

BEFORE THE
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 21 of 2002

IN THE MATTER OF
**Applicability of SP-I (High Tech Agriculture) tariff to the three units of
Jain Irrigation Systems Limited**

**Shri P. Subrahmanyam, Chairman,
Dr. Pramod Deo, Member
Shri A. Velayutham, Member**

ORDER

Dated: September 02, 2004

BACKGROUND

1. In their Petition dated 7th October, 2002 with the Maharashtra State Electricity Board (MSEB) as Respondent. M/s. Jain Irrigation Systems Limited (JIS), District Jalgaon, state that they are engaged, inter alia, in the development and supply of micro (drip and sprinkler) irrigation systems, manufacture of bio-fertilisers and pesticides, food (fruit) processing, onion and vegetable dehydration, green house environment-controlled agriculture, tissue culture, plant materials and seeds etc., under biotechnology and water management technology to promote High-Tech agriculture at their units in Mohadi, Shirsolli and Bambhori, District Jalgaon, Maharashtra. These units undertake the following activities.

- (a) Mohadi - Tissue culture, green houses, shade houses and high tech farming
- (b) Shirsolli - Vegetable dehydration, Food (Fruit) processing
- (c) Bambhori - Manufacture of Micro (drip) irrigation systems and pipes.

2. For the purposes of their business, the Petitioner availed of High Tension power (HTP) supply connections for their above plants from the Maharashtra State Electricity Board ("MSEB"). JIS were being charged for power that was consumed by their units at the HTP II tariff of MSEB that was applicable to all high tension industries and other high tension consumers other than those covered under the HTP-I tariff.



3. The HTPII tariff of MSEB reads as follows:

*“HTP - II
Applicability* *This tariff will be applicable for all H.T. Industries and other H.T. consumers other than those covered under HTP-I*

*Tariff rates
Demand Charge* *Rs. 160/- per month per KVA of billing demand
Plus*

Energy Charge *335 p/unit FCA
Fuel Cost Adjustment (FCA) Charges as applicable from time to time.*

Consumers having captive power plant synchronized with the Board's system shall pay demand charges at the rate of Rs. 200/KVA/Month.

*Note 1. Night consumption concessions presently applicable to the Steel and Ferro Alloys consumers shall continue upto 31st March, 1999 i.e. For Contract demand of 15 MVA & above 80 p/u.
For Contract demand below 15 MVA 50 p/u.*

2. Night consumption concessions presently applicable to the Newspaper industries shall continue upto 30th September, 1999.

*Monthly Minimum
Charges* *For non-seasonal consumers
Payment of Demand Charges based on kVA of Billing
Demand*

*Annual Minimum
Charges* *For Seasonal Consumers
A minimum annual bill at Rs. 1500/- per kVA demand will be charged on the actual highest demand established by the consumer during the 12 months period or 75% of Contract Demand or 50 kVA whichever is higher. The 12 months period for the purpose of determining the annual minimum bill shall be from 1st October to 30th September next year. The consumer will be charged Demand Charges every month on the basis of the actual demand established during each month at the rate of Rs. 160/- per kVA per month plus the units consumed during each month will be charged at the above rates prescribed under Energy charge*



plus FCA charges and the account will be finally adjusted after taking into account annual minimum bill determined as above payable after the year is over along with the bill for the month of September. The stipulation regarding determination of billing demand will not be taken into account to the annual Minimum billed consumers for month to month billing.

However while issuing adjustment bill for September of any year, the FCA billed during the previous 11 months and the current month will not be considered for calculating the short-fall if any, to be recovered from the seasonal consumers (condition No. 21(g)).

4. The Petitioner submitted a supplementary affidavit dated 17th October, 2002 regarding the alleged wrongful levy of tariff in the assessed supplementary bills for the period from September, 1998 to June, 2002 and for the current bills of July, 2002 and August, 2002 to its units at Mohadi, Shirsoli and Bambhori and, inter alia, challenging the supplementary bills (MSEB letter No. 07554 of 11th September, 2002) and asking for a stay on disconnection of electricity by MSEB in this regard.

5. The Petitioner contended that, in terms of the MSEB Circulars dated 29th August, 1998, 1st September, 1998, and 3rd November, 1998, with effect from 1st September, 1998 MSEB had introduced a concessional SP I tariff for certain High Tension users, including for "agricultural (High Tech), i.e. tissue culture, green house, mushroom, etc. for power supply on HT or LT". The Circular issued by MSEB on 3.11.1998 (hereinafter referred to as "the Circular") prescribed the revised SP I tariff applicable with effect from 1st September, 1998 to High Tech Agricultural Consumers, which was applicable as quoted above. The concessional SP I tariff of MSEB reads as follows:

<i>"SP - I</i>	
<i>Applicability</i>	<i>Applicable for Agricultural (HIGH TECH) i.e., Tissue Culture, Green House, Mushroom etc. for power supply on HT or LT.</i>
<i>Tariff rates</i>	<i>225 p/u + FCA Fuel Cost Adjustment (FCA) Charges as applicable from time to time."</i>

6. The Petitioner contended that, on 24th November, 1998, the MSEB granted approval for the extension of the SP I tariff to its Mohadi unit with effect from 1st September, 1998. On 24th November, 1998, the Petitioner applied for extension of the SP I tariff to the Shirsoli and Bambhori units on the ground that the term "High Tech Agriculture" had wider connotations than merely tissue culture, green house and mushroom. In support of this contention, the Petitioner submitted material evidencing



that “High Tech Agriculture” includes the activity carried on by JIS at the Shirsole and Bambhori units as well.

7. The Petitioner contended that, on 15th April, 1999, a team from MSEB visited the Shirsole unit and examined the activities carried on by it. The Petitioner believes that the team issued a report confirming that the electricity was being used by it for “High Tech Agriculture”. Thereafter on 3rd May, 1999, the MSEB granted approval for the extension of the SP I tariff to the Shirsole unit with effect from 1st September, 1998.

8. The Petitioner submitted several materials in support of the application of the SP I tariff to the Bambhori unit. It also drew attention to a letter from the Commission dated 16th June, 2000 which, according to the Petitioner, “instructed the Respondent to inform the Petitioner that the matter had already been decided”. The Petitioner further submitted that “it is therefore abundantly clear that this Hon’ble Commission has recognized that all the businesses being undertaken by the Petitioners were ‘High Tech Agriculture’ and had directed Respondent to clearly state the charges that are proposed to be charged for electricity from such consumers”. The Petitioner believed that, pursuant to an examination of its unit at Bambhori, the MSEB internal report recognized that the activities in the micro-irrigation system division of the Bambhori unit would amount to “High Tech Agriculture” activity and, accordingly, vide letter dated 17th February, 2001, the MSEB granted approval for the extension of the SP I tariff to the Bambhori unit with effect from that date but not with retrospective effect. The Petitioner and MSEB entered into an agreement on 7th March, 2001 for supply of power for a minimum period of two years, which was terminable by either party by giving six months notice. The Petitioner has submitted that it has been paying the energy bills regularly.

9. The Petitioner submitted that, for the bills from the month of July 2002, the tariff applied by MSEB was the normal HTP II tariff and not the SP I tariff. No explanation was given by MSEB for the change in the basis of the tariff. The Petitioner was informed that an audit report had objected to the extension of SP I tariff to the Bambhori unit. Subsequently, the Petitioner was informed by MSEB that the concessional tariff applicable to it was to be withdrawn on a retrospective basis.

