

**Before**

# **UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No. 16 of 2022 (Suo-Motu)**

**In the matter of:**

Suo-moto proceedings in the matter of applicability of Rate Schedule RTS-4A, Agriculture Allied Activities in light of Hon'ble ATE Order dated 10.02.2022 in Appeal No. 339 of 2017.

**In the matter of:**

M/s Flex Food Limited & Ors.

... Petitioner

**AND**

**In the matter of:**

Uttarakhand Power Corporation Ltd.

... Respondent

**CORAM**

**Shri D.P. Gairola    Member (Law) - Chairman (I/c)**

**Shri M.K. Jain        Member (Technical)**

**Date of Order: May 27, 2022**

This Order relates to the suo-moto proceedings initiated by the Commission in the matter of applicability of Rate Schedule RTS-4A: Agriculture Allied Activities in light of Hon'ble ATE Order dated 10.02.2022 in Appeal No. 339 of 2017.

## **1. Background and submissions**

- 1.1 The Commission (hereinafter referred to as "UERC") vide its Order dated 29.03.2017, in the matter of Suo-Moto proceedings regarding applicability of Rate Schedule RTS-4A: Agriculture Allied Activities on the connection no. 557 issued to M/s Flex Foods Limited (hereinafter referred to as "Petitioner") at their Mushroom Farm at Chidderwala, Dehradun, directed Uttarakhand Power Corporation Limited (hereinafter referred to as "Respondent")

or “UPCL”) to convert the connection no. 557 of M/s Flex Foods Limited from RTS-7 to RTS-4A w.e.f. 01.04.2015.

- 1.2 The Respondent preferred an appeal against the Commission’s Order dated 29.03.2017 before Hon’ble ATE challenging the Commission’s Order broadly on the grounds of contravention of applicable Regulations & applicability of jurisdiction of the Commission.
- 1.3 Hon’ble ATE vide its Order dated 10.02.2022 set aside the Commission’s Order dated 29.03.2017 and remitted the matter for fresh consideration and decision by the State Commission after hearing all the stakeholders, and in accordance with law. Hon’ble ATE also stated in its Order that the Complainant, i.e. UPCL shall also be a party to the proceedings to be held on the remission of the matter and will have a right of hearing.
- 1.4 Hon’ble ATE in its Order dated 10.02.2022 also made certain observations, the relevant portion of which is reproduced hereunder:

*“6. We had some doubts as to the jurisdiction of the Commission to entertain and adjudicate upon such a complaint of an individual consumer. In this context, reliance was placed by the appellant on judgment dated 22.03.2011 in appeal no. 181 of 2010 (Uttar Gujarat Vij Company Ltd v. Gujarat State Electricity Regulatory Commission and Ors.). But then the learned counsel for the respondent Commission sought to explain that the Commission had taken it as an issue of violation of law and regulatory framework in the shape of tariff orders and consequently had also invoked, at one stage, provision contained under Section 142 of the Electricity Act, 2003, intendment being to pass an order which would apply generally to all similarly placed consumers and so as to bring clarity in the tariff orders. We find such objective not reflected in the impugned decision.*

*7. In our considered view, the examination of the facts by the Commission is not comprehensive enough to reach the conclusions which have been returned so as to result in the impugned directions. There seems to be some overlap in the definitions of the two categories and there is a need for the Commission to pass a more comprehensive order so that confusion on the applicability prevails. Needless to add such exercise cannot be undertaken without taking into account the concerns and submissions of the distribution licensee, this inclusive of the objection to the jurisdiction exercised.”*

- 1.5 The Commission, in light of the directions issued by Hon’ble ATE asked UPCL to submit its comments in the matter. The Commission also asked M/s Flex Foods Limited to submit its rejoinder on the comments filed by UPCL.

- 1.6 The Commission also held a public hearing in the matter on 20.05.2022 to give an opportunity to the concerned stakeholders to make their submissions before the Commission. The Commission received a total of 11 comments in the matter from various stakeholders.
- 1.7 The Petitioner's submission, stakeholders' comments and the Respondent's submission in the matter alongwith the Commission's view on the same is discussed in the following paras of this Order.

