

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

Tariff Authority for Major Ports

G. No. : 172

New Delhi, 13 October 2004

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representations made by the port user organisations for waiver of charges on containers which could not be cleared during the strike period at the Chennai Container Terminal Limited as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/37/2004 - CCTL

Representative bodies of the port users of the Chennai Container Terminal Limited	} ---	Applicant
	V/s	
Chennai Container Terminal Limited	---	Respondent

ORDER

(Passed on this 30th day of September 2004)

This case relates to representations made by different port user organisations for waiver of charges on containers which could not be cleared during the period of workers' strike at the Chennai Container Terminal Limited (CCTL).

2.1. The Chennai Custom House Agents' Association (CCHAA), the Hindustan Chamber of Commerce (HCC), the Southern Indian Chamber of Commerce and Industry (SICCI), the Tamil Chamber of Commerce (TCC), the Andhra Chamber of Commerce (ACC), the Chennai and Ennore Ports Steamer Agents' Association (CEPSAA) and M/s. Pushpit Steels Private Limited (PSPL) have represented to this Authority for waiver of charges on containers which could not be cleared due to the workers' strike at the CCTL. Since the issues agitated are common, all these representations have been collectively registered as a tariff case.

2.2. The main points made by the user organisations are as under:

- (i). The productivity of the Terminal has declined from mid January 2004 due to go-slow of the labour of the CCTL and there was total stoppage of work at the CCTL from 22.00 hours of 23 May 2004.
- (ii). The strike at CCTL has caused lot of problems on the export and import front. The creator of the present crisis is the operator of the Terminal and the Trade is the unfortunate sufferer of the ordeal.
- (iii). For any stoppage of work, the Chennai Port Trust (CHPT) follows the following guidelines:
 - (a). Consider full waiver of demurrage / storage, by treating the strike period as dies non if the stoppage of work is due to internal reasons (like strike by Port labour).
 - (b). Consider a percentage waiver (normally 80%) if the strike is by outside agencies like Transport.
- (iv). Users are not responsible for the present problem and the CCTL may be directed to:
 - (a). Waive all the rent charges leviable from 23 May 2004 till restoration of normalcy at the terminal.
 - (b). Where the ground rent has already been collected without concurrence be re-credited to the account of the Line.
 - (c). Stop collection of charges for Special Service Request (SSR) for containers that report to the queue on time for cut-off.

- (d). Refund / recredit SSR collected from 23 May 2004 till restoration of normalcy.
- (v). Even though such waiver may not off set the financial and other consequential loss suffered by the Trade, it is but fair that Trade should not be made responsible for the delays of Terminal operator.

2.2.1. The PSPL has pointed out that their 27 containers landed before the strike commenced i.e. on 19 May 2004 remained stranded at CCTL. The en-block movement to CFS introduced by CCTL did not give priority to first landed containers. The PSPL has requested that CCTL should waive storage charges from 23 May 2004 till the completion of en-bloc movement of containers to off dock CFS. The PSPL has further prayed that the CCTL should bear the liner detention charges for all strike affected consignments and also the congestion surcharge of US \$ 50 per container.

2.2.2. The HCC vide its letter dated 21 June 2004 addressed to the CCTL and copy endorsed to TAMP has also stated that the CCTL may resort to en-block movement of import containers after stopping all direct deliveries if it agrees to move the containers on First In First Out basis or agree that the CCTL will not collect storage charges for import containers from 21 June 2004 till the time the en-block movement is in progress.

2.2.3. The references made by PSPL and HCC about en-bloc movement of import containers is in the context of certain operational procedure introduced by the CCTL reportedly in consultation with users just prior to the strike period and after the strike period. The documents made available by the PSPL bring out such operational procedure prescribed by CCTL for delivery of import containers which are narrated below:

Just before strike period (CCTL Trade Notice dated 22 May 2004)

- (i). Delivery of import containers will be given at CCTL till the 9th day after the berthing of the vessel at CCTL.
- (ii). If any import container has not been collected by the stipulated day, the containers will be transported to the nominated off-dock Container Freight Stations (CFS) by CCTL on the 10th day at no additional cost to the trade.
- (iii). CCTL's storage charges will continue to be applicable upto the date of delivery at the nominated CFS.
- (iv). All containers arrived on or before 15 May 2004 and lying at CCTL yard will be moved to any one of the nominated CFS by CCTL commencing 25 May 2004, unless they are collected from CCTL before this date.

After Strike Period (CCTL Trade Notice dated 18 June 2004)

- (i). No direct deliveries of import containers will be effected from CCTL with effect from 12 noon of 21 June 2004. All import containers will be delivered only for movement to off dock CFSs, from where consignees may take delivery of their containers.
- (ii). The facility of destuffing LCL import boxes at CCTL will continue and the delivery of LCL import consignments destuffed at the CCTL import CFS will continue to take place as per the present practice.
- (iii). Consequent upon the above decision of the trade, 'on-wheel' inspection of FCL import containers at 'O' yard will be automatically suspended.
- (iv). This decision will be reviewed on 21 July 2004.