10. JIS submitted that, though they have paid the bills regularly, MSEB has, without notice or hearing, raised supplementary bills aggregating to Rs. 6.15 crores for the period September 1998 to June 2002 and for the months of July 2002 and August 2002 at the normal rates. The Petitioner submitted that such withdrawal was by way of unilateral action based on a report by MSEB’s auditors relating only to the Shirsole unit and not the other two units, without giving the Petitioner notice and a reasonable opportunity of being heard.



11. The Petitioner believes that, upon an inspection of the units by the Superintending Engineer, MSEB, a report by MSEB officials on or about 11th September, 2002 confirmed that the activities carried on by it at the three units have not changed or been altered from the date of application for SP I tariff.

12. The submissions made in the Petition are summarised as under:

- (i) The withdrawal of the SP I tariff to the three units without giving the Petitioner any notice or hearing is against the principles of natural justice and therefore, this arbitrary action on the part of MSEB is not binding on JIS.
- (ii) The activities carried on at the three units having remained the same, the Petitioner was legitimately entitled to being charged the same tariff under SP I category, and the MSEB cannot take any action that would defeat such legitimate expectation.
- (iii) The withdrawal of the SP I tariff to the Shirsoli unit is on erroneous grounds and based solely on the comments by the MSEB auditor.
- (iv) Although the audit report refers to only the Shirsoli unit, MSEB have withdrawn the application of the SP I tariff to all three units. This action is totally arbitrary, without any basis and contrary to directions issued by the Commission.
- (v) MSEB should have granted approval to the application of the concessional SP I tariff to the Bambhori unit with retrospective effect.
- (vi) The imposition of the HTP II tariff with retrospective effect is in gross violation of the principle that no penal action can be taken or tax applied retrospectively.
- (vii) The supplementary bills be set aside and MSEB be restrained from disconnecting electricity supply or demanding or recovering the amounts due from the supplemental invoices or future invoices at any tariff in excess of the SP I tariff.

13. The prayers of the Petitioner are as under:

- (a) *To declare that the businesses of the Petitioner carried out at its units at Mohadi, Shirsoli and Bambhori, such as tissue culture, green houses, biofertilisers and pesticides, plant materials and seeds, vegetable dehydration, Food (fruit) processing, micro (drip) irrigation systems etc. amount to 'high-tech' agriculture for the purposes of the tariff schedule of the Respondent.*
- (b) *To declare that the electricity consumed by the units of the Petitioner at Mohadi, Shirsoli and Bambhori engaged in the business of high-tech agriculture be charged at the SP I tariff.*
- (c) *To set aside the supplemental invoices dated 11th September, 2002.*
- (d) *To direct the Respondent to charge for electricity consumed by the MIS unit of the Petitioner at Bambhori at the SP I tariff from the date of the new tariff order i.e. 1st September, 1998.*



- (e) *To direct the Respondent to charge for electricity consumed by the three units of the Petitioner for the months of July and August, 2002 at the SP I tariff and to refund all excess amounts that have been paid by the Petitioner in respect of the said months with interest at 18% p.a. or at such rate as this Hon'ble Commission deems fit from the date of payment by the Petitioner till its refund by the Respondent.*
- (f) *Pending the hearing and final disposal of this Petition, in exercise of powers under Regulation 68 and Regulation 95 of the Regulations, be pleased to pass interim orders/directions restraining the Respondent and its officers from raising any demands and/or recovering and/or attempting to recover any amount from the Petitioner in relation to the supplemental bills dated 11th September, 2002 and thereafter, and restraining the Respondent and its officers from disconnecting or terminating the electric supply or connections of the Petitioner in its units for non-payment of the said supplemental bills and/or from applying any tariff in excess of the SP I tariff or claiming or recovering or demanding any amount in excess of the SP I tariff for supply to the units referred to in prayer (a),*
- (g) *To grant ad-interim orders in terms of prayer (f) above;*
- (h) *To grant costs to the Petitioner, and*
- (i) *To grant such other relief's this Hon'ble Commission may deem fit on the facts and circumstances of the case.*

14. On 17th October, 2002, the Petitioner filed a supplementary affidavit for urgent ad interim reliefs to restrain MSEB from disconnecting the electricity supply after being served a notice by MSEB on 1st October, 2002 to that effect.

15. MSEB submitted their reply vide letter dated 15th November, 2002. MSEB submitted that the SP I tariff was applied to the Petitioner's units mistakenly and wrongfully. MSEB had introduced a new and a separate category of agricultural consumers called "High Tech Agriculture", and submitted that the tariff was applicable to such agricultural consumers who are engaged in High Tech Agriculture and was not meant to include industrial consumers engaged in the manufacturing of agricultural inputs or equipments or other such manufacture or processing.

16. The MSEB submitted that the word "etc." used while defining the new SP I tariff category for "High Tech Agriculture" has to be construed in *ejusdem generis* to the preceding words "tissue culture, green houses and mushroom", which are all agricultural activities. They submitted that application of the SP I tariff to industries engaged in the fields mentioned by the Petitioners would have disastrous financial consequences for the MSEB and that the revised tariff was never intended to benefit industries engaged in manufacture of equipments/inputs which may be used for agriculture.



17. MSEB also stated in their reply that the tariff was wrongfully applied to the Bambhori unit due to a mistake on the part of the MSEB and misrepresentation by the Petitioner as to the nature of activities carried out at that unit. The MSEB further submitted that JIS did not point out that they were not using micro irrigation systems themselves but were, in fact, manufacturing them. Therefore, the representation of the Petitioner was clearly misleading. The MSEB submitted that the use of drip irrigation and not the manufacture of drip irrigation equipment is included in the term 'high-tech agriculture' for the purposes of the SP I tariff category. Further, MSEB submitted that, at the Bambhori unit, the Petitioner was engaged in the manufacture of both PVC tubes pipes as well as micro irrigation systems, besides not using the micro irrigation systems itself. Hence, the SP I tariff rate was not applicable to either of the activities at that unit.

18. The MSEB submitted in respect of the Shirsolli unit that, following a routine audit when the application of the SP I tariff was objected to, a decision was taken by the MSEB to retrospectively withdraw the application of the SP I tariff. It was also submitted that similar objections were raised for the other two units and, in view of those objections, the tariff was withdrawn retrospectively for the other two units also. Accordingly, the bills from the month of July 2002 and supplementary bills for the period of September 1998 to June 2002 were raised in respect of all the three connections.

19. The MSEB submitted that, as per the Petitioner's letter dated 24th November, 1998, the activities at the Mohadi unit were shown as manufacture of liquid fertilizers, biopesticides, etc, to which the SP I tariff is clearly not applicable, being in the nature of manufacture and not constituting the conduct of agriculture in any sense.

20. The MSEB submitted that the retrospective withdrawal was a corrective action in respect of the mistaken application of the SP I tariff, which has been taken at the highest level after due deliberation and in the public interest to prevent loss of revenue.

21. The MSEB further submitted that they cannot be forced to disclose their internal reports to the Petitioner. Further, the expert opinions put forward by JIS relating to the wider connotations of various terms used to define the tariff category were not binding on MSEB, and they are not statutorily bound to follow the same.

22. At the admission stage, the Commission passed directions to the MSEB to maintain the *status quo* in the matter and allow the Petitioner to pay its energy bills till the disposal of the Petition.