## **2. Petitioner, stakeholders and Respondent's submission**

- 2.1 The Respondent, i.e. UPCL submitted that previously M/s Flex Food Limited vide their letter dated 03.11.2016 requested UPCL that its mushroom cultivating unit at Chidderwala has an electricity connection of 1000 kVA under rate schedule RTS-7, applicable for LT and HT industry, and requested for converting its connection from RTS-7 category to RTS- 4A category and revise their electricity bills w.e.f. 01.04.2016.
- 2.2 UPCL submitted that in the past M/s Flex Food Limited applied for a load of 1600 kVA in the year 1992 and the same was allowed under HV-2 category as per the applicable category and tariff as existed for large and heavy power, further later on M/s Flex Food had also applied for a continuous supply after reducing the load to 1000 kVA.
- 2.3 UPCL further submitted that the Commission in Tariff Order dated 05.04.2016 for the first time created a new category RTS-4A titled as Agriculture Allied Activities, which was applicable to supply of power for use in;
- 1) Nurseries growing plants/saplings.
  - 2) Polyhouses growing flowers/vegetables and fruits which doesn't involve any kind of processing of product except for storing and preservation.

UPCL submitted that the Mushroom cultivation was intentionally left out and was included in RTS-7 Category. UPCL also submitted that vegetable, fruits, floriculture & Mushroom integrated units engaged in processing, storing and packaging in addition to farming and those not covered under RTS-4A should be covered under RTS-7.

- 2.4 UPCL submitted that on the basis of the representation made by M/s Flex Food Limited on 03.11.2016 for conversion of their connection to RTS-4A category, the Concerned Executive

Engineer of UPCL submitted his report dated 15.12.2016 wherein it was submitted that the tariff Schedule of RTS-4A applies to nurseries growing plants/saplings, polyhouses growing flowers/vegetables and which doesn't involve any kind of processing of product except for storing and preservation. UPCL submitted that the report also stated that the RTS-7 specifically pointed out to Mushroom integrated units, and also the said unit of M/s Flex Foods Limited utilizes a huge amount of electricity in order to control the temperature of the plant.

- 2.5 UPCL submitted that M/s Flex Food Limited by their letter dated 21.12.2016 requested the Commission to intervene in the matter and give necessary directions to UPCL to amend their rate schedule and categorize their mushroom cultivation farm under Tariff category RTS-4A with retrospective effect from the date when RTS-4A was made applicable, in response to which the Commission vide their letter dated 22.12.2016 directed UPCL to submit their comments and a report on the action taken by UPCL.
- 2.6 UPCL submitted that vide letter dated 24.12.2016 they submitted their comments to the Commission stating that M/s Flex Food limited is a company engaged in the growing and processing of Culinary Herbs, Mushrooms, Fruits and Vegetables. UPCL also submitted that it has been mentioned on the website of M/s Flex Foods Limited that it sources its raw materials through contract farming, thus making it clear that it procures its raw material from elsewhere, stores and packages the same on its premises, therefore, the electricity connection of the Flex Food limited cannot be converted to RTS-4A.
- 2.7 UPCL submitted that the Commission vide their letter dated 19.01.2017 directed UPCL to form a joint team comprising of the Chief Engineer, Distribution (Garhwal Zone), UPCL and Chief Engineer (Commercial), UPCL for the inspection of the activity being carried out at the premises of connection no. 557 for verification of the claims made by M/s Flex Food limited, and in compliance of the same, the Committee submitted its report on 31.01.2017 wherein it was stated that M/s Flex Food limited was mainly using heaters, blowers, A/C Units, in order to maintain the temperature/humidity required for growing the mushrooms in a controlled environment. The report further stated that it was evident that Flex Foods were involved in the growing of fresh mushrooms which did not involve processing of ready mushrooms at this site of connection, and the electricity is being used for other

purposes that are ancillary to the farming or growing of mushrooms.

