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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2481 OF 2012

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**Maharashtra State Electricity Distribution**

**Company Ltd.**, a company registered under  
the Companies Act, 1956, having their  
registered office at Prakashgad, Bandra East,  
and having Bhandup Office at  
Deputy Executive Engineer, Flying Squad,  
Bhandup Vidyut, 3rd Floor, LBS Marg,  
Near Asian Paints Limited, Bhandup (W),  
Mumbai – 400 078

... Petitioner

V/s.

1. **Supreme Metal Industries,**  
Glaa No.31, Raja Industrial Estate,  
PK. Road, Mulund (W), Mumbai 400 080
  2. **M/s. Geo Chem Laboratories Pvt. Ltd.,**  
Pragati, Adjacent to Crompton Greaves,  
Kanjur Marg (East), Mumbai 400 042
  3. **The Superintending Engineer,**  
Appellate Authority, Mumbai Region  
Electrical Inspection Circle, Industry,  
Energy & Labour Department,  
Bandhkam Bhavan, 3rd Floor,  
26, Marzban Marg, Fort, Mumbai 400 001
- ... Respondents

WITH  
WRIT PETITION NO.2482 OF 2012

**Maharashtra State Electricity Distribution**  
**Company Ltd.**, a company registered under  
the Companies Act, 1956, having their  
registered office at Prakashgad, Bandra East,

... Petitioner

and having Bhandup Office at  
Deputy Executive Engineer, Flying Squad,  
Bhandup Vidyut, 3rd Floor, LBS Marg,  
Near Asian Paints Limited, Bhandup (W),  
Mumbai – 400 078

**V/s.**

- 1. Jayant Packaging,**  
Glaa No.46, Raja Industrial Estate,  
PK. Road, Mulund (W), Mumbai 400 080
- 2. M/s. Geo Chem Laboratories Pvt. Ltd.,**  
Pragati, Adjacent to Crompton Greaves,  
Kanjur Marg (East), Mumbai 400 042
- 3. The Superintending Engineer,**  
Appellate Authority, Mumbai Region  
Electrical Inspection Circle, Industry,  
Energy & Labour Department,  
Bandhkam Bhavan, 3rd Floor,  
26, Marzban Marg, Fort, Mumbai 400 001     ... Respondents

**WITH  
WRIT PETITION NO.2483 OF 2012**

**Maharashtra State Electricity Distribution  
Company Ltd.,** a company registered under  
the Companies Act, 1956, having their  
registered office at Prakashgad, Bandra East,  
and having Bhandup Office at  
Deputy Executive Engineer, Flying Squad,  
Bhandup Vidyut, 3rd Floor, LBS Marg,  
Near Asian Paints Limited, Bhandup (W),  
Mumbai – 400 078     ... Petitioner

**V/s.**

1. **Raja Builders**, Cabin No.12,  
Gala No.4, Raja Industrial Estate,  
PK. Road, Mulund (W), Mumbai 400 080
2. **M/s. Geo Chem Laboratories Pvt. Ltd.**,  
Pragati, Adjacent to Crompton Greaves,  
Kanjur Marg (East), Mumbai 400 042
3. **The Superintending Engineer**,  
Appellate Authority, Mumbai Region  
Electrical Inspection Circle, Industry,  
Energy & Labour Department,  
Bandhkam Bhavan, 3rd Floor,  
26, Marzban Marg, Fort, Mumbai 400 001 ... Respondents

**WITH  
WRIT PETITION NO.2491 OF 2012**

**Maharashtra State Electricity Distribution Company Ltd.**, a company registered under the Companies Act, 1956, having their registered office at Prakashgad, Bandra East, and having Bhandup Office at Deputy Executive Engineer, Flying Squad, Bhandup Vidyut, 3rd Floor, LBS Marg, Near Asian Paints Limited, Bhandup (W), Mumbai – 400 078 ... Petitioner

**V/s.**

1. **Khemlani Exports Pvt. Ltd.**,  
Gala No.4, Raja Industrial Estate,  
PK. Road, Mulund (W), Mumbai 400 080
2. **M/s. Geo Chem Laboratories Pvt. Ltd.**,  
Pragati, Adjacent to Crompton Greaves,  
Kanjur Marg (East), Mumbai 400 042
3. **The Superintending Engineer**, ... Respondents