23. At the admissibility hearing, the Commission queried the Petitioner on the apparent discrepancy in activities said to be undertaken at the three units as set out at pages 2 and page 47 of the Petition. Counsel for JIS clarified that all the activities fall within the meaning of 'High Tech Agriculture' since this term had a wider connotation than merely tissue culture, green houses and mushroom cultivation. The Commission also queried the Petitioner on the applicability of the term 'High Tech Agriculture' to the



activities of production of micro/drip irrigation systems and manufacture of agricultural implements. The Commission further queried the petitioner on the usage of the power supply to the activities undertaken at the units. The Petitioner submitted that the entire power supply is being used only for high tech agricultural purposes.

24. At the hearing, the Consumer Representative drew the Commission's attention to the fact that no notice was given to the Petitioner before the unilateral change in tariff categorization by the MSEB.

25. The Petitioner submitted its Rejoinder dated 4.12.2002 rebutting the contention of MSEB that the SP I tariff was wrongfully applied, and contended that field verifications by MSEB's officers had confirmed the applicability of the SP I tariff to JIS' High Tech Agriculture activity at the three units. The Petitioner called upon the MSEB to produce the internal reports in question. JISL further submitted that the accounts auditors did not have the requisite expertise to comment on the applicability of the SP I tariff.

26. The Petitioner further submitted that thirty-nine other industries have also been granted the benefit of the SP I tariff by MSEB, and that JIS were being singled out by the reclassification and hence being discriminated against. The Petitioner submitted that the activities carried on by all its three units continue to be High Tech Agriculture activities, and explained further the activities of each of the units. The Petitioner also reiterated that physical verification was conducted by the MSEB's officials confirming the applicability of the SP I tariff to the High Tech Agriculture activities at their three units. It was further submitted that, in any event, the MSEB cannot make the Petitioner pay any excess amount for a mistake made by MSEB.

27. In regard to the Mohadi unit, the Petitioner submitted that the activities of tissue culture, green house, etc. undertaken at the unit are within the definition of 'High Tech Agriculture' even if the terms used in the relevant tariff category are interpreted narrowly and literally since they have been specifically mentioned while illustrating the applicability of the SP I tariff in MSEB's own document.

28. With regard to the Shirsolli unit (engaged in vegetable dehydration and fruit processing), JIS submitted that agriculture in its broadest sense includes the entire range of technologies associated with the production of useful products from plants and animals, and includes the activities of processing, marketing and all the agricultural activities involved in the manufacture and distribution of industrial inputs used in farming. The Petitioner further submitted that pre and post harvesting and processing of agricultural produce, which adds value to the original forms of these agricultural products, would be included in the definition of High tech Agriculture.



29. In regard to the Bambhori unit, JIS submitted they have always indicated that they were engaged in the manufacture of Micro Irrigation Systems (“MIS”) and PVC tubes/pipes, and that there was no misrepresentation on their part. Further, in the High Tension Tariff Booklet of January 2002, the tariff categories of SP I and SP II had come to be merged with a successor tariff category. The tariff subsequently re-categorized as HTP VII under the said booklet has been made applicable to, inter alia, High-Tech Agriculture (greenhouse, tissue culture, mushroom, etc) purpose. Therefore, any activity that is for High tech Agriculture purposes would fall within the subsequently re-categorized HTP VII. The Petitioner further submitted that a separate meter was fixed for the non-agricultural activities at the Bambhori unit, and that JIS had the relevant records and data of the separate metering which could, thus, be segregated.

30. At the hearing on 5th December, 2002, Counsel for Petitioner cited several reports and interpretations provided by various authorities and experts submitted by it confirming that the activities carried out by JIS (as stated at Para 1 above) are covered under the term ‘High Tech Agriculture’. JIS Counsel reiterated that, upon plain reading of the tariff Circular, the mention of ‘tissue culture’, ‘green house’ and ‘mushroom’ is made only as an illustration of what constitutes high tech agriculture and is not exhaustive. Counsel for the Petitioner further stated that, in the case of the Bambhori unit, the SP I charges were not applied from September, 1998 but from a later date on the ground that the electricity consumption for the manufacture of drip irrigation equipments/systems on the one hand and for pipe manufacture on the other, could not be bifurcated. He reiterated, however, that JIS have maintained separate meters for these two activities and, hence, the SP I tariff could and should be applied from September 1998 onwards to the former.

31. The Commission drew attention to the (Marathi) note forwarded by MSEB to GoM on 14th August, 1998 containing the GoM Cabinet Committee’s views and recommendations on MSEB’s tariff revision proposal at that time which seems to indicate that the need for a separate category for farmers using high-tech methods formed the basis on which this new SP I category was introduced. It also observed that, if drip irrigation was included, other methodologies like lift irrigation would have also been included which was not the case. Counsel for JIS submitted that certain activities preceding actual cultivation activities would also fall within the scope of ‘High-Tech Agricultural’ activities depending on their nature, as per the expert opinion that has been furnished. Counsel further submitted that drip irrigation was distinguished from lift irrigation because of large differences in the efficiency of consumption and use of water, regarding which JIS had also furnished material.

32. Counsel for MSEB denied that the Petitioner was eligible for the SP I tariff. Counsel referred to MSEB’s letter dated 14th August, 1998 containing the Cabinet Committee’s views, and stated that the intention was clearly to create a separate category for farmers actually engaged in high tech cultivation. Counsel for MSEB also referred to the judgement in the case of *Income Tax Commissioner, West Bengal v Benoy Roy* (SC Appeal No. 165 of 1954). He submitted that it was incorrect and wrong on the part of the Petitioner to contend that the Commission, in its tariff Order dated 5th May, 2000, had



upheld the treatment and scope of high tech agriculture. In fact, the Commission had, inter alia, stated that

“Demand charges of Rs. 160/kVA/month are being charged, which has not been shown in the proposal. One association has asked for a clarification on this. A request has been made to include micro-irrigation systems, liquid fertilizers, bio-fertilizers & pesticides, food processing, vegetable dehydration, plant materials and seeds under biotechnology and water management technology in this category.

The objection is broadly sustained. The MSEB should clearly state the demand charges being charged to this category of consumers. It is sufficient to point out here that the steps taken by the MSEB to promote high-tech agriculture cannot be faulted because nothing prevents the MEEB from providing incentive to make agriculture sustainable and capable of enhancing its contribution to the national exchequer. However the question whether such incentives should be a part of the MSEB tariff itself or should be provided by the Government through transparent subsidies from its budgetary resources is the point.”

33. Counsel for MSEB also referred again to the discrepancies in the stated activities at the Mohadi unit. The Commission directed the Petitioner to file an affidavit with regard to these discrepancies, and MSEB to file an affidavit listing the consumers to whom SP I tariff was applied. However, MSEB has not furnished the requisite information till the date of this Order.

34. In compliance with the Commission's directions, JIS submitted an affidavit dated 6th January, 2003 detailing the facilities at Mohadi for carrying out the activities of green house and tissue culture, namely, Tissue Culture laboratory, Seed/Planting material and Media preparation, farm office lighting, Green Houses and Shade Houses, on the basis of MSEB's communication dated 14th December, 2002 sending them the verified connected load list.

35. Final hearing was held on 25th August, 2004 before the Commission for further submission of arguments by the Petitioner and MSEB. At the outset, the Commission observed that the case had already been extensively heard earlier. The notice for this hearing specifically referred to two issues viz. (i) Whether the activities carried out at the three units of the Petitioner amount to 'High Tech Agriculture' activities within the meaning of the MSEB tariff Circular, and (ii) whether the withdrawal of the SP-1 tariff to these units without giving the Petitioner notice or hearing is contrary to the principles of natural justice. If an agriculturist uses high tech techniques and processes, then the applicability of the high tech tariff would not pose any problem. However, if some other entity is engaged in such high tech practices and adding value, that would require consideration. The Commission asked that this be addressed in the context of the activities at JIS' three units.