2.2.4. Subsequently, the CCHAA vide its letter dated 28 July 2004 and 2 August 2004 while reiterating its submission made earlier furnished additional points.

3.1. Since the policy direction issued by the Government under Section 111 of MPT Act, 1963 restrains this Authority from entertaining representations by individual parties, a reference was made to the Ministry of Shipping (MOS) for its advice on disposing of the representations in reference received against CCTL.

3.2. The MOS vide its letter dated 20 July 2004 has advised this Authority to consider the representations in reference on merits and pass speaking orders. It has also been mentioned in the said communication of the Ministry of Shipping that concessions proposed to be allowed by way of waiver of charges may have to be suitably shared by corresponding reduction in the share of CHPT.

4.1. In accordance with the consultation procedure prescribed, a copy each of the initial representations received from the user organisations was forwarded to the CCTL. The comments received from the CCTL vide its letters dated 21 June 2004 and 14 August 2004 are summarised below:

- (i). At the time of take over of the terminal, throughput handled by the port was approx. 3.35 lakhs TEUs and today it has gone up to 5.50 lakhs TEUs due to the efficient service offered by the CCTL. Since the consignees retain the containers in the CY for long period, productivity of the terminal is affected.
- (ii). It agrees to refund the storage charges pertaining to the strike period to the Lines based on the following documentary support.
 - (a). Custom duty paid Bill of Entry Copy
 - (b). CCTL job order within 48 hrs. of payment of Customs Duty.
- (iii). The terminal was operational during the strike period and was working at 55% efficiency. It is, therefore, clarified that full waiver of storage charges during the strike period is not exactly applicable in the case of this strike. In support of this, the CCTL has furnished a summary of containers handled during the strike period 23 May 2004 to 5 June 2004:
- (iv). The labour has been demanding for an abnormal increase in wages in the range of 400% to 700% over the last three years. Since January 2004, the labour has been agitating on this issue. The management made a counter offer with an enhanced productivity scheme allowing workers to earn an additional upto 60% of basic salary based on productivity. This offer was rejected by the workers and the matter went to the Regional Labour Commissioner (RLC) for conciliation in March 2004. As a measure of abundant precaution and to ensure that the trade is not inconvenienced, the CCTL also obtained a stay order from the High Court against a possible strike by the labour during these wage negotiations. Despite the stay order, the workers declared illegal strike, whilst the conciliation proceedings were ongoing with RLC. It has stated that all due diligence was exercised in the treatment of the wage negotiations.

Wage negotiations with the workforce recommenced after illegal strike was called off and a three-year wage settlement has been entered into with the workforce on 19 July 2004 granting them immediate salary increase of 42%.
- (v). With reference to the request of users to stop collection of SSR for containers that report to the queue on time for cut-off, it may be noted that late reporting of export boxes at the Gate is a result of various factors which are out of its control and, therefore, do not fall within the purview of waiver due to strike. It is willing to consider refund of genuine cases of SSRs charged due to strike-related reasons, based on individual applications.

- (vi). It has waived shut out charges for containers that were shut out due to 5 vessels sailing on completion of discharge without loading any outbound cargo, during the strike period.
- (vii). It has confirmed that even during the strike period it continued to give deliveries of containers and the contention of the trade that it was unaware of this fact is incorrect.
- (viii). It has already processed refund requests of genuinely affected importers submitted with the relevant documents amounting to the tune of Rs. 3.8 millions. Further, the claim made by Pushpit Steels Private Limited has been processed based on the facts of the case and credit has been given to the line for storage charged during the strike period.
- (ix). It has fully committed to waive storage charges and process refunds for cases genuinely affected during the strike period based on certain documentary evidence as listed by it and based on the following principles.
 - (a). For the containers in the yard or containers discharged during the strike period (23 May 2004 to 5 June 2004) refund will be based on proof of Customs Duty paid or PNR movement copy or job order.
 - (b). Storage refund for the ICD containers lying in the yard or landed during the strike period will be based on TSA document filled by COA.
 - (c). Storage refund for the containers moved under en-bloc will be from the date of filling of PNR up to the date of gate out of CCTL.
- (x). Lines may assist the importers to get waiver of storage charges by collecting the documents from importers. The CCTL will process such claims speedily and recredit the Lines under advice to the concerned importers.
- (xi). The CHPT may be directed to waive their revenue share during this period for which refunds are allowed by CCTL.
- (xii). It has also submitted that TAMP does not have jurisdiction to rule on these matter since these are bilateral disputes between the lines and the terminal operator. TAMP is not a dispute resolution body, but is a tariff fixing body. The submissions made are without prejudice to this clear-cut position in law and statute.

4.2. A copy each of the initial representations received from the user organisations along with a copy of CCTL letter dated 21 June 2004 was forwarded to CHPT for its comments. We have not received any specific response from the CHPT.

5. A joint hearing in this case was held on 19 August 2004 at the CHPT premises in Chennai. The CCTL, CHPT and the users have made their submissions.

