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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. 65

New Delhi, 26 March 2004

NOTIFICATION

In exercise of the powers conferred under Section 49 of Major Port Trust Act, 1963 (Act 38 of 1963), the Tariff Authority for Major Ports hereby approves insertion of two conditions in the definition of 'port convenience' in the Scale of Rates of the Chennai Port Trust as in the order appended hereto.

(**A.L. Bongirwar**)
Chairman

TARIFF AUTHORITY FOR MAJOR PORTS
Case No: TAMP/76/2003-CHPT

The Chennai Port Trust

- - -

Applicant

ORDER

(Passed on this 15th day of March 2004)

This case relates to a proposal received from the Chennai Port Trust (CHPT) for an amendment to its Scale of Rates relating to the definition of 'Port Convenience' to regulate shifting charges.

2. Since the existing definition of Port Convenience as prescribed in the Scale of Rates does not cover all types of shifting made by the port in the port's interest, the CHPT has proposed to include the following additional clauses in the definition of Port Convenience under Note 3(a) in Schedule - 2.3.4 of Chapter – II of its Scale of Rates (SOR):

- “(v). Whenever a vessel is shifted to accommodate another vessel which cannot be berthed at other berths due to draft and LOA restrictions.
- (vi). Whenever a vessel is shifted to accommodate another vessel having priority at the adjacent berth and unless that vessel is shifted, the vessel enjoying priority cannot be berthed at the adjacent berth due to length / draft restrictions.”

3.1. In accordance with the consultative procedure prescribed, the proposal of the CHPT was forwarded to the concerned port users / representative bodies of port users for their comments.

3.2. The comments received from the concerned user organizations were forwarded to the CHPT as feed back information. The CHPT has responded to the comments furnished by the users

4. A joint hearing in this case was held on 20 February 2004 at the CHPT premises in Chennai. At the joint hearing, the CHPT and the concerned users have made their submissions.

5. The proceedings relating to the 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 are also available at our website www.tariffauthority.org.

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

- (i). The composite pilotage charges prescribed in the Scale of Rates of CHPT is for the prescribed services in relation to inward and outward movements and one shifting operation at users request inside the breakwater. In case of second and subsequent shifting at the request of vessels, shifting charges at the prescribed rates are leviable. No such charge is, however, leviable for shifting of any vessel for port convenience. In this context, the definition of port convenience is prescribed in the Scale of Rates. The existing definition of this term in the Scale of Rates of CHPT is in line with that prescribed in the Scale of Rates of many other port trusts.
- (ii). The two situations of shifting brought out by the Port are definitely the movements required to be made for the operational convenience of the port. The CHPT has, therefore, proposed to enlarge the existing definition of port convenience so that the vessels if shifted under these two circumstances need

not pay shifting charges. As pointed out by CHPT, the proposed amendment is, therefore, user-friendly and most of the users have endorsed the proposal.

- (iii). The Madras Chamber of Commerce and Industry has raised a point about possible delay to working vessel due to shifting. The decision to shift a vessel in operational exigencies rests with the Port. The issue before this Authority is to prescribe the charges payable when such shifting is effected. It has already been held by this Authority that shifting made for port convenience is not chargeable. The issue of where a vessel is to be shifted is an operational matter to be taken up with the Port. It is noteworthy that the CHPT has assured that it will endeavour to minimize the loss to the vessel shifted.
- (iv). The Chennai and Ennore Ports Steamer Agents' Association and Hindustan Chamber of Commerce have made suggestions for further simplification of the definition of port convenience. It does not appear to be an objection to the proposal of the Port as understood by the CHPT which has resulted in its outburst of conveying its intention to withdraw the proposal if it is not unanimously agreed to.

Be that as it may, the issue in reference is shifting for port convenience for which charges will not be levied. The reasons given by CHPT highlighting the issues involved in getting users written consent in all such cases appear to be justified. Further, instead of leaving the issue open to the discretion of the port or users, it will be more transparent if the circumstances of shifting for port's convenience are listed out in the Scale of Rates. In any case, when a vessel is shifted at its request, a written requisition is expected to be made by its owner/master/agents.

If the users feel that even after the proposed elaboration of the term port convenience, it may not adequately cover some other circumstances of shifting which are for the convenience of the port, they may take up with the port for further amendment of the term. The CHPT is advised to consider such suggestions and initiate a suitable proposal for consideration of this Authority. The instant proposal which will benefit the users need not, however, wait for such an exercise to be completed.