- 2.8 UPCL submitted that the Joint Committee along with concerned Executive Engineer during their site visit on 25.01.2017 submitted their analysis along with their site visit report on the matter which was not assigned to the Committee, and the site visit report prepared by the Executive Engineer clearly showed different plant/equipment such as boilers, conveyor machines, AC Plants , which proved that the industrial activity was being done at M/s Flex Food connection no. 557. UPCL submitted that the analysis by the members of the Committee was not required and, therefore, could not be the basis for permitting the change in the category. UPCL submitted that this issue was not before the Commission as no Petition in this regard was filed, and this matter was purely an issue which was subject to the jurisdiction of CGRF and required a finding and analysis of the facts.
- 2.9 UPCL submitted that upon the receipt of report of the joint Committee, the Commission directed UPCL to convert the said connection no. 557 of M/s Flex Foods Limited to RTS-4A from RTS-7 w.e.f. 01.04.2015, and also issued a show cause notice to UPCL as to why appropriate action should not be taken against UPCL under section 142 of the Electricity Act, 2003 for the alleged delay in the matter.
- 2.10 UPCL submitted that a detailed reply was submitted on 09.03.2017 wherein it was explained that how the claims of M/s Flex Foods Limited are not justified and submitted their response on the conclusion made by the Commission that the report of the Committee unambiguously confirms the claim of M/s Flex Foods Ltd. regarding non-involvement of any process. UPCL in its reply dated 09.03.2017 submitted that M/s Flex Food was not growing mushrooms completely naturally, also the list of load/equipment's provided makes it apparent that the range of processes involved, before during and after the production of mushroom comprises together to form a mushroom farm and the same are itself sufficient to show that it is not simply an agricultural activity rather it is an industrial activity. UPCL also submitted that M/s Flex food has neither declared itself as a nursery or a polyhouse which were the only two categories to which RTS -4A is applicable, and the RTS-7 category is applicable for the vegetables, fruits, floriculture and mushroom integrated units engaged in processing, storing and packaging in addition to farming and which are not covered under RTS-4A.
- 2.11 UPCL submitted that the Commission did not consider the aforesaid reply and passed the

suo-moto order on 29.03.2017, wherein it was held that the growing/cultivation of any vegetable/fruit not involving processing (which may consequently change the form of the product) is covered under RTS-4A category. UPCL submitted that the Commission had held that not having a nursery or a polyhouse based setup does not disqualify a consumer to be covered under RTS-4A category, and directed UPCL to convert the electricity connection of M/s Flex Food Limited from RTS-7 to RTS-4A w.e.f. 01.04.2015. UPCL also submitted that they were not aware about the institution of any suo-moto proceedings in the matter neither any opportunity to file the reply/comments was provided.

- 2.12 UPCL submitted that since the Commission's order has been set aside by Hon'ble ATE, therefore, the findings and the reasons & the basis upon which the findings were based do not survive any longer. UPCL submitted that the matter has been remitted for fresh consideration, however, it is not clear as to the manner in which the issue has to be dealt with, as there was neither any petition nor any proceedings.
- 2.13 UPCL referring to observations made by Hon'ble ATE in its Judgement submitted that Hon'ble ATE has considered the facts of UPCL that this is a dispute between consumer and distribution licensee which does not fall under the jurisdiction of the Commission, and also the earlier findings and reasons do not survive as the Order has been set aside especially considering the specific finding/ observation though conservatively.
- 2.14 UPCL submitted that such High Intensive units consuming huge amount of electricity working as industry in totality earning huge profits by selling them in international markets and one unit of this industry engaged in agriculture activities in which growing of plants, mushrooms, fruits are not being done in natural environment cannot be considered as part of RTS-4A as per the intent of the provisions of the applicable Tariff Order, and further such industries would obtain undue benefit which will ultimately cause burden to the other consumers of the State.
- 2.15 UPCL also submitted that, no proceedings have been instituted in this matter and also findings of the suo-moto order dated 29.03.2017 have been set aside, thereby rejecting all the submissions made by M/s Flex Food, by the Hon'ble ATE. UPCL submitted that at the present juncture since there is no proceedings, nor any clarity as to the facts and scope nor there are issues to deliberate, therefore it is not possible to visualize the points on which

submission is to be made, and, accordingly, UPCL has limited its submissions to the issue which was involved in passing the suo-moto order dated 29.03.2017, and requested for providing an opportunity to make elaborate submission if the Commission decides to hear the matter, and also elaborate the matter which the Commission wants to consider especially from the point of view whether the proceedings would be commenced as a petition of any individual consumer or a general proceedings with respect to all concerned stake holders would be taken up by holding a public hearing.

