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TARIFF AUTHORITY FOR MAJOR PORTS

GNo.28

New Delhi,

19 January 2010

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the reference received from the Jawaharlal Nehru Port Trust (JNPT) seeking clarification on the rates for the transshipment containers moved between JNPT and Mumbai Port as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/53/2008-JNPT

The Jawaharlal Nehru Port Trust

- - -

Applicant

ORDER

(Passed on this 30th day of December 2009)

This case deals with a reference received from the Jawaharlal Nehru Port Trust (JNPT) seeking clarifications on the rates for transshipment containers moved between JNPT and Mumbai port.

2.1. The JNPT vide its letter dated 3 March 2008 has forwarded a reference made by Maritime Service Private Limited (MSPL) to JNPT regarding billing of transshipment containers moved between JNPT and Mumbai port. The main points made by MSPL in its letter in reference are summarized below:

- (i). The Import containers are transhipped from JNPT to Mumbai via Barges.
- (ii). Note 4 of the JNPT Scale of Rates (SOR) states that a container from foreign port landing at the JNPT for subsequent transshipment to an Indian Port on a coastal voyage or vice versa would be charged at 50% of the transshipment charges prescribed for foreign vessels and 50% of that prescribed for coastal category.
- (iii). Since the JNPT SOR does not prescribe coastal tariff for transshipment containers, it is assumed that the foreign tariff will apply.
- (iv). For a 20' transshipment container, the rate prescribed in the JNPT SOR is Rs.2550/-. So, should the TP billing be based on Rs.1275/- or be based on Rs.1275/- for the foreign vessel and Rs.637.50 for coastal barge.

2.2. With reference to the above, the JNPT in its letter dated 3 March 2008 has made the following main submissions:

- (i). No separate rate is prescribed for handling coastal transshipment containers.
- (ii). The charges applicable for transshipment containers are 50% of the normal handling charges.
- (iii). The JNPT levies Rs.2550/- per TEU as per Clause 3.3.1(D) of Chapter 3 of the JNPT Scale of Rates for the same service.

2.3. Since the MSPL is not in agreement with the views of JNPT, the JNPT has requested this Authority to clarify the charges actually leviable by the port for a transshipment container vis-à-vis the provisions of its Scale of Rates.

3.1. In accordance with the consultative procedure prescribed, a copy of the reference from the JNPT along with the enclosures was forwarded to the concerned users/ user organizations for their comments.

3.2. The comments received from Mumbai and Nhava-Sheva Ship-Agents' Association (MANSA) and Container Shipping Lines Association (India) [CSLA] were forwarded to JNPT as feedback information. We have not received the response of JNPT till the finalization of this case.

4. A joint hearing in this case was filed on 27 November 2009 in the office of this Authority. The JNPT and the users made their submissions.

5. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.

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

- (i). In compliance of a policy direction issued by the Government of India under Section 111 of the MPT Act, 1963, to prescribe concessional rates for coastal cargo / containers / vessel related charges levied at all major port trusts and the private terminal operators thereat, this Authority amended the Scale of Rates of all major port trusts and private terminal operators to insert the policy direction of the Government in the form of general conditionalities with effect from 1 February 2005 vide Order No. TAMP/4/2004-Genl. Dated 10 January 2005. The general conditionalities were introduced to prescribe concessional coastal cargo / container / vessel related charges in line with policy direction of the Government in the Scale of Rates of the respective ports / terminals.
- (ii). Clause 4.3. of the tariff guidelines of March 2005 stipulates prescription of concessional tariff for coastal containers not exceeding 60% of the rates of normal container related charges.
- (iii). Clause 5.5.1 of the tariff guidelines stipulates that the handling charges for transshipment containers shall be concessional. Such charges shall be calculated with reference to the applicable handling charges subject to the concession specified in Clause 4.3 for coastal containers.
- (iv). The Scale of Rates of JNPT was last revised in September 2006 vide Order dated 28 September 2006 in Case No. TAMP/48/2005-JNPT. Clause 1.2 (vi)(b) prescribed in Chapter 1 of the existing Scale of Rates of JNPT provides for levy of coastal rates at 60% of the rates prescribed for handling foreign containers.
- (v). In terms of Note 4 of Section 3.3.3 prescribed in the Scale of Rates of JNPT, a container from foreign port landing at the JNPT for subsequent transshipment to an Indian Port on a coastal voyage or vice versa would be charged at 50% of the transshipment charges prescribed for foreign going vessels and 50% of that prescribed for coastal category.
- (vi). The prescription made in Section 3.3.1 of the existing Scale of Rates of JNPT with regard to levy of charges for handling transshipment containers is given below:

Sl. No.	Description	Rate per TEU (in Rs.) Foreign Container	
		Loaded	Empty
1.	1 – 3000 TEUs	2550	2210
2.	3001 – 6000 TEUs	2380	2040
3.	6001 – 9000 TEUs	2210	1870
4.	Thereafter	2040	1700

As can be seen from the above, rates for coastal transshipment containers are not specifically included in the above table and notified.