Appellate Authority, Mumbai Region  
Electrical Inspection Circle, Industry,  
Energy & Labour Department,  
Bandhkam Bhavan, 3rd Floor,  
26, Marzban Marg, Fort, Mumbai 400 001

**WITH  
WRIT PETITION NO.2492 OF 2012**

**Maharashtra State Electricity Distribution  
Company Ltd.**, a company registered under  
the Companies Act, 1956, having their  
registered office at Prakashgad, Bandra East,  
and having Bhandup Office at  
Deputy Executive Engineer, Flying Squad,  
Bhandup Vidyut, 3rd Floor, LBS Marg,  
Near Asian Paints Limited, Bhandup (W),  
Mumbai – 400 078

... Petitioner

**V/s.**

- 1. Kollinz Laboratories Pvt. Ltd.,**  
Gala No.23, Raja Industrial Estate,  
PK. Road, Mulund (W), Mumbai 400 080
- 2. M/s. Geo Chem Laboratories Pvt. Ltd.,**  
Pragati, Adjacent to Crompton Greaves,  
Kanjur Marg (East), Mumbai 400 042
- 3. The Superintending Engineer,**  
Appellate Authority, Mumbai Region  
Electrical Inspection Circle, Industry,  
Energy & Labour Department,  
Bandhkam Bhavan, 3rd Floor,  
26, Marzban Marg, Fort, Mumbai 400 001

... Respondents

**WITH  
WRIT PETITION NO.2493 OF 2012**

**Maharashtra State Electricity Distribution Company Ltd.**, a company registered under the Companies Act, 1956, having their registered office at Prakashgad, Bandra East, and having Bhandup Office at Deputy Executive Engineer, Flying Squad, Bhandup Vidyut, 3rd Floor, LBS Marg, Near Asian Paints Limited, Bhandup (W), Mumbai – 400 078

... Petitioner

V/s.

1. **Hitesh Plastics** ,  
Gala No.41, Raja Industrial Estate,  
PK. Road, Mulund (W), Mumbai 400 080
2. **M/s. Geo Chem Laboratories Pvt. Ltd.**,  
Pragati, Adjacent to Crompton Greaves,  
Kanjur Marg (East), Mumbai 400 042
3. **The Superintending Engineer**,  
Appellate Authority, Mumbai Region  
Electrical Inspection Circle, Industry,  
Energy & Labour Department,  
Bandhkam Bhavan, 3rd Floor,  
26, Marzban Marg, Fort, Mumbai 400 001

... Respondents

**WITH  
WRIT PETITION NO.2494 OF 2012**

**Maharashtra State Electricity Distribution Company Ltd.**, a company registered under the Companies Act, 1956, having their registered office at Prakashgad, Bandra East, and having Bhandup Office at Deputy Executive Engineer, Flying Squad, Bhandup Vidyut, 3rd Floor, LBS Marg,

... Petitioner



distribution licensee under the Electricity Act, 2003. It carries the statutory duty to distribute electricity throughout the State of Maharashtra. It must regulate, monitor and enforce authorised use of electricity in its network. It must protect public revenue. It must ensure compliance with MERC regulations. It must act whenever it detects unauthorised use within the meaning of Sections 126 and 135 of the Act.

3. Respondent No. 1 in each Petition is the registered consumer. Each connection bears a separate consumer number. The sanctioned supply stands in the name of Respondent No. 1 alone. The contractual relationship under the Act, the Supply Code of 2005 and the Conditions of Supply exists only with Respondent No. 1.

4. Respondent No. 2 is a lessee. He has never applied for change of name. He has never entered into a supply agreement with the Petitioner. He has never disclosed his occupation or activity as required by Regulations 10 and 11 of the Supply Code. He is not a consumer within Section 2(15) of the Act. In spite of this, he has assumed the role of Respondent No. 1 and contested the statutory assessment under Section 126. The statute does not permit such participation.