- 2.16 In response to the same, M/s Flex Foods Limited submitted that their company is engaged in growing of fresh mushrooms with mushroom cultivation farm at Chidderwala, Dehradun, and have separate processing units at other site which is located 8 kilometer apart from their Chidderwala site.
- 2.17 M/s Flex Foods Limited submitted that the information mentioned in their website regarding sourcing of raw material etc. pertains to activities being carried out at their other site at Lal Tappar Industrial Area, and that they have never requested for conversion of electricity connection of that site.
- 2.18 M/s Flex Foods Limited also submitted that Ministry of Industry, National Bank of Agricultural and Rural Development, and Department of Horticulture (Government of India) have issued directions to Horticulture Commissioner, Joint Director of Industries and Special Secretary, Department of Industry not to consider Cultivation of Mushroom as industrial activity and should be considered as an agricultural & allied activities.
- 2.19 M/s Flex Foods Limited further submitted that RTS-4A category was created for units engaged in Agriculture Allied Activities which are not involved in any kind of processing of products except for storing and preservation, and their unit at Chidderwala is exclusively engaged in growing of fresh mushrooms which is purely an agricultural activity. The Petitioner also submitted that the income derived from such activity is an agricultural income under Section 2 (1A) of the Income Tax Act and income derived from such activity is not eligible to tax u/s 10(1) of the Income Tax Act, 1961.
- 2.20 M/s Flex Foods Limited submitted that the Commission has relied upon the report of the joint Committee which clearly stated that M/s Flex Foods Ltd. were involved in the growing of fresh mushrooms which did not involve processing of ready mushrooms at this site of

connection.

- 2.21 Further, various comments were received from stakeholders during the process of public hearing. The same are summarized as discussed in the following paras.
- 2.22 Shri Dhruv Agarwal of M/s Sterling Farms, Shri Hiresha Verma of M/s Han Agrocare, Shri Amit Kumar Sharma of M/s Welkin Overseas, Ms. Sarika Chauhan of Nature Green, Shri Naveen Patwal of Welkin Foods, M/s Aahar Mushroom Products, M/s The Mushroom Barn, M/s Redridge Mushrooms, M/s Fusion Foods, M/s Nature's Bestow & Mushroom Farmers Association, Uttarakhand, submitted that the State of Uttarakhand is progressing towards, becoming a mushroom hub as the mushroom growing activity is covered under the RTS-4A category, and if the said activity is excluded from this category then it will hamper the growth of this industry due to high rate of electricity and also high cost of mushroom production as compared to other States and, accordingly, requested that the mushroom production may not be excluded from RTS-4A category.

### **3. Commission's views and decision**

- 3.1 The Commission has taken the submission of the stakeholders on record and has heard them in detail during the hearing. Following this, the Commission has identified the following issues cardinal to address the matter and the concerns of the Hon'ble APTEL raised in the order dated 10.02.2022:-
- (i) Whether this Commission has jurisdiction to delve into the matter pertaining to a dispute between a consumer and Distribution Licensee?**
  - (ii) Whether mushroom cultivation was covered in the Tariff Order dated 10.04.2015 under the RTS-4A Category?**
  - (iii) Whether M/s Flex Foods Ltd. is entitled to be billed under the RTS-4A Category?**
- 3.2 Before deliberating upon and examining the justifications of applicability of rate schedule (RTS-4A) on the consumers, vis-à-vis M/s Flex Foods Ltd., it is imperative that the jurisdiction of Commission w.r.t. taking up a matter of individual consumer be decided upon first.
- 3.3 The Respondent UPCL, vide its submission dated 24.03.2022, and during the hearing as well, has raised questions on the jurisdiction of the Commission on taking up a matter which is a