6. The CCTL was requested to furnish additional information regarding details of SSR charges levied and the services offered against levy of such charges and the details of productivity levels of the terminal 2 months before and after the strike. The CCTL was also requested to clarify whether SSR is a rate approved in the Scale of Rates and if not to explain the authority under which such charges are levied. The CCTL vide its letter dated 27 August 2004 furnished the requisite information which are summarised below:

- (i). CCTL levies late arrival charges (gate in after cut off time) under SSR when the export boxes are allowed to enter the terminal after the gate cut off of a particular vessel for loading it on to that vessel on a special request from the liner. Since these late arrived boxes have to be staked in a separate stake, it requires additional shifting within terminal as well as two additional lift on and

lift off. CCTL, however, is charging only for one additional shifting within the terminal as per clause 3.12.9 of the tariff.

CCTL does not encourage the acceptance of late arrival of boxes as it not only involves additional yard shifting but also adversely affects the vessel planning and productivity. It involves extra shifting and lift on / lift off and also results in replanning and resequencing vessel loading. Hence this SSR charge is not specifically included in the tariff. The CCTL, however, charges only for a part of the actual work done to accomplish this activity, which in any case is notified in the tariff (extra shifting).

- (ii). Details of moves per day are as follows (moves per day):

Period	Throughput
Feb – 2004	1,091
Mar – 2004	1,455
Apr – 2004	1,333
01 May 2004 to 22 May 2004	1,086
Strike period 23 May 2004 to 5 June 2004	650
06 June 2004 to 30 June 2004	1,125
July – 2004	1,152
Daily Average Moves excluding the strike period	1,207
Strike period performance as a % of average performance between March 2004 to July 2005 excluding strike period	54%

- (iii). The scheme of refund announced by CCTL is fair and all documents required to prove the claim for refund are available with the concerned parties as pointed out by the certain participants at the joint hearing held on 19 August 2004. CCTL's scheme is also in accordance with the Authority's Order dated 8 April 2002 where at the Authority directed the Chennai Port Trust to refund the portion of royalty paid to them.
- (iv). Under no condition can the period of illegal strike resorted to by a section of workers be deemed to be "dies non" as the terminal was functional through the period. However, as a goodwill gesture recognizing the difficulties faced by the trade and to amicably settle this matter CCTL has decided to:
- (a). Waive 100% of storage charges accrued during the strike period only without submission of documents.
 - (b). The above waiver is subject to CHPT waiving their royalty share of all charges waived by CCTL as well as refunding of lease rental charges on container yard during the strike.
 - (c). It is reiterated that the waiver of storage charges agreed by CCTL is only for the strike period (23 May 2004 to 5 June 2004) subject to CHPT agreeing to waive the royalty and lease rental charges.

7.1. At the joint hearing, the CHPT was requested to convene a meeting between the CCTL and the users to explore the possibility of arriving at a consensus on the issue and forward a report on the outcome of this meeting. The CHPT was also requested to furnish a summary of the various decisions taken in the earlier meetings convened by it during the strike period to ensure clearance of containers from the terminal.

7.2. The CHPT vide its letter dated 2 September 2004 furnished the report, the salient point of which are summarised below:-

(i). Consensus arrived at between the users and CCTL:

Sl. No	Issues	Demand of the Users	Views of CCTL	Consensus arrived between Port Users and CCTL
1.	Duration of Strike / Go slow period	The Users demanded that the strike period should be taken from 23 May 2004 to 19 July 2004	CCTL did not agree to their proposal and stated that the strike period should be from 23 May 2004 to 5 June 2004	The strike period shall be taken from 23 May 2004 to 5 June 2004
2.	Percentage of waiver of container rentals during strike / go slow period	The users demanded to waive 100% of the container rentals without any condition	CCTL agreed to waive 100% of the container rentals for the strike period as demanded by the Port Users, subject to the condition that Port Trust shall not demand royalty on the waiver of container rental amount and waive the Annual ground rent of the Terminal for the strike period	CCTL shall waive 100% of the containers rentals for the strike period provided Port Trust shall not claim the royalty on the waiver of container rentals and waive Annual ground rent of the container terminal for the strike period.
3.	Refund of demurrage to the users account	Demurrage collected for the strike period shall be credited to the users account and a copy of the calculation shall be sent to the Users.	The demurrage / container rentals for the strike period shall be credited to the liners account and the detailed calculation thereof container-wise shall be sent to the liners and the Users Association. The trade notice thereof shall also be issued.	The demurrage / container rentals for the strike period shall be credited to the liners account and the detailed calculation thereof container-wise shall be sent to the liners and the Users Association. The trade notice thereof shall also be issued.
4.	Completion of the refund within the stipulated period	It was demanded to complete the credit of the container rentals for the strike period to the liners account within 15 days from the date of issue of TAMP's order	CCTL agreed to the proposal of the Users	CCTL shall credit the refund of container rentals for the strike period to the liners account within 15 days from the date of receipt of TAMP's orders and send the calculation sheet container-wise to the liners and to the Users Association.

