



ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. OA-266/17-18

IN REGARD TO THE APPLICATION SUBMITTED BY M/S BSK AGRO
FARM IN THE MATTER OF BRIJENDRA SINGH -VS- WBSEDCL

PRESENT:

DR MALLELA VENKATESWARA RAO, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER

DATE: 04.09.2024



CASE IN BRIEF

- 1.0 The petitioner M/s BSK Agro Farm is involved in farming of button mushroom within the premises of M/s BSK Agro Farm and this type of farming requires electricity to run chillers to bring down the temperature.
- 2.0 The petitioner filed a written application to the Regional Manager, North 24 Pgs for the change of tariff code from industrial tariff to agricultural tariff and also for imposition of rates according to agricultural tariff plan as the petitioner is the consumer of WBSEDCL and WBSEDCL at the time of billing had applied B-IDIT tariff code, which is used in case of industrial use only.
- 3.0 The Superintending Engineer (Com), 24 Pgs North through a letter dated 20.11.2014 (along with a note sheet issued by the Chief Engineer (Com)) had communicated that the tariff code will not be changed. The petitioner then approached RGRO but RGRO in their order also stated that the tariff code will not be changed as the button mushroom is not coming under the Agricultural category under NIC Code 2008.
- 4.0 Being aggrieved by the decision from and RGRO, North 24 Pgs Region, the petitioner had preferred to file an application before the Ombudsman. Ld. Ombudsman had observed that growing of mushroom does come under agricultural-horticultural activity but that they are unable to pass any order in this issue as this is not under the jurisdiction of the Ombudsman.
- 5.0 The petitioner then filed a writ petition (W.P. No 28719 (w) of 2017) before Hon'ble High Court, Calcutta in which upon hearing both the parties, Hon'ble High Court passed an order dated 05.12.2017 by giving liberty to the petitioner to appeal before the appropriate forum.
- 6.0 The petitioner vide 11.01.2018 filed a petition before the Hon'ble Commission and prayed before the Commission for the following:-
 - a. Pass an order to withdraw/revoke/recall and/or cancel/set aside the order passed by Regional Grievance Redressal Officer (RGRO).
 - b. Directing the respondents and each of their servants and/or agents to pass an order regarding electricity tariff code as agriculture and impose agricultural rate in the electricity bill in the light of National Industrial Classification Code, 2008.
 - c. Pass necessary directions to provide complete relief to the petitioner.The petition was placed in file and was marked with OA-266/17-18.
- 7.0 The Hon'ble High Court of Calcutta vide order dated 30.08.2023 in WPA 8156 of 2023 had directed the Commission to consider the representation of the petitioner (M/s BSK Agro Farm) dated



- 11.01.2018 by granting an opportunity for hearing to the petitions and other relevant persons and pass a reasoned order within 12 weeks from the date of the order of the Hon'ble High Court.
- 8.0 Upon receipt of the same, the Commission vide Notice dated 13.09.2023 had called for hearing on 20.09.2023.
- 9.0 Upon hearing both the petitioner and the respondents, the Commission vide order dated 22.09.2023 has passed the following order –
- (i) M/s BSK Agro Farm shall serve the copy of the petition both in hard copy and soft copy to WBSEDCL, within three (3) days from this day (20.09.2023). M/s BSK Agro Farm shall also furnish a proof of service of the same to the Commission.
 - (ii) WBSEDCL shall submit reply to the petition to the Commission within seven (7) days from the date of receiving the copy of the petition. A copy of the reply shall also be served to the petitioner and a proof of service is required to be furnished to the Commission.
 - (iii) The petitioner shall have the liberty to file rejoinder with the Commission, if any within seven (7) from the date of receiving the reply from the respondents. A copy of the rejoinder, if any, shall also be served to the respondents and a proof of service is required to be furnished to the Commission.
- 10.0 Accordingly, WBSEDCL vide their letter dated 04.10.2023 inter-alia has submitted the followings: -
- (i) The petitioner M/s BSK Agro Farm is using commercial-grade facilities, equipment and resources for mushroom cultivation and having contractual electrical load of 94 KVA, which is considered as high voltage connection and indicates that it is a commercial operation.
 - (ii) As cultivation of mushroom by the petitioner in large scale for the purpose of business involves uses of artificial technology, closed room, equipment and other facilities which are not required in normal agriculture, the petitioner is liable to pay electricity tariff either under commercial or industrial category and not agriculture.
 - (iii) As the petitioner is growing white button mushrooms in a temperature-controlled facility by employing various plant and machinery and also availed huge loans from banks and financial institutions under industrial category, this activity can only be considered as industrial and not agricultural.
 - (iv) There is no basic operation like tilling of land, sowing of the seeds, planting and other basic agricultural operation while growing the white button mushrooms, So the production and sale



of white button mushrooms is a business activity and incomes derived from this activity is assessable under the head income from business and profession and electricity tariff must also be charged under commercial sector head.