consumer and Licensee's dispute. In this regard, it is to clarify that although, the instant matter may be a dispute between a consumer and the Distribution Licensee, however, it is important to note that the cause of dispute between the consumer and UPCL is due to wrong applicability of tariff category, due to alleged ambiguity in application of the tariff category, and that, such ambiguity/interpretation of the Tariff Orders are only to be clarified by the Commission. Besides this matter not only pertained to M/s Flex Food Ltd. but also to other consumers involved in mushroom cultivation, hence, the Commission initiated the suo-moto proceedings as it was a statutory obligation of the State Commission to ensure that any particular category of consumers has been rightly considered under the approved tariff category to which it belongs. In this regard, the Hon'ble APTEL in the matter of Madhya Gujarat Vij Company Limited v. Yash Co-operative Group Housing Society Ltd., Appeal No. 311 of 2013 dated 27.05.2014, while recognizing the jurisdiction of the Commission to entertain the matter where consumer is being charged under right category, also drew a distinction as to when a Commission can or cannot entertain a consumer matter:-

*"12.1 ...As observed by the Hon'ble Supreme Court in Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd. (2007) 8 SCC 381 and in M/s H.P. State Electricity Board v. M/s Gujarat Ambuja Cements Ltd. and others, in Civil Appeal No. 2005 of 2011, vide judgment, dated 22.2.2011, the State Commission, being State Electricity Regulator, is under statutory obligation to ensure that any particular category of consumers has been rightly considered under the approved tariff category to which it belongs and is charged the tariff approved by the State Commission for the said category because the State Commission is under statutory duty or obligation to ensure the complete and full compliance of its tariff order in letter and spirit by the distribution utility and to direct the distribution licensee to comply with the tariff order by adhering to consumer categories as approved under the tariff order and recover tariff as approved for that category. Thus, the adjudication of consumer disputes arising out of classification and reclassification of consumer categories is quite different and distinct from ensuring compliance of the tariff order in letter and spirit. The State Commission, being State Electricity Regulator, is fully competent and empowered to look into the fact that the particular class of consumers or category of consumers is not over-charged under any so called new nomenclature or by making quite new categories without the approval of the State Commission, otherwise, the provision of Electricity Act, 2003, State Commission's Regulations, Supply Code and National Tariff Policy, would be put to misuse by some errant distribution licensees."*

- 3.4 The Commission is convinced with the submission made by the Respondent and law laid down by the Hon'ble Supreme Court in the above referred case is fully applicable in the facts of the present case. Moreover, taking cognizance of such matters and initiating proceedings is rather incumbent on the State Commission as such matters are not limited to a dispute between two parties because orders in the same *mutatis mutandis* applies to all the other consumers who are involved in the same business. Like in the instant case, order on applicability of RTS-4A Category to M/s Flex Food Ltd. shall apply to all consumers involved in the same business. Hence, the instant matter is purely under the jurisdiction of the Commission which is the State Commission's foremost authority to give clarifications on such matters.
- 3.5 Further, coming on to the second issue, i.e. whether mushroom cultivation was covered in the Tariff Order dated 11.04.2015 under the RTS-4A Category it is relevant to reproduce the definition of the sub-category RTS-4A (Agriculture Allied Activities) which is given hereunder:-

*"Agriculture Allied Activities: All Consumers involved in nurseries growing plants/saplings, poly houses growing flowers/vegetables and fruits which doesn't involve any kind of processing of product except for storing and preservation."*

- 3.6 The above definition of the sub-category "Agriculture Allied Activities" was introduced by the Commission vide Tariff Order dated 11.04.2015. While introducing the said category, the Commission gave a reasoning for the same and the same is reproduced hereunder:-

*"5.2.3.5 Tariff Categorisation for Horticulture and Floriculture Consumers; Various suggestion from stakeholders including Government of Uttarakhand were received on not considering horticulture and floriculture consumers as industrial consumers. **The Commission in its in-house paper mentioned that as the activities involved in horticulture and floriculture are in nature close to agricultural activities, the Commission intends to create a separate category for the Agriculture Allied Activities which will apply to the consumers engaged in Horticulture, Floriculture, etc. with an appropriate tariff.** UPCL in its response submitted a copy of GoU's letter no. 167/I(2)/2015-05-14/2015 dated February 04, 2015 wherein it had been directed by Cabinet of Ministers to not levy industrial tariff to such consumers. UPCL, accordingly, requested the Commission to take decision in the matter. Some other stakeholders during the public process as well*

as during SAC meeting suggested that in line with the practice in other States, there should be a separate category for Horticulture and Floriculture consumers. The Commission, accordingly, has created a new sub-category for such consumers and has designed the tariffs for such sub-category at 50% of the Average Cost of Supply. The Commission in order to avoid any ambiguity in identifying such consumers has defined this sub-category "Agriculture Allied Activities" as follows:

