ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021
****

Present: **Shri U. N. Behera, Chairperson**
Shri S. K. Parhi, Member
Shri G. Mohapatra, Member

Case No. 03/2021

M/s. Odisha Cold Storage Association …… Petitioner
Vrs.
CEO, TPCODL & Others …..... Respondents

In the matter of: **Application for amendment of Regulation 138 (f) & (g) of OERC Distribution (Conditions of Supply) Code, 2019 for inclusion of cold storage under Allied agricultural Activities (AAA) category.**

For Petitioner: Shri Bibhu Charan Swain, the authorized representative, Shri Janardan Sahu, President on behalf of Odisha Cold Storage Association.

For Respondents: Shri Vidyadhar Wagle, TPCODL, Ms. Malancha Ghose (RA), TPNODL, Shri K. C. Nanda, DGM (Fin.), TPWODL, Shri Binod Nayak, Asst. GM (Comm.), TPSODL and Ms. Sonali Patnaik, ALO, DoE, GoO and the representative of Director of Horticulture, GoO.

Nobody is present on behalf of Department of Finance, GoO, Department of Agriculture and Farmers' Empowerment. GoO.

ORDER

Date of hearing: 06.07.2021 **Date of order:29.10.2021**

This order arises out of an application filed by the petitioner through its President praying for altering the Regulation to the effect of bringing the cold storage into the category of Allied Agricultural Activities under the Regulation 138(f) of the Odisha Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2019 (herein-after stated in short as the "Code") from the existing category of Agro Allied Industrial Activities mentioned in Regulation 138(g) of the Code.

2. Averments made by the petitioner in the application may be summarised as follows:-

The Odisha Cold Storage Association (herein-after referred as "OCSA") is a registered Association incorporated under the provisions of the Society Registration Act, 1860 having its registered office at Bhubaneswar. The petition is filed by the petitioner under the Regulation 202 & 203 of the Code for amendment of the Regulation 138(f)

and 138(g) under Chapter VIII of the Code for inclusion of cold storage in Allied Agricultural Activities category. According to the petitioner, the cold storage units in the State are dealing in the preservation of vegetables, horticulture products and provide lots of benefit and support to the farmers and agricultural community by way of storing their products in their respective cold storage facility, thereby help the Echo system in agriculture and horticulture and maintain the supply chain management of vegetable and foods. These cold storages do not carry out any industrial activity, rather they store vegetables, fruits, preserve the agro products and forest produce. They do not have any Ice factory nor do they carry out any food, meat and other food related processing activities. They do not carry out any industrial activity nor agro processing nor food processing, rather they only store the vegetables and food in temperature controlled enclosure where the flowers, fruits and vegetables are kept in fresh condition. The original form of the fruits, vegetables, horticulture and agro produce is not changed in cold storage as no processing is involved. As such, the cold storages where no food processing activity is involved, should not be treated as Allied Agro Industrial Activities, rather they should be considered under the Allied Agricultural activities as their activities fall under the category of Agricultural Allied Activities. These cold storages are important part of the agriculture and horticulture of the State and therefore, they need special treatment and require to be classified under Agricultural Allied Activities and should be charged with the lower electricity tariff as applicable to Allied Agricultural Activities. In spite of the same, the cold storage units in the State are being considered under the Allied Agro Industrial Activities for which the cold storages are not commercially viable and becoming sick day by day.

3. Initially there were 144 cold storages in the State of Odisha, out of which at present only about 30 cold storages are functional. Out of these 30 cold storages, there exist 23 numbers of new cold storages which have been established under State Potato Mission during the years 2015-18. Thus, it can be said that 23 new cold storage units and 7 old cold storage units are functional. The detailed list of total cold storage units in the State is furnished under the Annexure-I and list of the cold storage units currently running is furnished under Annexure-II. Although the State Government had launched Potato Mission in 2015 with an aim to increase potato production in the State and to meet shortage of potatoes. However, lack of initiative by the State Government as well as higher cost of electricity charges contributed to failure of the said mission. For such