36. Shri Anil Jain, Managing Director, JIS first dealt with the activities at their Mohadi unit. These involve tissue culture, shade houses and green houses. Tissue culture involves taking mother tissue from a plant (bananas in the case of JIS), adding chemicals, and cloning inside a laboratory which ultimately results in an increase in the number of plants, which are disease-free and of high productivity. This has to be seen in the context of the meaning of 'high-tech agriculture' as providing value addition and a different way of doing agriculture, and would include pre and post harvest operations as interpreted worldwide, regarding which JIS had already submitted considerable material and elaborated upon in oral submissions earlier. The tissue culture process thereafter involves incubation in the laboratory for 2 to 3 months for primary hardening. Thereafter, shade houses are used to grow the plants further to a certain level and make them stronger, using certain media and adding moisture. The shade houses consist of perforated shade nets which allow just enough sunlight for life support. The shade house process takes about 6 weeks and JIS have a capacity of around 20 lakh plants at a time. 1/2 to 1 acre is required for each shade house. Shri Jain stated that the tissue culture lab is more energy-intensive than the shade houses. Originally, the protocol was obtained from Israel, and then modified for local conditions. The bananas that result are also more exportable.

37. To a query from the Commission, Shri Jain stated that although they had standby generators and the Electricity Act (EA), 2003 had liberalized captive generation, Captive Power Plants (CPPs) require heavy investment and JIS' operations were at 3 different locations. The Commission observed that a CPP could even be at one location, and MSEB's wheeling facilities could be used to provide power to the other units.

38. Shri Jain stated that, after the shade house process, the plants are shifted to green houses which also provide a controlled environment in which the banana plants are grown for a further period of six weeks. At the end of this process, when the plants go to the farmer, there is no mortality and the plants will take root. In the case of normal plants or seeds, the percentage of germination could be as low as 50 to 60%, causing loss to farmers. JIS also guide farmers with regard to the required treatment of soil and water after conducting lab analysis, and give agronomical advice so as to create a suitable on-farm environment. As a result, the yield in respect of bananas in Jalgaon Dist. has increased by 30 to 80%. Moreover, growing bananas from normal stems (bought out or owned) will take 18 months. With the plants provided by JIS, the crop cycle is only 12 months, thus reducing the crop rotation period and increasing farmers' incomes correspondingly even apart from the increase in productivity. Shri Jain stated that JIS have been engaged in tissue culture for the last five years, with a capacity for 60 lakh plants, and around 50,000 farmers from all over the country had benefited.

39. The Commission observed that, even after a long lapse of time, MSEB had yet to furnish the list and details of the other 30 or so consumers to whom the high-tech agriculture tariff had been applied. Shri Sunnapwar, Technical Director (Commercial), MSEB submitted that they had withdrawn the concessional tariff from them also, but would furnish the list in a few days. The Commission observed that the time for that is



long past. Shri Sunnapwar also submitted that JIS are engaged purely in manufacturing or processing of agricultural produce at two of their units rather than in farming or engaging in high tech agriculture, though the matter of eligibility of tissue culture at Mohadi could be understood. The Commission observed that, at the earlier hearing, MSEB Counsel had said as much, but hoped that the concessional tariff had not been withdrawn even in the case of those consumers who were eligible.

40. Resuming his description of activities at Mohadi where he had referred to bananas, Shri Jain stated that the tissue culture of seeds, specifically onions, was also being undertaken. This involves selection of suitable bulbs and application of tissue culture leading to higher production of bulbs. However, the major activity relates to bananas, and commercialization in the case of onions is limited. The activity relating to onions is mostly for captive purpose. Onions are grown on around 700 acres and then sent to the JIS unit at Shirsole for dehydration. JIS had also conducted trial runs for liquid fertilizers at Mohadi, but that activity was discontinued.

41. With regard to the Shirsole unit, Shri Jain stated that the first activity was that of dehydration of onions, which are highly perishable. The onions are deskinned, and water is removed from them because the oxygen content causes quick decay. The onions are then converted into powder or chopped. As a result, the shelf life is extended upto two years (as compared to two weeks) and the product is mostly exported (to the tune of Rs 50 crores). The dehydrated products can be used for flavouring, for example in soup or chips. It can also be rehydrated (except for the powder) by addition of water, and used like normal onions.

42. Shri Jain explained that the activities at Shirsole also involve technology transfer to farmers. The seeds developed by JIS are provided to farmers on a contract farming basis, with a buy-back arrangement and with prices linked to market rates. The resulting increase in productivity has to be seen in the context of yields in India being much lower than in some South American and South European countries. JIS deals with 2000 farmers, many of whom were earlier engaged in dryland farming, but were given extension and other support services. To a query of the Commission regarding irradiation, Shri Jain stated that irradiated products encountered psychological resistance from consumers. Moreover, only dehydrated onions can be irradiated. JIS have been dealing with BARC, but Shri Jain explained that irradiation was required primarily if a zero bacteria count was demanded, and not otherwise. There were other companies engaged in dehydration, but they were doing so on a cottage industry basis, as in Gujarat. JIS planned to extend their activities from onions to five other vegetables now.

43. Shri Jain submitted that the other activity undertaken at Shirsole is the processing of banana, mango, papaya and guava into pulp, which is then aseptically packaged. The process involves removing the skin and seed, making pulp, followed by sterilization and packaging with barrier properties. As a result, the product shelf life increases to 18 months. There are no additives, and the pulp is used by others to make juice, ice cream,



confectionery, baby foods, etc. He stated that the activities at Shirsolli are more power intensive than at Mohadi.

44. To a query of the Commission as to how making pulp would relate to agriculture rather than pure processing, Shri Jain responded that there is a separate tariff category for 'normal' agriculture. However, the new SP I category for hi-tech agriculture introduced in 1998 was essentially intended for value addition in agriculture. To Commission's query regarding how to distinguish between simple dehydration and pulping activities from JIS' complex processes, Shri Jain submitted that they have a 600 acre farm with a R&D lab which 20,000 farmers had visited last year. JIS have prepared booklets and videos, developed seeds, and taken farmers to Israel, Australia, etc. to show them the best practices, and have subsidized the cost. JIS have also won CSIR awards for their tissue culture activities. Taking this into account, the guideline for distinguishing between JIS' activities and other simpler processes could be on the basis of considering only those units which undertake the entire value chain upto the farmer along with the processing activities. JIS have invested Rs 300 crores for this, and no other company in India can match it. The Commission asked Shri Jain to suggest in writing objective criteria on the basis of which the distinction could be made for the purpose of application of hi-tech tariff and submit it by the evening. Shri Jain agreed to do so.

45. Shri Jain submitted that JIS were producing micro drip irrigation systems and PVC pipes/ tubes at Bambhori. The drip irrigation system provides water in measured doses, rather than the usual irrigation practice which alternates between flooding and dry spells. The latter results in shock to the roots of the plants, followed by stress when there is no water left, and also damages the soil. JIS' micro-irrigation system activities include a scientific analysis of the crop, soil, water and climate configuration of the individual farms using computer modeling and other techniques, and then customization of the drip system along with irrigation scheduling for each farmer-customer. The system includes arrangements for filtering, and water soluble fertilizers are directly fed to the roots of the plants. This integrated system results in increase in productivity between 30 to 200%, and also to substantial savings in water.