*"Agriculture Allied Activities: All Consumers involved in nurseries growing plants/saplings, polyhouses growing flowers/vegetables and fruits which doesn't involve any kind of processing of product except for storing and preservation."*

*Such consumers shall now be charged at separate tariff under rates as approved for "Agricultural Allied Activities".*

**[Emphasis supplied]**

- 3.7 Later, on receiving representations from the stakeholders, it was realized that even though mushroom growing is included in RTS-4A (Agriculture and Allied) rate schedule, it was not being implemented by UPCL, the Commission vide the Tariff Order dated 29.03.2017, clarified that mushroom cultivation is covered in the RTS-4A Category. The said view of the Commission is reproduced hereunder:-

*"The Commission in its Tariff Order dated April 10, 2015 for FY 2015-16 had created a separate category Agriculture Allied Activities after due consultation process and hence, the tariff applicable for mushroom cultivation should not be covered under commercial tariff and the tariff for Agriculture Allied Activities should be applicable. Further, the Commission in Rate schedule has specifically included "mushroom cultivation" in RTS 4A Category."*

- 3.8 It is to emphasize that the above extracts of the Tariff Orders dated 11.04.2015 and 29.03.2017 be read harmoniously keeping in view the avowed broad objective/intent of the Commission. The Commission had introduced RTS-4A in 2015 covering mushroom cultivation therein. On representation when it was realized that mushroom growers are being deprived of the benefit of the RTS-4A Category, the Commission in 2017 clarified the same. Further, the instant case must be read in the light of the Rule of Beneficial Construction which involves giving the widest meaning possible to a statutes when there are two or more possible ways of interpreting a section or a word, the meaning which gives relief and protects the benefits of large number of people which are purported to be given by the

legislation, should be chosen. A beneficial statute has to be construed in its correct perspective so as to fructify the legislative intent. From conjoint reading it is amply clear that the legislative intent here was to cover mushroom cultivation under RTS-4A Category which does not involve any kind of 'processing' and such consumers must not be deprived of the same as the Commission in Para 5.2.3.5 of the Tariff Order dated 11.04.2015 had laid down its intent of creating a new category for Horticulture and Floriculture Consumers and Horticulture also covers mushroom farming. Besides there is no denial that mushroom is also a kind of vegetable and is included in Horticulture by the National Horticulture Board. Hence, the RTS-4A Category specified in the Tariff Order for FY 2015-16 & FY 2016-17 cover the mushroom cultivation which does not involve processing.

3.9 Coming to the third issue, i.e. whether M/s Flex Foods Ltd. is entitled to be billed under the RTS-4A Category; it is a recorded fact that, the Commission on taking cognizance of the grievance of M/s Flex Foods Ltd. that it is being billed under RTS-7 Category instead of RTS-4A Category, initiated a *suo-moto* proceeding wherein the Commission gave directions to UPCL to form a joint team to examine the matter as is recorded in the parent order of the Commission dated 29.03.2017 and *supra*. The committee had submitted its report, examining which it was found that no such 'process' is being carried out by the consumer which disallows it to be covered under RTS-4A Category.

3.10 Now, it is relevant to know how we understand the word 'process' or 'processing' for which following dictionaries are being taken for reference;

1) Merriam Webster Dictionary:

- a natural phenomenon marked by gradual changes that lead toward a particular result
- a series of actions or operations conducing to an end

2) Cambridge Dictionary:

- the series of actions that are taken to change raw materials during the production of goods

3) Collins Dictionary:

- a series of actions that produce a change or development

4) Oxford Learner's Dictionary:

- the treatment of raw material, food, etc. in order to change it, preserve it, etc.

