revenue Requirement for FY 2011-12 and FY 2012-13 and Tariff Determination for FY 2012-13.

3.8 The State Commission by the impugned order dated 16.08.2012 disposed of the above Petition filed by Respondent no. 2 and determined the retail supply tariff applicable for FY 2012-13 w.e.from 1.8.2012. In the impugned order, the State Commission specified that the HT-I Industrial tariff shall also be applicable to use of electricity in the Research and Development Unit situated in the same premises of an industry and taking supply from the same point of supply. However, Research & Development unit situated at other place and taking supply from different point of

supply shall be billed as per either HT (II)(A) or HT (II)(B), as the case may be, under Commercial tariff category. Accordingly, the Appellant's Research and Development unit is now classified under HT II (A) Commercial Category as against HT-I Industrial Category applicable to consumption of Research and Development units which are situated in the same premises of an industry and taking supply from the same point of supply.

3.9 Aggrieved by the classification of its Research and Development Units having a separate connection under HT II Commercial category, the Appellant has filed this Appeal.

4. The Appellant has made the following submissions:

4.1 The State Commission has wrongly classified similarly placed Research and Development units,

being dedicated to their own manufacturing units and which are not commercially exploited, differently by placing them in different tariff categories, contrary to Article 14 of the Constitution of India. The State Commission has differentiated between the Research and Development units which are situated within the same premises of an industry and taking supply from the same point of supply and the Research and Development units which are situated at other places and taking supply from different points of supply. Though the Research and Development Centre of the Appellant is taking supply from different point of supply than its manufacturing unit, it is still dedicated exclusively to the manufacturing units of the Appellant and is ancillary to such manufacturing units.

4.2 The character of the Research and Development Centre and the purpose for which electricity is

required, do not change with its location or the fact that the supply is taken from a different point of supply. Such differentiation in tariffs is contrary to the principles contained in Section 62(3) of the Electricity Act, 2003. The Appellant is now liable to pay a comparatively higher tariff of Rs. 10.45 per kWh energy charge than other in-house Research and Development Centres which pay tariff of Rs. 7.01 per kWh merely on the ground that the Research and Development Centre of the Appellant has a different point of supply.

4.3 The Appellant has been kept in HT-II Commercial Category alongwith multiplexes, shopping malls, hotels, cinema theatres, etc. The purpose for which electricity is required by the Appellant is for research and development in medicines and other pharmaceuticals products for its manufacturing units

and it cannot be equated with that of multiplexes, shopping malls, hotels, cinema theatres, etc.

4.4 The State Commission has classified all non-residential and non-industrial uses alongwith commercial uses without any rational basis and without considering the inherent differentia based on the purpose for which the electricity is required. The above grouping is not a reasonable classification and has no nexus to the purpose for which the electricity is used and is thus, contrary to the principles contained in Section 62(3) of the Electricity Act, 2003.

4.5 The tariff of the Appellant decided by the State Commission is 201% of the average cost of supply and is, therefore, contrary to the tariff policy which stipulates that tariffs have to be within +/- 20% of the average cost of supply.

5. The reply submissions made by the State Commission and the Respondent no. 2 are as under:

5.1 Since the tariff order dated 17.8.2009, the State Commission has been applying the industrial tariff to only those activities which entail manufacture. The distinction created by the State Commission between R&D centres attached to the manufacturing unit vis-à-vis standalone R&D Centres, meets the test of Article 14 of the Constitution and the intelligible differentia can actually be demonstrated from the impugned order itself.

5.2 The State Commission has classified the Research and Development units under the HT-II Commercial category. The only allowance that has been made by the Commission is in respect of those Research and Development units and other ancillary services within

the industrial premises, which do not have a separate meter and are drawing the supply from the same point as the main industrial unit that their consumption will also be charged at HT-I Industrial tariff.

5.3 The State Commission's order has to be understood in light of the practical difficulties being faced where the point of supply to industry and its ancillary units or services is common. The meter only records the consumption of consumer and where the industrial activity is predominant, the major consumption would have to be of manufacturing unit. The same meter cannot read the consumption of ancillary services such as R&D centre, offices, canteen, etc. It is in this context, to obviate the practical difficulties, that the State Commission has passed on an incidental benefit to such consumers.