(ii). (a). The CHPT did not agree for waiver of annual ground rent of the container terminal for the strike period because the annual ground rent is a fixed amount and it has no relation with the earnings of the terminal operator. The terminal operator shall pay the fixed ground rent irrespective of the containers handled.

- (b). As regards waiver of royalty for the container rentals waived by the CCTL, CHPT agreed to waive the royalty upto 80% subject to the approval of the Board of Trustees of CHPT.

7.3. The CHPT, however, did not furnish the summary of the various decisions taken in the earlier meetings convened by it during the strike period to ensure clearance of containers from the terminal.

8. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be available in our website www.tariffauthority.org.

9. With reference to the totality of information collected during the processing of the case, the following position emerges:

- (i). Even though the CCTL has fully participated in this proceeding and assisted this Authority in disposing of the case, it has raised a preliminary objection about the jurisdiction of this Authority to entertain the representations in reference.

There is no doubt that most of the issues agitated by users are tariff related issues and their arguments center round the principle followed by this Authority of not requiring the users to pay for the delays attributable to ports. There is no restriction placed by the Statute on this Authority going into tariff related issues. The Government has, however, decided in Sept 2002 as a matter of policy to refrain this Authority from entertaining representations from individual users. The case in reference is taken up for consideration based on an advice received from the Government and, therefore, this proceeding is not in violation of the policy decision of the Government.

In an earlier occasion this Authority passed an Order in April 2002 for refund of storage charges by CCTL and CHPT collected on the containers which could not be cleared due to the situation of yard congestion prevailed when CCTL took over the terminal from CHPT. This Order was passed after considering the representations made by different port user organisations and the CCTL did not raise any objection about the jurisdiction of the Authority. Even though the circumstances leading to the representations filed by users may be similar then and now, the doubt in the mind of CCTL about the jurisdiction of this Authority may have arisen due to the policy direction issued by the Government as mentioned earlier. The Government in this case has advised this Authority to consider the representations in question as a special case and dispose the same on merits by passing speaking order. The decision of the Government has also been brought to the notice of CCTL. In view of the position explained above, the objection of CCTL does not deserve to be admitted.

- (ii). One of the governing principles borne in mind while prescribing port tariff and associated conditionalities is that users shall not be made to pay for the delays attributable to the port. Many tariff orders have been passed by this Authority following this principle, notable among them in the present context is the one passed earlier in April 2002 relating to CCTL itself.

The issue involved in this case is whether or not the storage charges during the period under consideration accrued due to reasons attributable to the CCTL. The CCTL has accepted that there were some operational problems during the strike period. They have admitted that they were working only at 55% efficiency level. In fact, the CCTL itself agreed to refund the storage charges levied on containers fulfilling some conditions prescribed by it. The conditionalities imposed by CCTL for refund of storage charges could not be

accepted by the users for the reasons given by them in their submissions. This Authority does not like to dwell on this issue in view of the mutually agreed position which emerged later.

- (iii). We would like to compliment the CCTL and users for readily accepting our suggestion and presenting a consensus proposal. The efforts of CHPT in bringing the parties to the negotiating table and facilitating a mutually agreed solution deserve a special mention.

As mutually agreed between the parties, the CCTL should re-credit storage charges levied for the period 23 May 2004 to 5 June 2004 on all containers which were in the yard at the beginning of this period or which landed during this period.

- (iv). The CCTL has agreed to re-credit storage charges for the relevant period subject to the conditions that CHPT shall not claim its revenue share on the earlier collection made on this account and waiver of lease rent for the lands for this period. The CHPT, for reasons not explained, agreed to waive only 80% of its revenue share.

Since the storage charges are fully to be re-credited by CCTL under the circumstances governing this case, the collection made earlier by CCTL cannot be strictly called as its revenue earned. It is, therefore, not necessary for CCTL to share with CHPT the collection of storage charges made earlier which it is going to re-credit to the respective parties, as per this Order. It is noteworthy that the Government while advising this Authority to consider this case has categorically referred to 'corresponding reduction in the share of CHPT'. Besides, in its earlier Order of April 2002, this Authority had directed CHPT to refund its share in all cases where CCTL allowed refund of storage charges.

The position maintained by CHPT is possibly due to an earlier guideline issued by the Government for waiver of demurrage charges by Port Trusts. In the instant case these guidelines are not relevant in relation to CHPT. CHPT gets its share of revenue earned by CCTL and not share of itemized charges levied by CCTL. That being so, the question of CHPT waiving storage charges in reference does not arise at all. From the CHPT's point of view, it will not get the share of revenue which CCTL is required to re-credit to the concerned parties.