46. Shri Jain submitted that farmers using drip or any other irrigation method are pumping water, for which the regular agricultural tariff is applied. By using drip irrigation, however, there is a saving not only for the farmer in terms of increase in productivity and saving in water, but also to MSEB since less electricity is required, and the electricity saved can be supplied to higher paying consumers in a situation of power shortage. Govt. would also benefit in terms of saving on irrigation infrastructure. Shri Jain related this to the introduction of the separate tariff category for hi-tech agriculture, which was intended to take into account activities which added value with lesser inputs or use of resources. The Commission observed that it was being argued that JIS are providing a customized, integrated system and should, therefore, get the benefit of the concessional tariff, whereas others are engaged purely in manufacture. Shri Jain also pointed out that Govt. of India had also accepted such a distinction inasmuch as no excise



is levied on tubing, plastic pipes, emitters, etc. usable only for agriculture in order to increase its productivity.

47. Shri Jain also pointed out that the auditors had only taken objection to MSEB applying the concessional tariff to the Mohadi unit. He confirmed that JIS' contention was that they do not sell components, but the entire system along with integrated services and support. The State Govt. are also giving subsidy and other support to units providing drip irrigation as a system, and Shri Jain submitted that the applicability of the tariff category could be linked to those activities which are eligible for such subsidy/assistance.

48. To a query from the Commission with regard to whether the SP I (now incorporated in HTP VII) tariff would amount to cross subsidy and, if so, how it could be justified, and referring to the background in which GoM had advised MSEB to introduce this special category prior to the Commission's establishment, Shri Jain submitted that the informal direction from GoM did not really amount to requiring MSEB to provide subsidy because of the resource saving and other benefits arising from use of drip irrigation by farmers as well as MSEB. Thus, the special category is justified even as a matter of commercial decision making by MSEB. Indirectly also, by increasing farmers' incomes, the potential for obtaining higher payments from farmers for energy use in future is enhanced. The Commission observed that JIS were referring to the principle of MSEB acquiring demand side resources for which, in theory, credit can be given, as regulators have done in the USA. Although this has not been articulated in the Commission's tariff Order, it had been alluded to.

49. With regard to the second issue mentioned in the Notice for hearing, Shri Viswanathan, Counsel for JIS submitted that JIS had never been in default of payment to MSEB. When they applied for application of the SP I tariff, the required documents and material, including expert opinion, had been furnished to MSEB. The SP I tariff was granted by MSEB only thereafter. MSEB being a public body, if there was any reason to re-categorize JIS, then an opportunity should have been given to them to address MSEB's concern as a requirement of natural justice. Thus, for example, the withdrawal of SP I tariff to Mohadi and the subsequent arguments could have been avoided, since MSEB Counsel had admitted the eligibility of that unit at the last hearing. In the context of MSEB having made some judgement initially and then changed their view, the Commission queried as to whether MSEB can go back and again change their decision from a past period. Counsel for JIS submitted that, even assuming that MSEB's withdrawal of the concessional tariff had been correct, JIS had already acted upon the MSEB's decision while pricing their products and services. Thus, if the decision to withdraw is retrospective, it would cause JIS unjustified hardship, particularly since there is a contract between MSEB and JIS. Shri Jain pointed out that, in the case of Bambhori, an agreement had been signed with MSEB, and no notice was given to terminate or change it. Without such notice, the agreement is in perpetuity. Moreover, the Commission had earlier directed that the status quo be maintained. JIS understood that



direction as meaning that the original concessional tariff should be restored, but this had not been done.

50. Shri Sunnapwar pointed out that MSEB had themselves introduced the SP I tariff in 1998 in order to encourage the development of hi-tech agriculture. He agreed with the Commission's concern that it should not be applied to units undertaking ordinary types of activities in the guise of hi-tech agriculture. In order to make the distinction, JIS should submit their suggestions as to the parameters, and MSEB would file their reply in a few days. The Commission observed that, if MSEB had any other submission to make, they should do so by the next day.

51. Shri Sunnapwar also stated that, on both the issues for today's hearing and related matters, MSEB had made extensive written and oral submissions and arguments earlier, which were on record and should be considered. He submitted that, with regard to Bambhori, the manufacture of micro irrigation systems is a purely industrial activity. Similarly, the activity of producing pulp or canning comes within the ambit of food processing and not hi-tech agriculture. If the benefit of the concessional tariff is given to JIS for these activities, a large number of other such units would claim similarly.

52. The Commission observed that PVC pipes/ tubes can be used for normal irrigation and other purposes, but JIS had not asked for any concession for their manufacture. The SP I tariff application has been sought only for micro irrigation systems, which could be segregated and for which there was separate metering. With regard to Shirsolli, the Commission observed that JIS claim that they are making pulp, without additives, and stated that the issue was how a distinction could be made.

53. Shri Abhijit Deshpande, Superintending Engineer (Commercial), MSEB submitted that only a small part, and neither the main pipeline nor sub pipelines undertaken at Bambhori, are really customized. He also cited the example of manufacture of high efficiency pumps, and queried as to whether units producing such pumps would also be eligible for the high-tech agriculture tariff. He submitted that a large number of such examples could be given. With regard to the activities at Shirsolli and their contribution to increasing shelf-life, Shri Deshpande submitted that there are many other ways in which a large number of units are engaged in extending the shelf life of such produce, for example by use of tetra-pack for juices as in the case of 'Frooti'. Shri Deshpande submitted that, in fact, such techniques have now become a routine part of food processing activities. He gave the examples of the very large and complex activities of Mahyco in Jalna, dealing with seeds. There were many other smaller units like Ajit which were engaged in contract farming and buy back.

54. Shri Jain responded that PVC pipes constitute only 10 to 15% of the total cost of the Bambhori unit. These are different from the small tubings and emitters which are specialized only for use as a part of the micro irrigation system. JIS have not asked for a concessional tariff for PVC pipe manufacture, and there are separate meters. With regard



to MSEB's observation regarding 'Frooti', he pointed out that they are engaged in producing juices, and do not deal with farmers. Regarding others engaged in contract farming, Shri Deshpande submitted that JIS are not asking for tariff benefits because they undertake contract farming. Their claim is based on the combined, integrated and customized activities in which they are engaged across the value chain for farmers for increase in productivity and saving in inputs and resources.

55. The Commission has examined the written and oral pleadings and submissions of the parties in the present matter. The following issues need to be addressed while deciding the case:

(1) Whether the activities carried out at the three units of the Petitioner amount to 'high Tech Agriculture' activities within the meaning of the MSEB tariff Circular?