6. The following questions would arise for our consideration based on the rival contentions of the parties:

- i) Whether the State Commission was correct in treating Research and Development units having separate supply connection differently from Research and Development Unit situated in the same premises of an industry and getting supply from the connection provided to the industry?
- ii) Whether the State Commission has erred in putting the Research and Development units getting independent supply from the distribution licensee under a separate connection in the Commercial category instead of industrial category?

7. The two issues are inter-connected and, therefore, being dealt with together.

8. Let us first examine applicability of HT I-Industrial Category and HT-II-Commercial Category as given in the tariff schedule approved by the State Commission in the impugned order:

“HT I : HT- Industry

Applicability

This category includes consumers taking 3-phase electricity supply at High Voltage for industrial purpose. This Tariff shall also be applicable (but not limited to) for use of electricity / power supply for Administrative Office / Time Office, Canteen, Recreation Hall / Sports Club / Health Club / Gymnasium / Swimming Pool exclusively meant for employees of the industry, lifts, water pumps, firefighting pumps, premises (security) lighting, etc. provided all such Administrative Office / Time Office, Canteen, Recreation Hall / Sports Club / Health Club / Gymnasium / Swimming Pool, lifts, water pumps, firefighting pumps, etc. are situated within the same industrial premises and supplied power from the same point of supply;

This Tariff shall also be applicable for use of electricity / power supply by an establishment covered under IT Industry and IT Enabled Services Policy of Government of Maharashtra as may be prevailing from time to time. This Tariff shall also be applicable to Research & Development units situated in the same premises of an industry and taking supply from the same point of supply. However R&D units situated at other place and taking supply from different point of supply shall be billed as per either HT (II) (A) or HT (II) (B) as the case may be;”

“HT II: HT- Commercial

Applicability

HT II (A): EXPRESS FEEDERS

Applicable for use of electricity / power supply at High Tension on Express Feeders 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:

a) Non-Residential, Commercial and Business premises, including Shopping Malls / Show Rooms;

- b) Film Studios, Cinemas and Theatres including Multiplexes, Hospitality, Leisure, Meeting / Town Halls and Places of Recreation & Public Entertainment;*
- c) Offices including Government Offices, Commercial Establishments,;*
- d) Marriage Halls, Hotels / Restaurants, Guest Houses, Internet / Cyber Cafes, Mobile Towers, Microwave Towers, Satellite Antennas used for telecommunication activity, Telephone Booths, Fax / Xerox Shops;*
- e) Automobile, Any Other Type of Workshops, Petrol Pumps & Service Stations including Garages, Tyre Retreading / Vulcanizing units;*
- f) Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, Laundries;*
- g) Printing Press,*
- h) Banks, Telephone Exchanges, TV Station, Micro Wave Stations, All India Radio Stations,*
- i) For common facilities, like Water Pumping / Street Lighting / Lifts / Fire Fighting Pumps / Premises (Security) Lighting, etc. in Commercial Complexes;*
- j) Sports Club, Health Club, Gymnasium, Swimming Pool;*

k) External illumination of monumental /historical / heritage buildings approved by MTDC;

l) Construction purposes

m) Aquaculture, Sericulture, Fisheries, Cattle Breeding Farms;

n) Research & Development units situated outside Industrial premises;

o) Airports (only activities not related to aeronautical operations)”

9. The tariff schedule for HT-I Industrial Tariff indicates that this category includes the consumers taking supply at High Voltage for industrial purpose. The same tariff will also be applicable for use of electricity for Administrative Office, Canteen, Recreation Hall / Sports Club / Health Club / Gymnasium / Swimming Pool exclusively meant for the employees of the industry, lifts, water pumps, firefighting pumps, premises lighting, etc., provided such facilities are situated within the same industrial

premises and supplied power from the same point of supply. This Tariff shall also be applicable to Research & Development Units situated in the same premises of an Industry and taking power supply from the same point of supply. However, the Research and Development units situated at other places and taking supply from different point of supply on High Voltage shall be billed as HT (II) (A) or HT (II) (B)- under Commercial Category.

10. The HT-II(A) Commercial Category is applicable for use of electricity at High Tension on all Express Feeders in all non-residential, non-industrial premises and/or commercial premises for commercial consumption. This tariff is also applicable to Research & Development Units situated outside Industrial premises and getting supply from a separate point of supply than the industry.

11. According to the Appellant, the Research and Development Units inside the premises of the industry getting supply from the same connection and the R&D Units outside the industrial premises getting supply from a separate connection could not be treated differently and treating them differently will be contrary to Article 14 of the Constitution of India and contrary to the principles contained in Section 62(3) of the Electricity Act, 2003 and in any case all the Research and Development facilities should be classified under HT-I industrial category.