failure in the State, the cold storages which were established under the Mission along with cold storage units now struggling to survive do require urgent intervention of the State Government and of this Commission for the rescue and revival of the remaining cold storage units of the State. Further failure of cold storages not only affects the business of the cold storage operators, but also hampers the direct and indirect employment of the local youth, farmers producing vegetables, fruits in the vicinity. The Association in its letter dated 30.10.2020 requested the Chief Secretary, Odisha and other Government Departments for their kind intervention in the matter and to take steps for revival of the cold storages. The cost of the electricity for cold storage units covered under the Allied Agro Industrial Activities has increased manifold during the last few years while energy charges for Allied Agricultural Activities have remained almost stable. This has resulted in further loss of cold storage units of Odisha and made them unviable. Keeping these factors in view, the petitioner prayed the Commission to consider extending the tariff applicable to Allied Agricultural Activities to cold storage units in the State in the interest of the farmers by amending the Code, 2019.

4. In response to the averments of the petitioner, the Respondents, different Distribution Licensees and the Director of Horticulture have submitted their reply. However, no reply has been submitted by the Government in their Energy, Finance or Agriculture and Farmers' Empowerment Department.

5. The counters submitted by the Distribution Licensees may be concisely stated as follows:

The issues pertaining to the tariff category of cold storage units in the State have been raised by different cold storage units/associations including the present petition in the past before this Commission and the same has been dealt with by the Commission which is very well reflected in the various RST orders passed by the Commission in every year. After inviting objections and suggestions from various stake-holders including public at large, the Commission have notified the Odisha Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2019. The tariff category of cold storage has been decided by the Commission consciously with all reasonable and judicious observations as reflected in various RST orders. Hence, there ought not to be any further interference in the present tariff category applicable to the cold storage units. Initially cold storage units were billed under the General

Purpose/Commercial tariff category as they were involved in commercial operation accruing profit or in other words the cold storage units were involved in trading activities which were purely considered as commercial in nature, resultantly bringing the said units under the fold of "General Purpose Category". Subsequently in the year 2007, the Commission introduced a new class of consumer namely "Agro Industrial Consumer" by way of amendment of the then existing supply code 2004 by inserting a new sub clause (1) under Clause No.80(5) "Irrigation Pumping and Agriculture" of the Code 2004. Subsequently, in the year 2009, the Regulation 80(5) of the Supply Code 2004 was completely substituted by virtue of another amendment by this Commission. The amended tariff for the above category of consumers came into effect from 09.11.2009. As per the amended provision, cold storage units were excluded from "Allied Agricultural Activities" category and included under the "Allied Agro Industrial Activities" category.

6. The cold storage units generally operate for business or commercial purposes (processing activities). However, certain cold storage units are attached with farming units for preservation of farming output or production in farm activities and therefore cold storage units were excluded in expressive terms from "Allied Agricultural Activities" category and included under Allied Agro Industrial Activities category. The tariff for the latter category is higher than that of former category. According to them, the above decision of the Commission was taken consciously and same has also been clarified in the aforesaid order pronounced after hearing different stake-holders and the aforesaid order of the Commission was never challenged before any other judicial forum by the petitioners' Association. Subsequently in the RST order 2012-13, the Commission directed that food processing unit attached with cold storage shall be charged at Allied Agro Industrial Activities tariff if the cold storage load is not less than 80% of the entire connected load. Thus, a distinction was made by this Commission in respect of cold storage units attached with food processing units and farming units. Since majority of the cold storages are attached with food processing units, the Commission made it clear that getting the tariff under Allied Agro Industrial Activities consumption of cold storages shall not be less than 80%.

   The issues relating to applicability of suitable tariff category to the cold storage units were further clarified by the Commission in the Tariff Order for 2014-15.

7. The Respondents 1 to 4 also submitted that the Commission decided to revisit the existing Supply Code 2004 and for that, a draft Supply Code 2019 was published inviting suggestions and views from the public as well as various stake-holders and the Commission after receiving suggestions and views in this regard, finally amended/enacted the Supply Code 2019 which came into effect from October, 2019.

According to the Respondents-Distribution licensees, they are running with financial stress due to non rationalisation of tariff from low end consumers and costs of purchase of power have increased day by day, due to increase in fuel cost and inadequate generation of hydro power. Any downward change or alteration in tariff structure would have obvious implication in the said business. It is in view of the above facts and circumstances, the Respondents 1 to 4-Distribution licensees prayed for dismissal of the application as being without substance and any valid reason.