- (v). It may be possible that the CCTL has already remitted the revenue share to the CHPT on the storage charges in reference. Past experience shows that the arrangement of CCTL and CHPT refunding their respective shares of 63% and 37% causes delay in users getting the re-credit or refund. The CCTL is, therefore, required to re-credit the storage charges it had collected earlier fully to the respective parties. The revenue share on this account, if any, already remitted by it to CHPT can be adjusted from payment of revenue share to be made in future by CCTL to CHPT.
- (vi). The CCTL has also demanded that the CHPT should waive lease rental payable for the port lands occupied by the CCTL. Considering the fact that storage charges on all containers during the strike period are agreed to be refunded, the demand of CCTL is not unreasonable. This is also in line with the spirit behind the advice received from the Ministry of Shipping about corresponding reduction in the share of CHPT. It has to be recognized that lease rental, unlike the revenue share, is for the land occupied by CCTL which was continued to be in possession of the CCTL even during the strike period. This Authority is not in a position to concede to the demand of CCTL and direct CHPT to waive the lease rentals. Nevertheless, the CHPT is urged to take a lenient view on a broader perspective and consider waiver of the lease rentals

for the strike period at least pro-rata on the area occupied by the container storage yard of CCTL.

- (vii). In the representations received, Special Service Request (SSR) charges levied during the strike period are also sought to be refunded by CCTL. There is no mention about refund of this charge in the mutually agreed proposal received later. The Chennai Custom House Agents' Association (CCHAA) has even claimed that SSR charges are unauthorized and beyond the tariff prescribed by this Authority. If an operator chooses to levy a charge which was not approved by this Authority, then the remedy lies elsewhere. This Authority does not have any legal power to take action against non-compliance of the orders passed (or tariff notified) by it. Be that as it may, the CCTL has clarified that SSR relates to additional shifting and extra lift on/off in some cases, for which rates are approved in the Scale of Rates. The CCTL has further pointed out that it levies SSR as a composite fee which is lower than the aggregate of the relevant itemised rates approved in the Scale of Rates for miscellaneous services. It is difficult for this Authority to verify the additional services provided to each and every container and decide whether such services were required or not. If the services have been provided, the CCTL can levy the charges to the maximum limit of rates prescribed in the SOR. As held by this Authority in its Order of April 2002, it would be unreasonable to expect the terminal operator to provide free of cost services required by Trade. If the charges were levied as per the notified Scale of Rates and the relevant services had been actually provided, the CCTL need not refund such charges levied during the strike period. The CCTL has, however, agreed that it would consider waiver of SSR charges in genuine cases.
- (viii). Another issue agitated by users, mainly Pushpit Steels, relates to the procedure adopted by CCTL to move containers en-bloc to an off-dock CFS. There seems to be no objection per se to the operational procedure introduced. The objection of Pushpit Steels is about the off-dock CFS operator charging rates as notified for CCTL; and, this arrangement is because of an understanding with CCTL. Charges levied at the off-dock CFS do not fall within the regulatory jurisdiction of this Authority and, hence, it does not like to enquire into the reference made in this regard. If the containers continued to have remained in CCTL yard without moving to off-dock CFS, they would have, in any case, paid charges as per CCTL tariff. From the point of view of users, there does not appear to be any additional cost on this account. En-bloc movement to off-dock CFS is explained to be a step taken to ease congestion in the Terminal and that too after allowing reasonable time to clear containers therefrom. This is in the interest of the productivity of the Terminal. If users do not want shifting of containers, at the cost of CCTL at that, to off-dock CFS, they should clear containers within the stipulated time from the terminal itself.
- (ix). Pushpit Steel have also claimed refund of some of the other charges like congestion surcharge, container detention charges, etc. As pointed out by CCTL, these are the charges not paid to the CCTL but to the concerned shipping lines. This Authority is mandated to go into the tariff related issues pertaining to major port trusts and private terminal operators. The demand placed by Pushpit Steel on CCTL is in the nature of damage compensation claim. This Authority is not the competent forum to adjudicate on such claims.
- (x). It has been mutually agreed between the parties that CCTL would re-credit the storage charges within the 15 days of notification of the Order passed by this Authority in this case. After examining the merit of claims, the CCTL may also re-credit SSR charges in the admissible cases within 15 days of receipt of such claims from the users.

As mentioned earlier, CCTL can re-credit admissible amount fully to the concerned parties and adjust revenue share, if any, already paid on account of

such charges to CHPT from the future remittances of revenue share to be made by it.

The re-credit is proposed to be effected to the accounts of the shipping lines. The Trade which had paid these charges to the shipping lines should ultimately get the refund. Since CCTL has agreed to notify all Users Associations about the container-wise details of re-credit allowed, the User Associations are advised to ensure that their relevant constituent importers/exporters are informed of the refund due to them.