12. According to the learned counsel for the Respondents, the dispensation of the State Commission that 'industrial category' is only for those consumers who are involved in "manufacture" is now in vogue since 2009 and has not been challenged by the Appellant.

13. It is noticed that the Respondent no. 2 had sought in the tariff petition filed before the State Commission that ancillary services within industrial/hospital/educational institutes/residential colonies which are exclusively meant for the employees/patients/students/residents of these establishments respectively be billed under the consumer category of the respective categories itself instead of billing them under commercial category. This proposal of the Respondent no. 2 was accepted by the State Commission. The relevant extract of the impugned order is placed below:

“MSEDCL has expressively mentioned in the proposed Tariff applicability that ancillary services within industrial/hospital/education institutes/residential colonies, which are exclusively meant for the employees/patients/students/residents of these establishments respectively and cannot be availed by any external person, shall be billed under the

consumer category of the respective categories itself instead of billing them under the Commercial category. This proposal of MSEDCL is accepted as it is in line with the views expressed by the Commission in the previous Tariff Order in Case No. 111 of 2009.”

14. Thus, the electricity consumption of a Health club or a Recreation Hall inside an industry meant for the employees of the industry or a medicine shop in a hospital may be charged at the same tariff applicable to category of the principal consumer i.e. industrial or Hospitals. However, if there is a Health Club or Recreation Hall or shop which is outside the industrial premises or Hospital and served by separate supply connection, it will be billed at the rate applicable to commercial category. A Health club or shop outside the industrial/hospital premises getting independent connection cannot claim industrial tariff/Hospital tariff on the ground that they cannot be

treated differently compared to a Health club or shop inside an industrial premises or hospital getting supply from the same connection as the industry/hospital and which are ancillary service to the industry.

15. The electricity supply to industry is primarily for industrial purposes. The other services such as Administrative Office, Health club, Canteen, etc., are only ancillary services required for smooth functioning of the industry and, therefore, their consumption is included in the total consumption of the industry and billed at the Industrial tariff. Such activities will fall under commercial category if situated outside the premises of the industry and served by a separate connection. Similarly the Research & Development activity carried out outside the premises of the industry and getting a separate electric supply connection will also fall under HT-II -commercial category.

16. There is practical difficulty in measuring the consumption and billing such ancillary services located inside the premises of an industry at different rate as these facilities are getting supply only from the same electric connection given to the industry. Thus, as rightly pointed out by the Respondents, the dispensation for application of the industrial tariff for such ancillary services to the industry has been given for the convenience of such industrial consumers for practical consideration. The purpose of supply to an industry is primarily for industrial purpose which the State Commission has been categorizing to such activities which entail manufacture. The consumption in other ancillary services of the industry required for functioning of the industry has also been correctly allowed to be included in the industrial consumption, the principal activity of the industrial consumer in

view of the practical difficulties in segregating the consumption inside the premises of the industry.

17. Similarly, the electricity consumption of a Research and Development unit situated in the premises of an industry and getting electric supply from the same point of supply has to be at the same tariff as applicable to the principal use of electricity for which connection has been obtained i.e. industrial tariff. Such R & D Centre will be treated as an ancillary service of the industry and can be treated differently from independent R&D Centre getting supply from a separate point of supply.

18. It is a settled law that there should be (i) a reasonable classification; (ii) such classification should have a nexus to the purpose sought to be achieved; (iii) such classification should not be arbitrary; (iv) equals should not be treated unequally and unequals equally.

19. We find that the approved tariff schedule by the State Commission shows reasonable classification for the categorization of the Appellant under HT-II Commercial Category. The intelligible differentia for the classification of Research and Development Centre in the impugned order is whether the R&D Centre is in the same premises as the industry and taking power supply from the same point of supply or it is located separately and getting supply from a separate connection.

20. The Research & Development Centre or any Recreation club located in the same premises and getting supply from the same connection as that of the industry and an R&D Centre or Recreation club getting direct supply from a separate connection are two sets of different consumers having distinct purpose of supply.

21. In the industrial connection the main purpose is manufacture. The purpose of supply in a Research and Development unit or Recreation club when these are located outside the premises of industry and get supply from a different point as a separate consumer is different from industrial purpose which entail manufacture to which the industrial tariff is applicable.