- (i) The Petitioner has contended that the activities carried out on in its units are included within the definition of High tech agriculture for the purposes of tariff category application.
- (ii) The tariff Circular merely states that the SP I tariff shall be applicable to "agricultural (High Tech) i.e. tissue culture, green house, mushroom, etc".
- (iii) The term 'agricultural (High Tech)' has not been exhaustively defined in the Circular. The word "etc." follows the words 'tissue culture', 'green house', and 'mushroom', implying an inclusive definition, and has to be construed ejusdem generis to these mentioned activities. Therefore, the word "etc." would be limited to things of the same kind as those expressly specified.
- (iv) In the given context, the activities of "green house, tissue culture, mushroom" constitute and are an integral part and parcel of high tech agriculture and cultivation. In its strict interpretation, the word "etc" would also have to be interpreted to give it the same meaning as the enumerated words. This may not be same as, and in fact may be somewhat fundamentally different in nature from the activity of manufacturing the devices or equipment required for such agricultural produce or cultivation, and from the processing of the resultant produce after the agricultural operation is complete except to the extent of techniques employed for extending the shelf life of quickly perishable produce and facilitating its marketing.
- (v) The MSEB have referred to the note attached to their letter dated 14th August, 1998 containing the recommendations of the Cabinet Committee regarding the introduction of the concessional tariff category for High Tech agriculture. The MSEB have submitted that the note of the Cabinet Committee expressly states that the concessional tariff is for the benefit of agricultural consumers. From a reading of the relevant para in the said note, which obviously has strong interpretive value, the Commission finds that what is stated is that the



concessional tariff shall be applicable for consumers who use artificial cultivation methods applying high technology.

- (vi) With regard to the Commission's letter dated 16th June, 2000 to MSEB in response to GoM's forwarding of the Horticulture Commissioner, Govt. of India's letter, MSEB have stated that the Commission has only drawn attention to the relevant portion of the Tariff Order dated 5th May, 2000 (cited at para 32 above), i.e. inter alia, that the demand charges for this (SP I tariff) category of consumers should be clearly stated. It does not in any manner accept or refute the Horticulture Commissioner's said letter and does not accept or reject the various examples of High Tech Agriculture as specified therein. The Commission notes that its statement that the 'objection is broadly sustained' does create possibility of interpretation that it may be feasible for these activities to be included in Hi-tech agriculture. However, the Commission's wording does not mean that it has definitely agreed to include above activities in hi-tech agriculture.
- (vii) The Petitioner has submitted voluminous material in support of its stand that the activities undertaken by JIS fall within the meaning of the term High Tech Agriculture, and that the term 'High tech Agriculture' is wider in meaning and includes more than just tissue culture, green houses and mushroom cultivation. We have critically considered the same.
- (viii) Counsel for JIS referred to the letter dated 25th November, 1998 from Dr. S. S. Magar Dean of Agriculture, Mahatma Phule Krishi Vidyapeeth, Rahuri, with which a note regarding what constitutes High Tech Agriculture had been enclosed. According to that note, Hi-Tech has been defined in the Worldbook Dictionary of Thorndike Barnhart as:

"Having to do with advanced, highly specialized and sophisticated technology goods such as computers and electronics comprise the most vital parts. Hi-Tech uses sophisticated industrial equipments and materials".

The same dictionary at page 44 defines "Agro-Technology" as "the science of preserving raw farm products and converting them into manufacture of commodities, as in dairying or canning. The manufactured commodities include Pulps, Purees Concentrates and deep frozen Fruits & Foods. The vegetables are either spray-dried or dehydrated or deep frozen. Some of such as Onion and Garlic are milled to produce small fractions.

In its broadest modern sense the word Hi-Tech Agriculture includes cultivation of crops by application of new technologies, materials and machines.



A search on internet has revealed the following information regarding “Modern Agriculture”. Modern agriculture depends heavily on engineering and technology and on the biological and physical sciences. Irrigation, Drainage, Conservation and Sanitation each of which is important in successful farming are some of the fields requiring the specified knowledge of agriculture engineering.

The McGraw Hill Encyclopedia of Science & Technology page 188 defines Modern Agriculture as The Art and Science of crop and live stock production. In its broadest sense, agriculture comprises the entire range of technologies associated with the production of useful products from plants, and animals, including soil cultivation, crop and live stock management, and the activities of processing and marketing. The term agri-business has been coined to include all the technologies that mesh in the total inputs and outputs of the farming sector. In this light agriculture encompasses the whole range of economic activities involved in manufacturing and distributing the industrial inputs used in farming. The farm production of crops, animals and animal products, processing of these materials into finished products...”

- (ix) The Petitioner further submitted that the above expert’s note further spells out the criteria to be applied for determining whether an activity constitutes Hi-Tech Agriculture, which is relevant to the Shirsolli unit, as follows:

“Pre & Post harvesting technology and further processing of agricultural products such as fruits, vegetable, nutraceutical from farm, crops and plants, cereals and legumes, etc. add value to the original form of these farm products”.

Further, the Petitioner submitted that, in terms of the expert opinion, ‘High-Tech Agriculture’ includes within its ambit the processing of agricultural products by the use of various techniques and technologies such as Dehydration, IQF, Pulping, Purees, Canning and Concentration. High Tech Agriculture will ipso facto be based on sophisticated, state-of-the-art equipments which use latest electronics. The use of engineering polymers, alloys, compounds, high impact industrial raw materials also forms an integral part of Hi-tech process.

The Petitioner further submitted that in relation to the manufacture of drip irrigation systems undertaken at the Bambhori unit,

“Hi-Tech Agriculture ipso facto is based on sophisticated, state-of-the-art equipments which uses latest electronics. The use of engineering polymers, alloys, compounds, high impact industrial raw material also forms an integral part of the Hi-tech process... The Drip Technology is



based on (a) Hydraulics and designing, a branch (a) mechanical and civil engineering (h) hydrology, climatology, agronomy and soil sciences, (c) articulate skills and advanced manufacturing techniques for making high precision components which go into development of the integrated Drip system. Therefore, the manufacture of such systems also constitutes Hi-Tech Agricultural activity.”

- (x) The Petitioner also submitted that Dr. K. L. Chadha, National Professor and former DDG (Horticulture), Govt. of India has also defined, in his article in the October, 1999 issue of ‘Agriculture Today’, “High-Tech Horticulture” as “*any agriculture/horticultural technology, which is modern, less environment dependent, capital intensive and has the capacity to improve the productivity and quality of any agricultural horticultural crop can be considered hi-tech agriculture/horticulture.*” JIS submitted that, therefore, the term ‘Hi-tech Agriculture’ could not be restricted to only three items as has been done by the MSEB.
- (xi) Further, the Horticulture Commissioner, Government of India, had also written to the Chairman, MSEB on 17th February, 1999 to the effect that “*any agricultural / horticultural technology which is modern, less environment dependent, capital intensive and has the potential to improve the productivity and quality of any agriculture / horticulture crop is a high-tech agriculture, and should include protected cultivation of horticultural crops, mushroom, production, use of biotechnological tool, drip irrigation and fertigation in crop production.*”
- (xii) In the light of the MSEB letter to GoM of 14th August, 1998 and the note of the Cabinet Committee, it seems clear that, for the purposes of application of the relevant tariff category, farming/ cultivation and the production of agricultural produce should be a resultant of artificial methods employing high technology.
- (xiii) JIS have also referred to MSEB’s High Tension Tariff Booklet of January 2002, in which the categories of SP I and SP II have been deleted and the tariff applicable to those consumers is now a part of the HTP VII category. The relevant portion of the HTP VII category reads as under.