- (v) WBSEDCL further submitted that, in the process of mushroom cultivation, a process of fermentation is involved, which proves that it is a commercial procedure.

11.0 As per order dated 20.09.2023, the last date of submission of rejoinder was 01.11.2023, but no rejoinder was then received from BSK Agro Farm within the stipulated date and time.

12.0 Accordingly, a hearing was scheduled on 30.11.2023 but considering the prayer of M/s BSK Agro Farm for postponement of the hearing, the same was postponed

13.0 Subsequently, BSK Agro Farm vide their email dated 13.04.2024 has submitted their rejoinder.

14.0 BSK Agro Farm vide rejoinder dated 13.04.2024 inter-alia contended the submission of WBSEDCL by stating the followings:-

- (i) Though farming of button mushroom requires electricity to run chillers but the farming of growing of mushrooms come under the agricultural activity and Directorate of Mushroom Research under Indian Council of Agricultural Research (ICAR) has certified the petitioner that farming/cultivation of mushroom is an agricultural activity.
- (ii) M/S BSK Agro Farm in their rejoinder also mentioned that Hon'ble Income Tax Appellate Tribunal Special (B) Bench, Hyderabad in Dy IT versus M/s Inventaa Industries Private Limited (2018) held that the income from production and sale of mushroom can be termed as "agricultural income" under the Income Tax Act, 1961 as the product does not arise from any secondary agricultural operation.
- (iii) M/s BSK Agro Farm also mentioned that the reply submitted by WBSEDCL is devoid of merits and M/s BSK Agro Farm is entitled to get relief as prayed for before the Commission.

15.0 The Commission held an e-hearing on 29.05.2024 at 13.30 hrs where representatives of the petitioner (M/s BSK Agro Farm) and Respondent (WBSEDCL) were present.

SUBMISSIONS DURING HEARING

16.0 During the course of hearing, advocate of the petitioner has reiterated their written submissions submitted before the Commission.



- 17.0 At the outset, the Commission enquired the advocate representing the petitioner whether Government of West Bengal or Department of Commerce and Industries, Govt of India has issued any order or does the petitioner has any order copy of the Department of Commerce and Industries, Govt of India / Government of West Bengal where it has been stated that mushroom cultivation comes under Agricultural activity.
- 18.0 The advocate representing the petitioner expressed his inability to produce any of such documents.
- 19.0 Representative of WBSEDCL also reiterated their written arguments to oppose the submissions of the petitioner and stated that the petitioner has not annexed any GST Certificate or Income Tax Certificate to validate that cultivation of mushroom comes under agricultural activity.
- 20.0 The petitioner, at the time of hearing also confirmed that they have not annexed any GST Certificate or Income Tax Certificate with their written submission.

OBSERVATION

- 21.0 The Commission observes that the petitioner in its petition has prayed for the change of tariff code from industrial tariff to agricultural tariff and also for imposition of rates according to agricultural tariff plan.
- 22.0 The Commission further observes that the Hon'ble Income Tax Appellate Tribunal Special (B) Bench, Hyderabad in its judgement dt. 09.07.2018 in ITA Nos.1015 to 1018 /Hyd/2015 and C.O. Nos. 53 to 56/ Hyd/2015 has held that the income arising from the sale of "Edible white button mushroom" is agricultural income for the purpose of income tax.
- 23.0 It is pertinent to mention that there is no separate category for agricultural consumers in the tariff regulations of WBERC. However, there is a separate category under the head "Irrigation".
- 24.0 From the submissions of both the petitioner and the respondent, the Commission has observed that farming of button mushroom does not come under the category of "Irrigation" as per provisions of West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as amended from time to time.



In regard to the application submitted by M/s BSK Agro Farm in the matter of Brijendra Singh-vs- WBSEDCL



ORDER

- 25.0 In view of the above, the prayer made in the petition by M/s BSK Agro Farm can not be acceded to and accordingly, the petition is disposed of.
- 26.0 A copy of the same shall be posted in the Website of the Commission.

Sd/-

**(PULAK KUMAR TEWARI)
MEMBER**

Sd/-

**(MALLELA VENKATESWARA RAO)
CHAIRPERSON**

Dated: 04.09.2024

**Sd/-
(SECRETARY)**