3.11 From the above definitions, it is understood that although the above definitions does not

squarely apply to the meaning of 'processing' in context to the present case, however, for reference sake, reading the definitions makes it clear that 'processing' denotes to a change or transformation/transition. Now coming back to the case of M/s Flex Foods Ltd., as mushroom is cultivated and is sold in its original form without any change, while examining the report of the joint committee it was clear that no such 'processing' was being carried out where there is a 'change' happening, therefore, the Commission, accordingly, gave directions to UPCL to change its category from RTS-7 to RTS-4A.

- 3.12 Moreover, it is relevant to note the submission of M/s Flex Food Ltd. whereby it is informed that Ministry of industry, National bank of Agriculture and Rural Development & Department of Horticulture (Government of India) have issued directions not to consider mushroom cultivation as an industrial activity. The Commission also takes note and agrees with the submission of M/s Flex Food Ltd., that their Assessing Officer (Income Tax Officer) has accepted that the growing of mushroom is an agricultural activity and allowed deduction on account of exempt agricultural income under the relevant section of Income Tax Act, therefore their unit must not be billed under the tariff of industrial category.
- 3.13 Further, regarding the submission of UPCL that the committee report which is being relied upon does not include site visit conducted by the Executive Engineer which showed that industrial activity was being done at M/s Flex Food Ltd., it is observed that this Commission had formed the committee comprising of Chief Engineer, Distribution (Garhwal Zone), UPCL and Chief Engineer (Commercial), UPCL. The said committee submitted its report to the Commission wherein the process flow of growing mushroom in the farm of M/s Flex Food Ltd. is specified which is reproduced hereunder:-

*"SPAWN PREPERATION→COMPOSIT PREPERATION→PASTEURIZATION OF COMPOSIT→ADDITION OF SPAWN IN PASTEURISED COMPOSIT→FILLING OF SPAWNED COMPOSITE IN BAGS→TRANSFER OF BAGS TO GROWING ROOMS→SPAWN RUN→CASE RUN→RUFFLING→ABERATION→CROPPING & HARVESTING."*

The above report of the committee is on records and is final, which reflects only growing of mushroom and no such process where there is a change happening. Observation by other officers/ staff of UPCL is irrelevant when committee has provided its view wherein M/s Flex Food Ltd. is not to be deprived of the RTS-4A Category. The Commission in the

parent Order dated 29.03.2017 had also relied on the said report of joint Committee formed for the purpose and there is no merit in setting aside the findings of said report and form a view contrary to the same based on the site visit report which basically pertains to internal procedure of UPCL and is also assumed to be reflected in the final view of the joint Committee.

- 3.14 Besides above, UPCL has submitted that that there are no proceedings, nor any clarity as to the facts and scope, nor there are issues to deliberate and, therefore, it is not possible to visualize the points on which submission is to be made. In this regard, it is observed that these proceedings are an outcome of the aforesaid Order of the Hon'ble APTEL where it directed the Commission to bring out more clarity in its view taken in the parent order dated 29.03.2017 vis-à-vis applicability of RTS-4A category on M/s Flex Food Ltd. and while doing so, all stakeholders be heard as M/s Flex Food Ltd. being a case which sets the precedent that affects the interest of other similar parties involved in same business. UPCL has been a party in the matter *ab initio*. It is surprising that such submission is coming from UPCL when it was a party to the matter in the parent Order and it was the appellant before the Hon'ble APTEL against the order of this Commission, and it was given opportunity to file its comments before the Commission and to argue its stance during the hearing as well. UPCL has been given enough opportunity and it has made submissions which are on record. Incompetence in producing stronger arguments before the Commission, cannot be referred to as confusion/ambiguity in the proceedings and be cited as an excuse.
- 3.15 Thus, from the above, the Commission is of the view that RTS-4A Category shall be applicable to M/s Flex Foods Ltd. and all the other mushroom cultivators where processing is not involved, from 01.04.2015.
- 3.16 UPCL is directed to ensure compliance of the above Order of the Commission with immediate effect.
4. Ordered accordingly.

(M.K. Jain)  
Member (Technical)

(D.P. Gairola)  
Member (Law)/Chairman(I/c)