7. In the result, and for the reasons stated above, and based on a collective application of mind, this Authority approves insertion of the following two conditions as clause (v) and (vi) under note 3(a) of schedule 2.3.4-Schedule of shifting charges in Chapter II of the Scale of Rates of CHPT:

- “(v). Whenever a vessel is shifted to accommodate another vessel which cannot be berthed at other berths, due to draft and LOA restrictions.
- (vi). Whenever a vessel is shifted to accommodate another vessel having priority at the adjacent berth and unless that vessel is shifted, the vessel enjoying priority cannot be berthed at the adjacent berth due to length restrictions.”

(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/76/2003-CHPT Proposal from the Chennai Port Trust for amendment in its Scale of rates relating to the definition of "Port Convenience" to regulate shifting charges.

1. The comments received from the port users / representative bodies of port users are summarised below:

Madras Chamber of Commerce and Industry (MCCI):

We are in agreement with the proposal with the following caveat:

In as far as the vessel being shifted for the convenience of the port and accommodated in another berth where it is possible to work the vessel without being shifted to anchorage and without additional shifting charges we have no objection to this clause. However, if the working vessel is being shifted for port convenience to anchorage and has to wait for being accommodated in other berths, this could result in delay to the working vessel.

The Shipping Corporation of India Limited (SCI):

We agree with the proposal.

Chennai & Ennore Port Steamer Agents' Association (CEPSAA):

The amendment may include the following condition:-

" Port shall carry out any shifting only at the written communication from the concerned steamer agents."

The Tamil Chamber of Commerce (TCC):

We welcome the proposal.

Hindustan Chamber of Commerce (HCC):

The following simple definition will remove the present ambiguity:

"Any shifting of vessel(s) carried out by the Port, without the written request of the user or any shifting of vessel(s) carried out to accommodate any other vessel(s) by the port, is to be termed as shifting under port convenience".

2. The CHPT has responded on the comments furnished by the users / users' organizations which are summarized below:

(i) The objective of the proposal is to enlarge the scope of Port Convenience to make shifting more user friendly, if it is looked at the macro point of view. The MCCI and CEPSAA took parochial view and did not look at the macro level which is required to be the objective of the chamber for the overall benefit of the users community.

(ii) On the comments of the MCCI:

The observation of MCCI that the Port should endeavor to avoid shifting to the extent possible and if shifting is necessary optimum productivity of the vessel should always be ensured is relevant only for the vessel which is going to be shifted. But the MCCI does not take into consideration that due to the shifting other port users are getting benefit. When other port users are getting the benefit, the benefit in total for the port users should be taken into consideration instead of the benefit of the vessels shifted. The

port shall, however, endeavor to minimize the loss, if any, caused to the vessel shifted.

(iii) On the comments of CEPSAA:

The CEPSAA has requested to make the shifting only after receiving a written communication from the concerned steamer agents. It is not agreed by the port, because the shifting is being made for the port convenience and for the convenience of the shipping community as a whole. Therefore, there is no necessity to get the written communication from the agent of the vessel being shifted. If a written consent is required then the objective of shifting on account of port convenience is defeated.

(iv). On the comments of HCC:

- (i). The suggestion of HCC cannot be agreed to. The port has right to shift the non-performing vessel(s) or any vessel(s) which overstays after completion of cargo operations or under other circumstances to the outer anchorage or other non-operating berth.
- (ii). Section 39 of Major Port Trusts Act, 1963 empowers the port to remove any vessel from any dock, berth, wharf etc., by giving notice in writing in case of emergency or for any reasonable cause. In such a case, when the vessels have to be shifted for reasons like non-performances or overstayal or any reasons attributable to vessels working it may not be required for the port to obtain a written confirmation from the vessel's agent.
- (iii). In case of shifting of vessels other than the reasons enlisted in the Scale of Rates, the necessary charges are to be paid by the agents.

(v). Other Points:

- (a). The port shall make the shifting if it feels that the shifting is in port convenience and / or in the convenience of the

shipping community as a whole without looking at the benefit of the individual vessel being shifted.

- (b). If the Steamer agents and the chambers of commerce are not unanimously agreed to the proposal of the Port, which is for the benefit of the trade and community and mooted on their requests, port shall withdraw the proposal and regulate the shifting as per the scope indicated in the notified SOR.

3. A joint hearing in this case was held on 20 February 2004 at the CHPT premises in Chennai. All the users present generally agreed with the proposal. They however, requested that the suggestions made in their written submissions might also be explored. The CHPT agreed to give its comments on the suggestions made by users. The comments received from CHPT are included in para 2 above.