8. In the counter affidavit, the Respondent No.8, the Director of Horticulture has stated as follows:

It is an established fact that the cost of power is the major contributor for the operational expenditure of the cold stores. For last many years, it has been requested by different stake-holders including the cold store owners to reduce the burden of energy tariff for cold stores. The cold storages are dealing with preservation of vegetables, horticulture and agricultural produces and they provide lots of benefits to the farmers and agricultural community by way of storing their products in the respective cold storages and help the eco systems in Agriculture and Horticulture and maintain supply chain management of vegetable and fruits. For such reason, he has proposed to cover cold stores under the category of 138(f) Allied Agricultural Activities instead of the category 138(g) Allied Agro-Industrial Activities. In view of the above, Respondent No.8 prayed that the Commission may consider the case of the petitioner-Association.

9. From the pleadings of the parties, the following issues are required to be answered for disposal of the application

Issues

I. Whether there is justification for covering the cold storage units in the category of Regulation 138(f) of the OERC Distribution (Conditions of Supply) Code, 2019?

II. Whether the present application is maintainable?

Findings

10. For avoiding repetitions, the issues are brought under the conjoint discussions stated below.

It may be correct that the OERC is empowered with the authority to make revision in the matter of classification of consumers under the Regulation No.203 of the Code, 2019.

From the averments made by the petitioner, it is seen that out of the cold storages, numbering 144, 37 number of cold storages preserve potatoes and 25 number of cold storages preserve marine products and the rest are engaged in the preservation of the multi-purpose items as per the list submitted by the petitioner. The petitioner submits that the present tariff for energy consumption for keeping cold storages operational has the impact of increased operational costs of the cold storages. It is submitted that due to higher operating costs, commercial viability of cold storages has been seriously affected. At this point, it appears pertinent to mention here that the petitioner has admitted that Government of Odisha have provided capital subsidy, interest subsidy, exemption for Contract Demand Charges for 5 years, Electricity Duty subsidy to the existing and upcoming cold storage units as per the norms of IPR (2015) and National Horticulture Mission. After grant of so many subsidies, there hardly emerges any logic for bringing the cold storages into the category of Allied Agricultural Activities categories under the Regulation 138(f) of the Code from Agro Industrial Activities covered under the Regulation 138(g) of the Code.

11. The prayer of the petitioner was substantially and indirectly the subject matter of consideration before this Regulatory Commission in Case Nos. 38, 39, 40, 41 and 90/2009 and after giving the opportunity of hearing to different stake-holders this Commission spelt out its observation in the order dated 02.07.2013 as stated below:

Xxxxxxx

"12. For the FY 2009-10 the new Regulation which created two new categories of consumers such as allied agro industrial activities and allied agro industrial activities put cold storage in the latter category and excluded it from allied agricultural activities. The tariff for allied agricultural activities is higher than allied agricultural activities though there were some observation in the RST order for FY 2009-10 which regard to exclusion of cold storage used for

commercial purpose from allied agricultural activities, the earlier Regulation have however not been changed and remained in force. xxxxxxxx

13. Accordingly, the Cold Storages shall pay as per the tariff under General Purpose category till the end of FY 2007-08. Thereafter, they are required to pay tariff under 'Agro Industrial Consumer' category for the complete financial year 2008-09. They would also continue to pay the same Agro Industrial Consumer tariff till 08.11.2009. From 09.011.2009 onwards the Cold Storage consumers would be categorised under Allied Agro Industrial Activities or General Purpose depending upon their eligibility to be checked by DISCOMs and pay the tariff accordingly."

12. After considering the written submissions advanced by the parties as found from record, there appears no cogent occasion to revisit the said earlier order to take a contrary view. In other words, the prayer of the petitioner to categorise, the cold storages under the Regulation 138(f) instead of the category 138(g) of the OERC Distribution (Condition of Supply) Code, 2019 is found to be devoid of any merit and accordingly rejected.

13. For the sake of clarification, it is declared that this Commission will have no objection if any further subsidy/incentive is provided to the cold storages by the Government of Odisha.

14. Subject to the above observations, the petition is disposed of.

Sd/-	**Sd/-**	**Sd/-**
(G. Mohapatra)	**(S. K. Parhi)**	**(U. N. Behera)**
Member	**Member**	**Chairperson**