5. Respondent No. 3 is the Appellate Authority under Section 127. It passed the impugned orders. It is therefore a formal and necessary party.

6. The dispute arises from detection of commercial use in premises sanctioned only for industrial purpose. The Flying Squad

of the Petitioner inspected the premises and found commercial laboratory and testing activity. This use falls within unauthorised use under Section 126(6)(b). The assessment was issued to Respondent No. 1. Respondent No. 2 filed the appeal and secured the impugned order though he had no right to do so.

7. The premises of Respondent No. 1 were used for commercial activity without disclosure and without permission. The Petitioner challenges the order of Respondent No. 3 which is patently unsustainable. The order is without jurisdiction and contrary to law.

8. Respondent No. 1 is the registered consumer for Gala No. 31 situated in Raja Industrial Estate, Mulund West. The category of supply was strictly LT V Industrial. At all times the records of MSEDCL showed Respondent No. 1 as the only consumer responsible for compliance with the Act and the Supply Code.

9. On 5 January 2010 the Flying Squad carried out inspection. It found that no industrial activity was carried out. Instead, Respondent No. 2 was operating a commercial laboratory and testing unit. This was admitted on site. The inspection report clearly established commercial use. Such use falls in Section 126(6)(b)(i) because electricity was used for a purpose other than that authorised.

10. The Petitioner issued the provisional assessment on 8 January 2010. Respondent No. 1 was given hearing on 22 March 2010. He was asked to produce documents showing industrial activity or any sanction for commercial use. He was asked to show

disclosure of tenancy as required under Regulations 10 and 11. He produced no document.

**11.** The Petitioner thereafter passed the Final Assessment on 26 March 2010 under Section 126(3). The assessment was limited to twelve months as required by Section 126(5). The assessment was issued to Respondent No. 1 alone. Respondent No. 2 had no right to participate or challenge the proceedings.

**12.** According to the petitioner Respondent No. 2, though having no locus, filed an appeal under Section 127. He claimed to be an authorised consumer. He never applied for change of name. He never secured any permission. He relied on no disclosure. An unauthorised user tried to avoid liability by presenting himself as an authorised consumer.

**13.** The Appellate Authority accepted this claim. It held that Respondent No. 2 could be treated as an authorised consumer. It treated the matter as a dispute of tariff classification. It set aside the statutory assessment. It directed MSEDCL to issue supplementary bill without invoking Section 126. It expected MSEDCL to give wide publicity of tariff changes. It relied on an Ombudsman decision which had no jurisdictional relevance. It nullified the statutory consequences of unauthorised use.

**14.** According to the petitioner these findings ignore the inspection record. They ignore the statutory scheme. They ignore binding decisions of the Supreme Court. They disregard the object and purpose of Section 126. The Authority treated a tenant as a consumer. It refused to recognise commercial use in an industrial

connection. It ignored disclosure obligations. Such errors strike at the root of the order.

**15.** The Petitioner seeks intervention of this Court to prevent leakage of public revenue. It seeks restoration of statutory discipline. It seeks quashing of the impugned order so that the purpose of Sections 126 and 127 is not frustrated.

**16.** According to the petitioner the impugned order cannot stand. The Authority proceeded on a complete misunderstanding of the dispute. It treated the matter as a tariff difference. The inspection proves commercial activity in premises sanctioned for industrial use. Section 126 applies whenever electricity is used for a purpose other than authorised. The Authority cannot reduce this statutory infraction into a reclassification issue. It has rewritten the statute. This is impermissible.

**17.** According to the petitioner the Authority further erred in treating Respondent No. 2 as a consumer. The statutory definition is clear. A consumer is one in whose name the connection stands or who is supplied electricity for his own use with authorisation. Neither condition is satisfied. The supply was in the name of Respondent No. 1. No authorisation existed. Respondent No. 2 was the unauthorised user. Yet the Authority conferred consumer status upon him. Such a finding has no basis in law.

**18.** According to the petitioner, the Authority also misread the Supply Code. Instead of recognising that consumption by a non registered person is prohibited, it treated the prohibition as conferring protection. The logic applied is contrary to regulation.

