

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

TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 36

New Delhi, 9 February 2007

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 references from the Chennai Port Trust and Hindustan Chamber of Commerce seeking clarification on the levy of C & F charges for hook point dispatch as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

TARIFF AUTHORITY FOR MAJOR PORTS

Case No. TAMP/63/2004 – CHPT

Chennai Port Trust

&

Hindustan Chamber of Commerce



Applicants

ORDER

(Passed on this 25th day of January 2007)

This case relates to references separately received from Chennai Port Trust (CHPT) and Hindustan Chamber of Commerce (HCC) seeking clarification on levy of C & F charges for hook point dispatch.

2.1. This Authority had passed an Order on 22 October 2003 on the proposal received from the CHPT for revision of levy for stevedoring activity. The conditions governing the levy for Clearing and Forwarding operations prescribed under Scale 2, Chapter-VII of the Scale of Rates of CHPT include, *inter alia*, the following condition no.7:

“7. Wherever CHPT has permitted Direct Delivery / Direct Shipment, no charges towards C & F operation is payable for such quantity, which is directly delivered from the hook point or directly shipped without the use of CHPT labour.”

3.1. With reference to the above condition, the Hindustan Chamber of Commerce (HCC) vide its letter dated 5 January 2004 sought clarification from the Authority. The main points made by HCC are summarised below:

- (i). Condition 7, Scale 2 of the TAMP Order exempts the user from paying C&F levy during a direct shipment / landing or wherever CHPT labour is not utilized.
- (ii). Even after the TAMP's order, the CHPT continues to lay a claim for C&F levy on all direct shipments and delivery of cargo. The word “CHPT” labour instead of “C&F Labour of the CHD Division” has resulted in this ambiguous situation for the port to stake a claim with the users.

3.2. In addition, the HCC has reiterated the points raised by it earlier when the CHPT proposal for revision of stevedoring levy was taken on consultation.

4.1. A copy of the HCC letter dated 5 January 2004 was forwarded to the CHPT vide our letter dated 24 May 2004 for its comments. While responding, the CHPT vide its letter dated 10 December 2004 furnished its comments and also sought clarification in the matter.

4.2. The CHPT vide its letter dated 23 March 2006 has again represented on the matter.

5.1. The references received from HCC and CHPT were registered as a separate "tariff case". In accordance with the consultative procedure prescribed, copies of the references received from CHPT and HCC were forwarded to the concerned user organizations for their comments.

5.2. The comments received from user organizations were forwarded to CHPT as feed back information. The CHPT has not responded to the comments of the users.

6. A joint hearing in this case was held on 5 January 2007 at the CHPT premises. The CHPT and the HCC have made their submissions.

7. 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 are also available at our website <http://tariffauthority.gov.in>

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

- (i). Clause 3.1.5 of the revised tariff guidelines provides for entertaining a representation filed by users when it involves fixation of tariff. This is a case seeking clarification from this Authority by a Major Port Trust and an organisation representing relevant users with respect to a conditionality governing a tariff item approved by this Authority in the Order dated 22 October 2003.
- (ii). The Scale of Rates of CHPT prescribes time rate wages and 192% levy on wages for stevedoring operations. A separate levy of Rs.40 per tonne has been prescribed in respect of general cargo for C & F operations. The limited point before this Authority is with regard to the levy for C & F operations.
- (iii). A harmonious construction of all the conditions specified under Scale 2 governing charges for C & F operations will reveal that levy of Rs.40 per tonne for C & F operations should satisfy three conditionalities prescribed; the CHPT should permit direct delivery / direct shipment of cargo; second, there must be actual deployment of labour for C & F operations; third, no separate wages should be collected for this work.
- (iv).
 - (a). From the proceedings of this case, it emerges that direct delivery / direct shipment of certain general cargo takes place at the hook point on-board the vessel. There is no disagreement between the CHPT and the users with regard to the flexibility available in deploying the on-board labour gang consisting six mazdoors for on-board or shore work.
 - (b). The CHPT has sought to argue that since there is deployment of CHPT labour for C & F operations, the port is required to collect the C & F levy. That CHPT labour is deployed for C & F operations is evident from the categorical statement made by Chennai Custom House Agents' Association that two mazdoors are posted at the hook point. The moot question is whether the cost of labours so deployed are collected through any charge other than the C & F levy.
- (v). As stated in the paragraph (iii) above, the CHPT is authorised to collect the applicable C & F levy for actual deployment of labour for C & F operations. The argument of the users that as CHPT collects applicable time rate wages and a levy of 192%, on all six labours is not countered by the CHPT. As a matter of fact, the CHPT also mentions about diverting the cargo handling workers to the hook point C & F related work. This means, the cost of these two labours is already recovered from the on-board stevedoring charges. That being so, collection of C & F levy without actual deployment of any other additional labour is nothing but a double recovery which was not intended by the earlier Order of this Authority.
- (vi). The underlying principle for introducing condition no.7 in the relevant Scale of Rates is to require CHPT to limit recovery of labour charges to the extent of actual deployment which is categorically specified under condition no.1. Viewed from this perspective, no justification emerges in the case under reference to uphold the approach adopted by CHPT in levying C & F charges on the specified direct delivery cases. For the purpose of clarity, the meaning of the words "without use of CHPT labour" in condition 7 should be taken to include "any labour under the control of the port whose cost of deployment is recovered by any other charge specified in this Scale of Rates".

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority accordingly clarifies Condition 7 of Scale 2 – Clearing & Forwarding Operations in Chapter-VII of the Scale of Rates of CHPT and directs CHPT to refund excess collection of C & F levy, if any, made contrary to the clarified position, to the concerned users.

(A.L. Bongirwar)
Chairman