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides as follows:

- (i). The CCTL shall re-credit the entire storage charges levied for the strike period of 23 May 2004 to 5 June 2004 on all containers which were in the yard at the beginning of this period and those landed during this period.
- (ii). SSR charges can be levied at the rates approved in the Scale of Rates for miscellaneous services, if the relevant additional services have been actually provided. CCTL shall examine on case to case basis the SSR charges levied during this period, based on applications by concerned parties, and re-credit the admissible charges in genuine cases.
- (iii). CCTL shall re-credit the storage charges for the relevant period and SSR charges in admissible case, in full and revenue share, if any, already paid by it to CHPT on these collections shall be adjusted by it from remittance of revenue share to be made by it in future to the CHPT.
- (iv). The CCTL shall re-credit accounts of the concerned shipping lines of the storage charges within 15 days. The time limit for effecting re-credit of SSR charges in admissible cases shall be 15 days from the date of receipt of claims by CCTL.
- (v). Simultaneously with the re-crediting of accounts of the Shipping Lines, the CCTL shall forward container-wise recredit position to the User Associations and also issue a general trade notice for information of all concerned.
- (vi). The CHPT is advised to consider the request of CCTL for waiver of lease rent for the lands payable for the strike period – at least pro-rata on the area covered by the storage yard of CCTL.

(A.L. Bongirwar)
Chairman

**SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS /
DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE
DURING THE JOINT HEARING BEFORE THE AUTHORITY**

F. No. TAMP/37/2004-CCTL - Representations made by the port user organisations for waiver of charges on containers which could not be cleared during the strike period at the Chennai Container Terminal Limited.

1. The CCHAA vide its letter dated 28 July 2004 and 2 August 2004 while reiterating its submission made earlier furnished the following additional points:

- (i). CCTL resorted to enblock movement of containers and the long delay in handling of containers was thrust on the trade by levying huge detention charges.
- (ii). The steamer agents / liners also collected congestion surcharge since the containers could not be moved in time. Importer is in no way responsible for this.
- (iii). TAMP should issue orders for refund of demurrage charges, ground rent charges and congestion surcharges collected during the strike period.

2. A joint in this case was held on 19 August 2004 at the CHPT premises in Chennai. The CCTL, CHPT and users made the following submissions in the joint hearing:

Chennai Container Terminal Limited

- (i). The strike period was from 23 May to 5 June 2004.
- (ii). Our trade notice about refund was even before the relevant Govt. order quoted by HCC.
- (iii). We do not deny that there was no problem of working during the strike period. The scheme was discussed with the Trade.
- (iv). We do not think anybody had been denied work order. If in any case that had happened, they can approach us. We will review such cases on merit and allow refund.
- (v). We have nothing to do with charges like revalidation charges, container detention charges and congestion surcharge imposed by Shipping Lines.
- (vi). We were working with 55% efficiency during the period. So it cannot be called dies non.
- (vii). SSR – We are responsible only after the box enters our Terminal. We will give details of SSR and the authority to charge such fees.
- (viii). We have refunded the storage charges fully to Pushpit Steels.

- (ix). CHPT may also forgo its share of revenue and waive lease rentals payable by us.
- (x). During this period, the collection was around Rs 3 crores. We had already refunded Rs 45 lakhs.

Hindustan Chamber of Commerce (HCC)

- (i). Even before the strike period (23 May to 5 June), the productivity of the Terminal started declining since Jan 04 due to labour issues. Dwell time of containers increased to alarming levels due to slow deliveries.
- (ii). Collection of storage charges during the strike period itself is illegal. Therefore, the question of waiver does not arise. CCTL should not charge any charge for this period and re-credit the collections made.
- (iii). CCTL wants the cut off as issuance of its job order. There is no established norm for issuing job order. They had not informed Trade about their job order and in many cases, CCTL refused to issue job orders. It cannot, therefore, be a pre-condition.
- (iv). Trailer turnaround was also a problem.
- (v). Trade has suffered lot due to this strike and go slow at CCTL. The congestion surcharge imposed by Lines is a big liability on Trade.
- (vi). There are two charges in question. One is storage charges and other is SSR. CCTL should re-credit collections made on these account unconditionally.
- (vii). Government Order of 24.1.1992 on remission of demurrage [item 2(i)] includes Transportation disruption as one of the reasons. During the strike period, nearly 800 trucks were held up at CCTL gate.
- (viii). CCTL's generosity is only after Govt. advised TAMP to look into the matter. Not on its own.
- (ix). SSR on export containers cannot be levied for this period.
- (x). During Port & Dock Labour strike in 2000 and 2003, and also during the container strike in May 2001, the CHPT declared entire strike period as 'dies non' and gave relief to Trade on storage charges. Same action should be taken by CCTL in this case.
- (xi). Normalcy was only after the wage agreement was signed on 19 July 2004. The conditionalities imposed by CCTL are unilateral. The entire period should be treated as 'dies non' without any conditions