22. As contended by the Respondents, for the purpose of consumer classification for tariffs, the State Commission has been considering industry as the undertaking involved in manufacturing of any product. On the other hand, the HT consumers involved in Research & Development have been classified in the HT-II Commercial Category. However, the State Commission in the impugned order has stipulated that the consumption of electricity even in activities which are purely commercial in nature such as Recreation clubs, health club, swimming pools, etc., which on a

stand alone basis would normally be classified under Commercial Category, would be billed at tariff applicable to industrial category if such activities are carried out within the premises of an industry and are getting power supply from the same supply connection given to the industry. Similarly, if the Research & Development activities are carried out in the same premises of an industry and get power supply from the same electric connection as that of the industry, the consumption of Research and Development Centre will be considered as an integral part of the industry and its consumption will also be billed alongwith the consumption of the industry at industrial tariff. However, if the Research and Development Centre takes a separate electric connection exclusively for its own consumption, it will be classified under the Commercial Category.

23. Hence, we feel that the State Commission is perfectly justified in adopting the above arrangement for the sake of convenience of the consumers and for practical consideration. The main activity of an industry is manufacture of some product. However, for smooth function of the industry, the industry will have ancillary loads like administrative office, Recreation club or Health Club for its employees welfare which may strictly as per the consumer classification be commercial activities. If the consumption of such commercial activities is to be charged at commercial tariff, then a separate electric connection and metering arrangement will have to be made which may be cumbersome and impractical. Instead, the State Commission has allowed consumption in such ancillary commercial activities to be included in the consumption of the main activity for

which connection has been given, viz. Industrial. We do not find any violation of Section 62(3) of the Electricity Act or Article 14 of the Constitution of India in the above classification.

24. The learned counsel for the Appellant has also argued that Research and Development is not a commercial activity and is being carried out to support the industrial activity and the State Commission has wrongly clubbed the Appellant alongwith Shopping Malls and Multiplexes in commercial category.

25. We do not agree with the above contention of the learned counsel for the Appellant. The State Commission has correctly placed the Research & Development unit under the commercial category as it is being carried out for commercial purpose. HT II- Commercial category also has offices, commercial

establishments, computer training institutes, Photo laboratories, water pumping/firefighting, etc., in commercial complexes, sports club, health club, Gymnasium, T.V. Station, etc. which are all commercial activities and have been placed alongwith Research and Development which is also a commercial activity. Hence, we do not find any infirmity in classification of the Appellant in the Commercial category.

26. The Appellant has also argued that their tariff is 201% of the average cost of supply which is not in conformity with the Tariff Policy.

27. The State Commission has filed an affidavit with regard to cross subsidy for HT Commercial Category. The cross subsidy immediately prior to the impugned order for HT Commercial category was 203%. In

comparison, as per the impugned order the cross subsidy for HT Commercial category is 201%. Thus, there has not been any increase in cross subsidy.

28. We find from the impugned order that the recovery of the approved revenue gap of Rs. 6921 crores amounts to 16.48% over the revenue at the tariff prevailing prior to the impugned order. The State Commission allowed increase of 7% in HT Commercial category. The State Commission has noted that there is a need to reduce cross subsidy and has proposed to lay down a roadmap for reducing cross subsidies and the impugned order has effected reduction in cross subsidy to some extent.

29. The Tariff Policy stipulates that the State Commissions would notify a road map within six months for gradual reduction of the cross subsidy

such that by 2010-11, tariffs are within $\pm 20\%$ of the average cost of supply.

30. We find that the State Commission has so far not drawn a road map for reduction of cross subsidy. The cross subsidy by a number of consumer categories is well above +20%. We, therefore, direct the State Commission to draw up a road map for gradual reduction of cross subsidy within 6 months of the date of communication of this judgment.

31. **Summary of our findings**

We do not find any infirmity in the impugned order classifying the Research & Development Unit situated in the same premises as of an industry and taking supply from the same point of supply differently from the Research and Development Units situated at other places and taking supply from a different point of supply.

Such classification is not in violation of Article 14 of the Constitution and provision of Section 62(3) of the Electricity Act, 2003, as explained above.

32. In view of above, we dismiss the Appeal as devoid of any merits. No order as to costs.

33. Pronounced in the open court on this **21st day of February, 2013.**

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

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REPORTABLE/~~NON-REPORTABLE~~

vs