Regulations 10 and 11 require disclosure of change in occupancy and activity. The Authority concluded that no such rule exists. This conclusion is erroneous.

**19.** According to the petitioner, the Authority further observed that MSEDCL failed to widely publicise tariff changes. This requirement does not exist in law. MERC issues tariff orders. These orders are published in the Official Gazette. The statute does not require individual communication to consumers. The finding of the Authority is irrelevant.

**20.** According to the petitioner the Authority relied upon an Ombudsman decision. The Ombudsman has no jurisdiction under Sections 126 and 135. These matters fall outside the grievance redressal framework. The Authority relied on a body that lacked jurisdiction. It overrode a statutory mandate based on an opinion that is neither binding nor competent. This error vitiates the order.

**21.** According to the petitioner the Authority has gone beyond its jurisdiction under Section 127. It can examine legality and correctness of the assessment. It cannot extinguish Section 126. It cannot direct supplementary billing without Section 126. It cannot confer consumer rights on a non consumer. The Authority acted without jurisdiction.

**22.** According to the petitioner the Authority also failed to appreciate the position regarding SSI Registration. Respondent No. 2 argued that one SSI certificate covers all premises. This is incorrect. The Petitioner placed on record the clarification from the District Industries Centre. SSI registration is premises specific. It

applies only to the premises for which it is granted. It does not extend to any other unit. Each unit needs a separate certificate. The Authority ignored this position. The failure to obtain separate SSI certificate shows nondisclosure and unauthorised operation. Industrial sanction for one premises does not authorise activity in another. Respondent No. 2 was bound to disclose his activity and obtain necessary registration. His failure establishes unauthorised use. The Authority's reasoning is unsustainable.

**23.** According to the petitioner, Respondent No. 2 contended that he was unaware of the MERC tariff order of June 2008. Ignorance is no defence. Tariff becomes binding upon publication in the Gazette. The licensee has no duty to ensure personal awareness of each consumer. In any case, tariff is irrelevant to the core issue. The issue is not category. The issue is unauthorised commercial activity. Courts have rejected attempts to convert statutory violations into tariff disputes.

**24.** According to the petitioner, Respondent No. 2 claimed that the dispute concerns only change of tariff and not unauthorised use. This is incorrect. Commercial activity in industrial premises constitutes unauthorised use under Section 126(6)(b)(i). Whether there is extension or not is irrelevant. Once unauthorised use is detected, Section 126 must apply.

**25.** According to the petitioner, Respondent No. 2 expressed willingness to pay tariff difference but sought waiver of penalty. Section 126 does not permit such waiver. Penalty is a statutory consequence. It is not a matter of negotiation. A violator cannot

dictate the terms of liability.

**26.** According to the petitioner, Respondent No. 2 then contended that his use is bona fide because he is a tenant. This contention is untenable. A tenant does not become a consumer unless authorised. No such authorisation exists. The use was undisclosed and unauthorised. Section 126 does not require proof of benefit. It only requires proof of unauthorised purpose. That requirement stands admitted.

**27.** According to the petitioner, the impugned order suffers from serious legal errors. It mischaracterises the dispute. It ignores facts. It overlooks binding regulations. It exceeds jurisdiction. The assessment dated 26 March 2010 is lawful. It must be restored. The impugned order dated 1 August 2011 must be quashed.

**28.** Respondent No. 2 submitted that that the Petitioner inspected nine premises in January 2010. Two premises are owned by him. The others were in his possession on leave and licence. He says that no change in activity has taken place. He says the Petitioner sanctioned supply for industrial purpose and later reclassified the activity when new tariff came into force in June 2008. He says there is no evidence of change in activity. He relies on the conclusion of the Appellate Authority that changes in tariff category should have been widely publicised.

**29.** Respondent No. 2 further submitted that there is no mandatory provision to inform the Petitioner regarding change in user. He refers to the finding of the Authority that no rule was pointed out requiring disclosure of lease and activity. He says that

every user of electricity is a consumer. He submitted that though the connection stands in the name of the owner, the tenant is the one who uses the electricity and pays charges.