- (xii). It is difficult to prove that importers have complied with all formalities required for issuing job order by CCTL. Because deliveries were not effected, Trade did not process the relevant documents.
- (xiii). When TAMP passed its Order for refund in 2002, it took nearly one year for us to get refund because various questions were asked by CCTL as the onus of proving was on Trade. CHPT had also delayed. This should not happen now.
- (xiv). TAMP guideline says users are not responsible for delay caused by Port. TAMP should implement its guidelines.
- (xv). The storage charges levied are without authority. Therefore, they should be re-credited. It is not a waiver/refund.
- (xvi). We reiterate that CCTL denied to issue Job orders to Trade during the strike period.
- (xvii). Our meeting with CCTL was not on conditionalities for refund.. We discussed the operational methodologies to ease the congestion problems.
- (xviii). Gate out/PNR may not be relevant for the containers which remained in the Yard during the strike period. It is CCTL's job to move en-bloc to CFS. But these containers should also get the benefit of re-credit of storage charges.
- (xix). We want dies non only for storage charges. Otherwise, if CCTL pleads 55% production let them give waiver on all charges to the extent of 45%.
- (xx). In fact, the period 23 May to 19 July should be 'dies non', as the problem ended only when the wage negotiation agreement was signed.

Southern India Chamber of Commerce and Industry

- (i). We reiterate the views of HCC.

The Chennai and Ennore Ports Steamer Agents' Association

- (i). CCTL press release dated 3 June 2004 agrees to waive storage charges. No conditionalities were specified. Conditions were, however, imposed later on.
- (ii). In a crisis situation, our anxiety was to clear containers and not creating documentary evidence. Production of documents, as required by CCTL is, therefore, not possible in all cases.

Tamil Chamber of Commerce

- (i). The strike was due to an internal problem of CCTL. Why should Trade pay for that?

Chennai Custom House Agents' Association

- (i). When we approached CCTL, their employees refused to issue job orders. How can we produce job order copies now?
- (ii). SSR and some more charges which are not as per SOR were levied by CCTL. We will give details within 3 days. This may be looked into.
- (iii). We are paying additional Rs 2000/- per container to Steamer Agencies because of CCTL's poor performance.

M/s. Pushpit Steels Private Limited

- (i). Our 27 containers came much before the strike. The last container was delivered to us only in the 2nd week of July. We were forced to pay Rs 16 lakhs as storage charges/detention charges.
- (ii). Not only storage charges but also the container detention charges and congestion charges are also to be borne by CCTL. CDC and congestion surcharge are the fall out of CCTL strike.
- (iii). Out of Rs 16 lakhs, the CCTL had yesterday refunded Rs 4 lakhs only.

Andhra Chamber of Commerce

- (i). Because of inefficiency of CCTL there is diversion of traffic.

Chennai Port Trust

- (i). No doubt the Trade suffered enormously during the period. It was an extraordinary situation.
- (ii). We will convene a meeting shortly to evolve a consensus in this matter and report the position to TAMP.

3. The PSPL in its initial and subsequent representations brought out the delays and additional cost suffered by it due to the procedure adopted by CCTL to move containers en-block to the off dock CFSs. The PSPL vide its letter dated 19 August 2004, filed additional written submission at the joint hearing further elaborating the problems faced by it. The PSPL vide its letter dated 23 August 2004 again made written submission bringing out that port storage, CFS storage and liner detention charges paid by it the refunds effected by CCTL and the balance amount due from the CCTL. The HCC furnished a copy of Trade Circular dated 30 July 2004 at the joint hearing issued by the CCTL. The

written submissions of PSPL and the contents of Trade Circular dated 30 July 2004 are summarised below:

M/s. PSPL

A. Summary of submission made by the PSPL

- (i). PSPL cannot be made to bear the storage charges of CCTL and the storage charges at the off-dock CFS as well as the container detention charges which solely arise due to strike in CCTL and the consequent accumulation of containers in their yard.
- (ii). The chronology of events with regard to the delivery of containers are as follows:-
 - (a). Containers arrived at Chennai on 19 May 2004.
 - (b). There was total cessation of activities in CCTL from 23 May 2004 to 5 June 2004.
 - (c). The strike resulted in pile-up of containers in the yard clearance of which became more complex due to the arrival of containers by incoming vessels during the strike period.
 - (d). There was inordinate delay in restoring normalcy in container movements even after the strike period.
 - (e). The containers were picked-up at random for en-block movement to the off-dock CFS and there was no sequencing of containers in order of landing. Many containers arrived earlier got held back while those containers which arrived later were moved to the CFS.
 - (f). The CCTL adopted a trial and error method of suspension and restoration of direct delivery from CCTL.
- (iii). We have paid the following excess amount:

		(Rs. in lakhs)
(a).	Port Storage (calculated upto 14 July 2004)	8.28
(b).	CFS Storage (Calculated upto 14 July 2004)	0.23
(c).	Liner detention charges (Calculated upto 16 July 2004)	6.88
	Total	15.39

In fact there are indirect loss incurred by us due to interruption in supply of input materials. We cannot bear the direct loss of Rs. 15.39 lakhs over and above the indirect loss. CCTL may be directed to refund Rs. 15.39 lakhs to us.