"Subsequently re-categorized Tariff Category"	
Applicability	Applicable for High Tension Agricultural Pumping loads and also for (i) Poultry (exclusively for Layer and Broiler Activities), (ii) High tech Agricultural (undertaking Green House, Tissue Culture, Mushroom, etc) purpose and (iii) Pre-cooling & Cold Storage for Agricultural Produce of Farmer’s



BASE TARIFF

Category	Demand Charges	Energy Charge (p/u)	T&D loss Charges
Flat Rate Tariff	(Rs./HP/Month) 200	0	(Rs./HP/M) 10
Metered Tariff	(Rs./kVA/Month) 10	90	(p/u) 15

NOTE:

1. The Flat Rate Tariff as indicated above will be applicable only till the meter is installed and once the meter is installed, the consumer will be billed as per the metered tariff indicated above.
2. For (i) Poultry (**exclusively undertaking Layer & Broiler activities.**), (ii) High Tech Agricultural (**undertaking Green House, Mushroom, Tissue Culture, etc**) activities & (iii) Pre-cooling & Cold Storage for Agricultural Produce of Farmer's Co-operative Societies, **option of Flat Rate tariff will not be available.** These consumers will be billed only as per the metered tariff.
3. HTPVIII tariff, which was earlier applicable to Poultry consumers availing power supply on High Tension stands deleted, since tariff applicable to these consumers is now on par with the High Tension Agricultural pumping loads metered tariff as indicated at sr. no. 8 (Successor tariff category) above.
4. SP-I & II tariff, which was earlier applicable to (a) High Tech Agricultural consumers & (b) Pre-cooling and Cold Storage for agricultural produce of Farmer's Co-operative societies availing power supply on High Tension stands deleted, since tariff applicable to these consumers is now on par with the High tension Agricultural pumping loads metered tariff, as indicated at sr.no. 8 (Successor tariff category) above.”

(xiv) The subsequently re-categorized tariff has been made applicable, inter alia, to High Tech Agricultural undertaking (green house, tissue culture, mushroom, etc.) purpose. Therefore, JIS have contended that, in the light of the revised tariff category, any activity (including manufacturing) that is for the purpose of High Tech Agriculture would be included for the purpose of applicability of the concessional re-categorized tariff category for High Tech Agriculture, and that this intention applied to the SP I tariff also.



- (xv) Upon a reading of the various opinions of experts and the letter of the Horticulture Commissioner, Government of India, it appears to the Commission that generally any agricultural/horticultural technology which is modern, less environment dependent, capital intensive and has the potential to improve the productivity and quality of any agriculture/horticulture would constitute high-tech agriculture, irrespective of the resultant cultivation/farming activity. It is not restricted to cultivation as understood in its ordinary meaning. The use of any equipment or input for producing any agricultural product or in adding quality to such produce or reducing its perishability would also be included within its ambit. What is essential is that the high tech method must be applied towards producing an agricultural product or in improving its quality or endurance. It is also essential that such technology shall be distinguishable from other similar technologies which are not specific to agriculture or agriculture produce. Thus, the use of the term 'etc.' while defining the relevant tariff category would have to be construed in furtherance of this interpretation.

Mohadi unit –

- (xvi) In terms of the Petition and affidavits filed by the Petitioner. JIS have submitted that they undertake the activities of tissue culture, green houses, shade houses and high tech farming at their Mohadi unit.
- (xvii) During the hearings, the Commission had queried the Petitioner on the discrepancy in the activities said to be undertaken at the Mohadi unit in terms of page 2 and page 47 (Exhibit) of the Petition. JIS have filed an affidavit confirming that the activities undertaken at the Mohadi unit are essentially those of green houses and tissue culture on the basis of information verified by MSEB themselves. Further, the MSEB had, vide letter dated 24.11.1998, granted approval to the application of the SP I tariff to the Mohadi unit. However, the MSEB had subsequently contended that, upon examination of the activities carried out at the units of the Petitioner, it was observed that there was a change in activity and, hence, the SP I tariff was withdrawn. The MSEB have failed to produce the internal report which evidences the change in activity. In order to effect a change in a tariff classification, it is necessary to provide evidence and material establishing that such change is merited. From the record, the MSEB does not appear to have produced any material or evidence which would make such a change in classification sustainable in law. The list of activities enumerated in the affidavit of the Petitioners would appear to fall within the meaning of the term 'High Tech Agriculture' activities as interpreted earlier, and have been expressly mentioned by MSEB while illustrating the applicability of the tariff category itself. Thus, the contention that the SP I tariff already approved in respect of the Mohadi unit required to be changed cannot be sustained.



- (xviii) As for the activity of shade houses, it has to be construed as being ejusdem generis to the earlier words. Shade houses are required for the activities of environment-control oriented farming and are similar in nature to green houses. Shade houses are used to improve the ultimate quality of the produce and thereby result in a value addition to it. As in the case of green houses, therefore, shade houses would also fall within the meaning of the term 'High Tech Agriculture'.

Shirsoli unit –

- (xix) According to the Petition, JIS undertake the activities of vegetable dehydration and food (fruit) processing at the Shirsoli unit. The Annexure to Exhibit-D, which is a letter from JIS dated 24th November, 1998 addressed to MSEB, indicates the details of the activities as “processing of agricultural products such as dehydration, pulps, purees, canning and concentrates, etc.”
- (xx) The Petitioner has submitted voluminous material seeking to show that vegetable dehydration and food processing increase the longevity of an agricultural or horticultural product and, hence, fall within the meaning of “High Tech Agriculture”. However, MSEB have contended that these activities do not constitute or result in any form of cultivation and would, therefore, not fall within the scope of High Tech Agriculture.
- (xxi) The Commission finds that the activities carried out at the Shirsoli unit are activities which constitute high tech agriculture for the purpose of tariff categorization. Dehydration of quickly perishable agricultural produce such as vegetables, onions and processing of quickly perishable agricultural/horticultural produce such as Mango, Guava etc, extend their shelf life and facilitates their marketing. By the very nature of such agri produce (Onions, Mangoes, etc.) if they are not properly stored in cold storage etc. and if they are not quickly processed by way of dehydration, pulping, etc. their shelf life will not increase, perishability will not reduce, and consequently marketing of such produce will become difficult. Hence, these activities of high-tech processing and specialised storages at the Shirsoli unit will be legitimately considered as part of High-tech Agriculture. These activities facilitate processing and preservation of agricultural produce, and in the currently held High-tech Agriculture definition such aspects do form part of High-tech Agriculture. These activities essentially add to the quality and improve endurance of the agricultural produce through means of artificial methods employing high technology. MSEB's letter dated 14th August, 1998 to GoM and the note of the Cabinet Committee also make it clear that the concessional tariff category would be applicable to farming/cultivation and the production of agricultural produce which result from such methods of high technology. Production of agricultural produce is not possible without some kind of processing employing High-technology. It must also be noted that no chemical preservatives are added nor is the natural form of fruits and vegetables changed



during processing of these items. This will distinguish these products and processes from other general food products or industrial products made from agricultural raw materials. Hence, the contention that the SP I tariff already approved in respect of Shirsoli unit is required to be changed cannot be sustained.

Based on the criteria proposed by the Petitioner vide letter dated. 25th August, 2004, the following conditions must be fulfilled for applicability of HTP VII (earlier SP-1) tariff for fruit processing and vegetable dehydration units:

- a) be an enterprise which has FPO license.
- b) be an enterprise which does not add any chemical preservatives, artificial or natural flavours and colours, salt, sugar or water in its end product. In essence, the produce is processed and preserved by using physical processes while maintaining its natural form.