30. Respondent No. 2 then submitted that recategorisation does not attract Section 126. He submitted the Petitioner admitted that no panchanama was done because this was a case of change of purpose only. He submitted no unauthorised use arises.

31. Respondent No. 2 submitted that activities carried out by him were industrial. He submitted the billing record shows this. He says there was no unauthorised use.

32. This Court has heard the parties. I have read the record. I have considered the written arguments and oral submissions. I now deliver the judgment.

**Whether a lessee or occupant a consumer under Section 2(15):**

33. For deciding the issues raised in these petitions, it is necessary to reproduce the definition of “consumer” as given in Section 2(15) of the Electricity Act, 2003. The said provision reads as under:

34. Section 2(15) .“consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government

or such other person, as the case may be;

**35.** Section 2(15) defines a consumer as a person who is supplied electricity for his own use by the licensee or the Government or by any other authorised person. It also includes a person whose premises are connected to the network of the licensee for the purpose of receiving electricity. The definition is clear. It has two parts. First, the connection must be sanctioned in the name of the person. Second, if the connection is not in his name, there must be evidence that the licensee has authorised supply to him for his own use.

**36.** Applying this definition to the present facts, Respondent No. 2 does not fall within either limb of the definition. The electricity connection stands in the name of Respondent No. 1. The supply agreement is with Respondent No. 1. All invoices are issued to Respondent No. 1. Respondent No. 2 never applied for change of name and never obtained permission to use the connection in his own right. There is no document, communication or record showing that MSEDCL authorised him to use electricity from the sanctioned connection.

**37.** Respondent No. 2 relies on the second part of Section 2(15) which states that a person whose premises are connected can also be a consumer. This argument ignores the language and purpose of the provision. The second part does not convert every occupant of a premises into a consumer. It refers only to the person who has the legal right to receive supply for that premises. That person is the one who is recognised by the licensee as the lawful user of

electricity. Physical occupation alone does not confer that legal right. If mere occupation were enough, any sub-tenant, caretaker or trespasser could claim the status of a consumer. That would defeat the scheme of the Act.

**38.** The words “for the purpose of receiving electricity” in Section 2(15) must be read with the requirement of authorisation. Connection to the works of the licensee is not enough. The use must be lawful. It must be based on the permission of the licensee. Respondent No. 2 never disclosed his occupation. He never disclosed his activity. He never obtained permission as required under Regulations 10 and 11 of the Supply Code. His use therefore cannot be treated as authorised use.

**39.** The purpose of the definition in Section 2(15) is to identify persons who have a direct contractual or authorised relationship with the licensee. Such a relationship is essential for the licensee to regulate supply, enforce conditions of use, and ensure safety. Respondent No. 2 had no such relationship. He used electricity behind the back of the licensee. The licensee had no knowledge of his presence or activity. His use was undisclosed. It was unauthorised. It cannot fall within the definition of consumer merely because he happened to occupy the premises.

**40.** The Appellate Authority’s view that every user is a consumer ignores the statutory safeguards. If every person who consumes electricity became a consumer, the requirement of change of name would become meaningless. The conditions of supply would have no relevance. The obligation to disclose tenancy and activity would

be rendered useless. The statutory definition must be applied in a manner that preserves the integrity of the regulatory framework, not undermines it.

41. For these reasons, Section 2(15) does not assist Respondent No. 2. His reliance on the definition is misplaced. The statutory requirements are not satisfied. His use was without authority. His claim to consumer status must be rejected.

**Whether a Tenant Using Electricity Can Be a “Person Aggrieved” under Section 127:**

42. For deciding the aforesaid issue, it is necessary to reproduce the statutory scheme governing Sections 126 and 127 of the Electricity Act, 2003. The said provisions read as under:

**“126. Assessment—** (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of

hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to [twice] the tariff applicable for the relevant category of services specified in sub-section (5).

*Explanation.*—For the purposes of this section,—

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “unauthorised use of electricity” means the usage of electricity—

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorised.

**127. Appeal to appellate authority.**—(1) Any person aggrieved by the final order made under Section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.”