- B. As decided at the joint hearing, all parties are to meet again to present a formula before TAMP. PSPL has stated that its case may be an

exception on account of the payment of Rs.16 lakhs by way of port ground rent charges, and container detention charges on 27 containers which got struck with CCTL just before commencement of strike till the containers were made available for delivery as late as 20 July 2004 at off-dock CFS (SICAL); and, therefore, presented the following submission:

(i). Port Ground Rent charges (PGR)

(a). PGR collected by CCTL through liner (Maersk India Pvt. Limited)

Steamer agents are not providing any supporting documents for the actual amount payable to CCTL. There is a shortfall of Rs.48,337/- between the amount collected by Maersk from PSPL on behalf of CCTL and amount credited by CCTL to the account of Maersk on account of refund. The CCTL new tariff started on 5 June 2004; but Maersk collected PGR at new rate much earlier from 19 May 2004.

(b). PGR collected by CCTL through SICAL CFS:

CCTL has made applicable its storage charges upto the date of delivery at the nominated CFS. SICAL CFS has collected Rs.3,46,670 from PSPL on behalf of CCTL. CCTL is also aware of the collection made by SICAL CFS on behalf of CCTL. CCTL has no jurisdiction to extend its tariff to any nominated CFS without the approval of TAMP. This is not an issue between SICAL and PSPL. This is a port tariff related issue and TAMP may please intervene.

(ii). Container detention charges collected by Liner (Maersk):

The Liner has collected Rs.6,88,667 from PSPL towards container detention charges.

PSPL agrees that this amount was not collected by CCTL. Had CCTL made available the containers for delivery to enable PSPL to return the containers within free days allowed by the Liner, there was no need for PSPL to pay the amount. This is not a liner related issue; but the main cause was the delay in delivering the containers due to strike in CCTL.

(iii). Port congestion charges

PSPL has been paying port congestion charges from 1 June 2004 which are collected by steamer agents including P&o Nedlloyd at US \$ 50 per container till date. It means that CCTL is till date not operating at 100% efficiency.

Contents of Trade Circular issued by CCTL

- (i). CCTL will refund storage charges for the strike period (23 May 2004 to 5 June 2004) for the containers in the yard as on 23 May 2004 or containers discharged during the strike period. Refund will be based on the submission of following documents:
 - (a). Proof of Custom duty paid or PNR movement copy.
 - (b). Job order copy of CCTL.
 - (ii). Storage charges for the ICD containers which were in the yard from the first day of strike period or which landed during the period of the strike will be refunded based on TSA documents filed by the COA.
 - (iii). Refund of storage charges for the containers moved en-block between 21 June 2004 (22.00 hrs) to 29 June 2004 (06.00 hrs) will be from the date of filing of PNR up to the date of gate out of CCTL.
 - (iv). All the refunds will be effected by means of crediting the shipping lines account.
4. As decided at the joint hearing, the CCHAA filed its written submission dated 25 August 2004 about the legal validity of the special services request (SSR) and some other charges levied by the CCTL. Written submissions made by the CCHAA are summarised below:
- (i). SSR included in a list of 17 activities and some of the activities are beyond the boundaries of Scale of Rates notified by TAMP. All elements of these 17 activities do not have the sanction of the TAMP. Hence such collection is without the authority of Law. Following are the examples:
 - (a). Collection of charge for entry in gate after cut off time for same Vessel Identification Advise.
 - (b). Invariably most of the containers inspected for customs would qualify under the notified category of destuffing of less than 25% of the cargo attracting less than equivalent rate of the notified tariff. In the format of SSR designed by them customs inspection is confined only to part examination or full examination.
 - (c). TAMP's order which visualizes certain miscellaneous charges includes charges for change of status of container. This category is limited only to a change from rail to road or vice versa. CCTL extended the charges for change of status as prescribed to any subsequent change sought by the line without the authority of Law.
 - (d). CCTL collects penal charges for over stay of vehicles after passed out by customs at Rs. 100/- for every hour of stay while

the trade is penalized even for few hours of delay to clear the vehicle from the premises of CCTL. There is no accountability on CCTL for delays either to load or off-loading vehicles in and around their terminal.

5. The HCC vide its e-mail dated 23 August 2004 furnished the weekly productivity details at the CCTL as decided at the joint hearing in support of its argument about the declining performance of CCTL since 2004. The weekly details are converted into monthly details and furnished below:

Details of Productivity Levels (Moves per day)

Period	Moves per day
January 2004	1119
February 2004	1030
March 2004	1506
April 2004	1331
3 May 2004 – 24 May 2004	1044
25 May 2004 – 8 June 2004 (Strike period 23 May 2004 – 5 June 2004)	630
9 June 2004 – 5 July 2004	1177
July – 2004	1092

6. The HCC vide its letter dated 23 August 2004 furnished its text of presentation made by it at the joint hearing alongwith text of its reply to CCTL's response.

7. The HCC vide its e-mail dated 25 August 2004 quoted some judgments of Hon'ble Supreme Court of India relating to go slow. The e-mail further states that there are various other judgement which hold that go slow is more harmful than total strike and in this case the trade suffered more due to the go slow where CCTL have themselves agreed that they worked to 55% of their capacity after making many operational changes at the cost of the trade.