Bambhori unit –

- (xxii) The Petitioner undertakes the activities of manufacturing MIS and other products at the Bambhori unit.
- (xxiii) JIS have produced material in support of their stand that the manufacture of micro/drip irrigation systems falls within the meaning of the term “High Tech Agriculture”. To a query of the Commission, the Petitioner submitted that, whereas the actual process of farming itself does not require any electricity, it is the technology that goes into improving agricultural productivity and the manufacture of such implements and equipments that require electricity. Hence the special incentives through a concessional tariff. JIS further submitted that if such benefit is not passed on to them, being engaged in the manufacture of high tech components used in MIS, the very purpose of creating the new tariff category would be defeated.
- (xxiv) The Petitioner has also relied on the letter from the GoM and this Commission wherein, according to JIS, “High Tech Agriculture” has been defined to include drip irrigation systems. The MSEB contended, on the other hand, that the use of drip irrigation and not the manufacture of drip irrigation equipment is included within the term “High Tech Agriculture since there is no cultivation involved in this process.
- (xxv) It is clear to the Commission that the use of customized drip equipment and techniques for irrigation in agriculture is a High-tech agricultural activity since it satisfies the essentials as stated above. Conversely, it is equally clear from what has been stated earlier that High Tech Agriculture is to include only the use of



such high tech equipment or inputs for producing an agricultural product or in adding value to such produce in the process of its cultivation.

- (xxvi) The Commission has also noted that the Union Government does not classify drip irrigation components as 'plastics item' but as 'Horticultural items'. Due to this classification, no excise duty is charged on manufacture of drip irrigation components even when excise duty is charged on other Plastic items. This is a very distinct and unique classification based on application of drip irrigation as a hi-tech agricultural input.
- (xxvii) It has been clarified to the Commission that drip irrigation systems are supplied to farmers on a custom-made basis rather than merely as components. These custom made systems (technology) are built in a scientific manner from inputs of soil and water analysis, climatological data, hydraulics and agronomical needs of various different crops. This unique custom-built nature transforms drip irrigation components to hi-tech agriculture.
- (xxviii) The Commission has taken on record that some distinction has to be made to prevent misuse of applicability of concessional tariff by manufacturers of similar products or technologies but not exactly same drip irrigation system which is custom-built. MSEB may follow the criteria annexed herewith for such purpose.
- (xxix) The Commission is of the view that the Petitioner has proved beyond reasonable doubt that it is engaged in hi-tech agriculture activity and is entitled to concessional tariff of SP-I and successor tariff category due to the unique nature of its technology and applications for the farming community.

The Commission therefore concludes that the SP I and re-categorized tariff category tariff shall be applicable to the Petitioner's Bambhori unit for manufacture of drip related items only so far as they are distinguishable from manufacture of PVC tubes.

Based on the criteria proposed by the Petitioner vide letter dated 25th August, 2004, the following conditions must be fulfilled for applicability of HTP VII (earlier SP-1) tariff for drip irrigation manufacturing units:

- a) be an integrated manufacturer of all the components of drip irrigation systems under Indian Standard Institute (ISI) license.
- b) be an enterprise which is exempt from paying excise duty on items manufactured for drip irrigation.



- c) be an enterprise which has necessary wherewithal to conduct survey of farm, analysis of soil & water and installation of system on a direct basis or through its dealer network and
 - d) which is making customized individual units based on agro-information of the farm in question.
- (2) **Whether the withdrawal of the SP I tariff to all three units without giving the Petitioners notice or hearing is contrary to the principles of natural justice.**
- (i) It was contended by the MSEB that JIS were given an opportunity to represent before effecting a change in the tariff category applied to them. However, no minutes of meeting or any other document or affidavit has been submitted by the MSEB to support this contention. Normally, if an authority is proposing to change its position qua a person or review a settled and accepted position to that person's detriment, it is incumbent upon it to provide that person reasons for the proposed change and the right to be heard and make submissions countering the reasons provided. It does not appear that any notice was issued, nor that there was any opportunity granted to the Petitioner to counter the contentions of the MSEB, and no reasons have been provided by MSEB prior to its decision. The MSEB is a statutory body discharging functions in the public domain. There does not appear to be any evidence of any change in the facts of the activities undertaken or the law which required re-classification to be made. The ground cited even at present is essentially that the change was necessitated because the earlier tariff category was mistakenly applied, which came to notice from an audit objection. In the normal course, it would be incumbent upon the MSEB to provide an opportunity to the Petitioner to deal with the basis of the proposed change and to counter it.
 - (ii) It is clear that the approval by MSEB for the application of the SP I tariff to the three units was granted after due deliberation and application of mind. Further, the MSEB have on numerous occasions physically inspected and examined the activities undertaken in the three units to determine the applicability of the SP I tariff to the units. For the reasons set out by the Commission earlier in this Order, in fact no mistake was committed by either party in the application of the concessional tariff to these units. Further, there does not appear to be any misrepresentation of its activities by the Petitioner, nor has any evidence been produced that this was the case.
 - (iii) The usual principle of construction is that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Every statute which takes away or impairs vested rights acquired under existing laws or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past must be presumed to be



intended not to have a retrospective effect. A Taxing Act cannot, however, be called retrospective if it taxes an event which is continuing and not complete when the Act comes into force.

- (iv) It may be pointed out that in certain taxation statutes the introduction of retrospective provisions and the imposing of burden thereunder retrospectively have been upheld by the Hon'ble Supreme Court. However, in those instances there were specific provisions introduced in the statutes themselves.
- (v) In its Order in the matter of MSEB Tariff rate applicable to streetlight services for Murbad and Additional Murbad Industrial Areas and differential tariff recovery through supplementary bill raised by the MSEB (Case No. 24 of 2001), the Commission had held as follows:

“23. No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. In all these cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective.”

Thus the question of recovery through the three supplementary bills raised by MSEB on the applicant (JISL) cannot be allowed, in either or all the locations, namely Shirsolli, Mohadi and Bambhori.

- (vi) The issue of whether or not MSEB should apply concessional SP I tariff to the Bambhori unit with retrospective effect needs to be decided in this context. It is admitted by the Petitioner that, after submitting a great deal of material over a period of time to MSEB and field visits by the latter's officials, this unit was granted SP I tariff with effect from 17th February, 2001. An agreement for supply of power for a minimum period of two years was entered into on 7th March, 2001. In view of this contractual arrangement between the two parties, the Commission is not inclined grant this prayer of the applicant. Moreover grant of concessional tariff retrospectively would entail separation of the units consumed for PVC Pipes and drip irrigation components for the period 1st September, 1998 – 17th February 2001. The basis for the same could be the data of earlier period (Before Sept'98) from separate meters for both the activities and further data from separate meters for both the activities at present. Permitting such extrapolation will not be in consonance with the policy and endeavour of the Commission to introduce billing based on 100% metering,



56. In view of the foregoing:

- (i) With regard to the Mohadi Unit, in view of the Commission's finding that its activities constitute 'Hi-tech Agriculture' for the purpose of application of the SP-I and successor tariff category, the excess amounts recovered by MSEB from JIS should be refunded to the Petitioner by adjustment through its energy bills or by other means.
- (ii) This would apply to excess amounts recovered from the different units and their activities at the Shirsoli facility which the Commission has found eligible for SP-I and successor tariff category.
- (iii) This would also apply to excess amounts recovered from drip irrigation unit at Bambhori which the Commission has found eligible for SP-I and successor tariff category.
- (iv) MSEB will not recover three supplementary bills and subsequent interest for non-payment from all the locations, namely Shirsoli, Mohadi and Bambhori.

MSEB are also directed to adjust the refundable amount together with the interest in future bills. The interest rate claimed by the Petitioner (JIS) appears to be on the higher side (18%). Hence MSEB are directed to refund the excess amount recovered together with interest at the rate at which MSEB are collecting interest for delayed payments from the consumers.

Sd/-
(Pramod Deo)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

(A.M. Khan)
Secretary, MERC