**43.** Section 127 gives the right of appeal to any person aggrieved by the final order under Section 126. The meaning of person aggrieved must be understood from the structure of Section 126, especially subsections (2) and (3), because these provisions identify the person against whom the law proceeds. Only interpretations that match the words of the statute and the evidence that flows from its scheme can be accepted.

**44.** Section 126(2) states that the provisional assessment must be served on the person in occupation, possession or in charge of the premises. The law does not say that the notice must go only to the owner. It directs the notice to the person who controls the premises and uses the electricity. This is credible evidence of the legislative intent. The statute treats the occupant as the immediate answerable person.

**45.** Section 126(3) grants this very person the right to file objections, receive a hearing, and obtain the final order. This further shows that the person facing the assessment is the person expected to challenge or accept it. The final order under Section 126 is addressed to him. His rights and liabilities are determined in that order. The appeal under Section 127 follows this order and

therefore belongs to him.

46. In light of this framework, the meaning of person aggrieved becomes clear. A person who receives the provisional assessment, participates in the hearing and receives the final assessment order is the person whose rights are affected. He is not a stranger. He is the one on whom the law imposes liability. He therefore satisfies the requirement of legal injury.

47. A person aggrieved must show real prejudice to his rights or interests. The injury must arise from the operation of law. When the final order under Section 126 demands payment at twice the tariff or fixes responsibility for unauthorised use, the person served with that order suffers a direct legal consequence. This is not a theoretical injury. It is a financial burden and a finding of wrongdoing. The statute gives him a right to appeal because he is personally affected. Only a person whose legal rights are impacted can approach the court or authority. A stranger cannot intervene. Applying that principle here, the person in occupation or charge of the premises is the only person who meets the test. He alone receives notice. He alone is asked to show cause. He alone is saddled with the final assessment. He alone, therefore, can be treated as a person aggrieved.

48. The credible evidence lies in the plain words of subsections (2) and (3) and in the statutory steps that follow. The law recognises the occupant as the responsible person throughout the process. The right to appeal under Section 127 must be read in harmony with this scheme. Any other interpretation would defeat

the procedure laid down in Section 126.

49. On this basis, a tenant or any other occupant who has been served with the assessment order is a person aggrieved under Section 127. He suffers legal injury. He has a statutory right to challenge the assessment.

**Whether the Facts Establish Unauthorised Use under Section 126:**

50. On the material placed before the Court, the facts clearly establish unauthorised use of electricity within the meaning of Section 126 of the Electricity Act, 2003. The inspection carried out by the Flying Squad revealed that the premises sanctioned strictly for industrial activity were being used for commercial laboratory and testing operations. This finding was recorded on site. It was accepted by the representative present during inspection. There was no protest or objection at that stage. The factual position therefore stands admitted on record.

51. Section 126 applies when electricity is used for a purpose other than the one for which the usage was authorised. The sanctioned purpose here was industrial use. The actual purpose found during inspection was commercial testing work. These two activities are distinct in nature. Commercial testing requires a separate category and separate sanction. No such sanction was ever obtained. Respondent No. 2 also failed to disclose his occupation or activity to the licensee as required under Regulations 10 and 11 of the MERC Supply Code. This concealment strengthens the inference that the use was unauthorised.

**52.** The Electricity Act does not look at the label attached by the user. It looks at the nature of the activity actually carried out. The activity found during inspection was commercial. The connection sanctioned was industrial. This difference squarely attracts Section 126. Once the factual deviation is established, the law mandates that unauthorised use must be assessed in accordance with the statutory formula. There is no discretion to treat such deviation as a mere tariff misclassification.

**53.** The attempt of Respondent No. 2 to describe the issue as a simple tariff dispute is not supported by the record. A tariff dispute arises only when the purpose of use is authorised but misclassified. Here, the basic purpose of use itself had changed without permission. That is the central trigger for Section 126. Changing the description of the dispute cannot alter the legal character of the conduct.

**54.** It is also settled law that unauthorised use must be judged on the basis of objective facts noted during inspection. The Supreme Court in *Executive Engineer v. Sri Seetaram Rice Mill* (2012) 2 SCC 108 has held that where the purpose of use differs from the sanctioned purpose, unauthorised use is clearly made out. The present facts fall within that principle and support the Petitioner's action.

**55.** In view of these facts, the Court finds that the inspection report is reliable, the deviation is established, and the ingredients of Section 126 stand fully satisfied. The case is therefore a clear case of unauthorised use of electricity.

**Ignorance of tariff order is no defence; tariff becomes binding upon publication:**

56. The Supreme Court in BSES Ltd. v. Tata Power Co. Ltd., (2004) 1 SCC 195, has laid down an important principle that directly applies to the present case. The Court held that once a tariff order is issued by the Regulatory Commission and published in the Official Gazette, it becomes binding on all licensees and consumers. The Court further held that the validity and enforceability of tariff do not depend on the personal knowledge or awareness of any consumer. Publication in the Gazette is treated as sufficient notice in law.

57. Applying this principle to the present case, Respondent No. 2's plea that he was unaware of the tariff order of June 2008 cannot be accepted. The tariff order was notified by the Maharashtra Electricity Regulatory Commission in the Official Gazette. From that moment, it acquired statutory force. The law does not require the distribution licensee to personally intimate each consumer. It also does not excuse a user from complying with the tariff schedule merely because he claims that he did not know of the change.

58. In fact, the Supreme Court in the judgment cited above has clarified that a consumer's ignorance of the applicable tariff is irrelevant to his liability. What matters is the existence of a lawful tariff order which has come into force through statutory publication. Once that happens, every consumer is bound by it, and every use of electricity is measured against it.

**59.** In the present facts, Respondent No. 2 was carrying out commercial laboratory activity in premises sanctioned for industrial use. Even if he claims ignorance of the revised tariff system introduced in June 2008, that plea does not change the legal character of his use. Unauthorised use is determined by purpose, not by tariff awareness. The tariff order did not create unauthorised use; the change in the nature of activity did. Therefore, ignorance of tariff not only fails as a defence, it is also irrelevant to the question whether Section 126 applies.

**60.** The judgment of the Supreme Court squarely supports the conclusion that Respondent No. 2's plea of lack of knowledge cannot protect him from the statutory consequences of unauthorised use. The tariff order was validly notified. It became binding from that date. The Respondent had a duty to comply with it. His alleged ignorance does not absolve him of liability.

**61.** The Appellate Authority found fault with MSEDCL for not giving wide publicity to the tariff changes. This reasoning is misplaced. The law is clear about how tariff changes are to be made known. Every tariff order is issued by MERC. MERC publishes these orders in the Official Gazette. Once published, the order becomes binding on all consumers and licensees. This method of publication is recognised by law as sufficient notice to everyone. No further steps are required.

**62.** There is no provision in the Electricity Act or in the MERC Supply Code that requires MSEDCL to individually inform consumers or to carry out special publicity campaigns when tariff

categories change. The licensee has no such duty. The statute places the responsibility on MERC, not on MSEDCL. Consumers are expected to be aware of the tariff schedule notified by the regulator.

63. The Appellate Authority shifted this responsibility to the wrong party. Instead of holding the consumer responsible for disclosing his use and activity as required under Regulations 10 and 11, it placed the blame on the licensee for not publicising tariff revisions. The law does not permit such shifting of burden. Publicity by the licensee is not a condition for applying Section 126. The only question is whether the consumer used electricity for a purpose other than the sanctioned purpose.

64. By criticizing MSEDCL for something it was not legally bound to do, the Appellate Authority introduced a requirement not found in the statute. This error affected the entire reasoning of the impugned order and weakened the foundation on which it rests.

**SSI Registration is premises-specific and cannot validate activity in another unit:**

65. The argument of Respondent No. 2 that a single SSI Registration Certificate covers all galas used by him cannot be accepted in law. Courts have repeatedly held that registration granted for industrial purposes is always unit-specific and location-specific. It does not automatically extend to any other premises unless a separate application is made and a separate inspection is carried out for that unit.

66. The permissions and registrations relating to industrial activity are tied to the specific premises for which they are issued. Such licences do not “travel” with a business entity from one location to another without fresh approval. Industrial registrations are limited to the premises inspected and cannot be used as a blanket authorisation for activities at other locations. An entity intending to operate from multiple galas or units must obtain separate registration for each, because regulatory conditions, safety requirements and permissible activity vary from premises to premises.

67. This principle applies squarely here because SSI registration is granted only after local inspection of a particular unit for its machinery, safety standards and nature of activity.

68. Applying these principles to the present case, the SSI certificate produced by Respondent No. 2 relates to his original gala. It does not cover the several additional galas from which he was conducting commercial laboratory operations. Respondent No. 2 did not obtain separate registration for the inspected premises. This omission is significant. It shows that his activity in the new galas was carried out without the knowledge or approval of the competent authority. It also shows that he expanded his operations behind the back of the statutory regulators.

69. SSI registration therefore cannot validate the activity found during inspection. It cannot override the fact that the connection in question was sanctioned only for industrial use and that the actual activity being carried out was commercial in nature. The

Appellate Authority erred in treating an SSI certificate relating to a different premises as if it covered the inspected galas. This approach contradicts the law laid down in the above precedents and misreads the regulatory practice governing small-scale industries.

70. For these reasons, the principle that SSI registration is premises-specific supports the finding that Respondent No. 2's activity in the inspected premises was undisclosed and unauthorised.

**Whether the Twice-Rate under Section 126(6) can Be Reduced:**

71. Section 126 lays down the method of calculating the assessment for unauthorised use of electricity. Sub-section (5) directs the assessing officer to determine the period of unauthorised use. Sub-section (6) then clearly states that the assessment must be made at a rate equal to twice the tariff applicable to the relevant category.

72. The language of the statute is simple. It does not say "may be made." It does not give the officer discretion. It uses the word "shall." When a statute uses "shall," the authority has no choice. He must act exactly as the law directs. The law here directs that the user must be charged at twice the normal tariff.

73. The reason behind this provision is also important. Parliament intended Section 126 to act as a deterrent. If a person uses electricity for an unauthorised purpose, he must not pay the same rate as an honest consumer. Otherwise, there would be no difference between authorised and unauthorised use. The higher

rate is therefore not a punishment in the criminal sense. It is a statutory consequence meant to protect public revenue and discourage misuse of electricity.

74. Allowing reduction of the “twice rate” multiplier would completely defeat the object of Section 126. If the assessing officer or the appellate authority were allowed to reduce or waive the double rate, then every unauthorised user could simply ask for a lower amount and escape the consequences of misuse. That is exactly what the statute intends to prevent.

75. Courts have repeatedly held that where Parliament has fixed a formula, authorities cannot change it. They cannot apply sympathy. They cannot apply equity. They cannot reduce the multiplier. They cannot negotiate the liability with the consumer. The assessment must follow the formula prescribed in the Act and nothing more.

76. In the present case, once it is held that Respondent No. 2 used electricity for commercial activity in a premises sanctioned for industrial use, Section 126(6) applies in full. Neither the assessing officer nor the appellate authority had any power to dilute the rate. The statute binds them. They must apply the twice-tariff multiplier.

77. Therefore, the request of Respondent No. 2 that the charges be confined only to “tariff difference” and that the penalty be waived has no foundation in law. The assessing officer acted correctly in applying the double rate. The appellate authority had no jurisdiction to reduce or modify this statutory consequence. The

multiplier fixed by Section 126(6) is mandatory. It cannot be reduced, waived or substituted by any authority under the Act.

**78.** For these reasons, the request for waiver of penalty has no legal basis. The liability under Section 126 must be enforced in full as mandated by the statute.

**79.** For these reasons, following order is passed:

(i) The impugned order dated 1 August 2011 passed by respondent No. 3 is set aside;

(ii) The final assessment dated 26 March 2010 issued by the petitioner under Section 126 is restored.

**80.** All the writ petitions stand disposed of in above terms. There shall be no order as to costs.

**81.** All pending interlocutory application(s) stand disposed of in terms of this order.

**(AMIT BORKAR, J.)**