- (vii). A Scale of Rate is not a document giving some set of rates alone for the services provided. It also contains the conditionalities governing application of rates. Therefore, the Scale of Rates of JNPT is to be seen in totality to decide on the applicable tariff. Harmonious reading of Clause 1.2 (vi) (b) of Chapter 1 and note 4 of Section 3.3.3. prescribed in the existing Scale of Rates of JNPT brings out the position that the coastal rates for transshipment containers is applicable and provided in the Scale of Rates. Notably, the table prescribing charges for transshipment containers is for foreign containers alone as seen from the header

given in the table. If the intention is not allowing any concession to coastal transshipment, which in any case would have been contrary to the Government policy, there would be no need to prescribe Note 4 under Section 3.3.3. detailing the charging basis when transshipment involves foreign as well as coastal legs.

- (viii). Incidentally, in the Scale of Rates of other two private container terminals at the JNPT namely, NSICT and GTIPL, the coastal rates for transshipment containers have been prescribed at 60% of the rates prescribed for foreign transshipment containers. It is relevant here to mention that the NSICT and GTIPL initially adopted the tariff structure of JNPT and the existing tariff structure of NSICT and GTIPL draws the genesis from the same tariff structure of JNPT. The Scale of Rates of both NSICT and GTIPL specifically carry a separate provision relating to rates for handling of coastal containers which is equivalent to 60% of the rates prescribed for foreign transshipment containers.
- (ix). Following Clause 1.2 (vi)(b) of the Scale of Rates of JNPT mentioned earlier and keeping in view Clause 5.5.1 of the tariff guidelines of 2005 which, inter alia, stipulates prescription of handling charges for transshipment coastal containers, the schedule under the existing sub-section D in Section 3.3.1 is to be taken to read as follows:

Handling of transshipment containers:

Sl. No.	Description	Rate per TEU (in Rs.)			
		Foreign Container		Coastal Container	
		Loaded	Empty	Loaded	Empty
1.	1-3000 TEUs	2550	2210	1530	1326
2.	3001-6000 TEUs	2380	2040	1428	1224
3.	6001-9000 TEUs	2210	1870	1326	1122
4.	Thereafter	2040	1700	1224	1020

- (x). By virtue of the existing Note 4 of Section 3.3.3., a container from foreign port landing at the JNPT for subsequent transshipment to an Indian port on a coastal voyage or vice-versa would be charged at 50% of the transshipment charges prescribed for foreign containers and 50% of that prescribed for coastal category.

8.1. In the result, and for the reasons give above, and based on a collective application of mind, this Authority clarifies that the existing Scale of Rates of JNPT already provides for concessional rates for transshipment of coastal containers and also provides for devising applicable rates when transshipment involves foreign leg and coastal movement. JNPT should follow the provisions in its Scale of Rates.

8.2. This Authority is of the view that a container from a foreign port with declared final destination to any port other than JNPT but handled at JNPT en route will only be eligible for transshipment rates. To put it in different words, a foreign container which is originally destined to JNPT and subsequently re-consigned to another Indian port from JNPT shall not be eligible for transshipment rates. In such cases of re-consignment from JNPT to another Indian Port, the normal coastal rate for its coastal voyage between JNPT and another port shall be applicable. As the issue involved touches upon the coastal policy of the Government, the Ministry of Shipping is being appraised of the interpretation of this Authority recorded in this sub-paragraph.

(Rani Jadhav)
Chairperson

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.

No.TAMP/53/2008-JNPT - Reference received from the Jawaharlal Nehru Port Trust (JNPT) regarding rates for the transshipment containers moved between JNPT and Mumbai Port.

A Summary of the comments received from the user organizations are summarised below:

Mumbai and Nhava Sheva Ship Agents Association (MANSA)

- (i). This should be made applicable not only to the movement between JNPT and Mumbai but also between JNPT and any Indian port on the second leg. This should also be made applicable for containers originating from any Indian port including Mumbai and outbound from JNPT on a foreign leg.

- (ii). TAMP Order is quite clear and it is understood in the following manner:
 - (a). Case 1: Container from foreign origin and Indian destination beyond JNPT –
 - (i). Handling charge for discharging from foreign vessel (50% of Rs.2550/-) Rs.1275/-

 - (ii). Handling charge for loading the container to coastal vessel (50% of coastal handling rate of Rs.1326/-) Rs.663/-

 - Thus, total cost for handling a transshipment container with part coastal leg Rs.1938/-**

 - (b). Case 2: Container from Indian origin and Foreign destination beyond JNPT –
 - (i). Handling charge for discharge of a vessel from coastal vessel (50% of coastal handling rate of Rs.1326/-) Rs.663/-

 - (ii). Handling charge for loading to foreign vessel (50% of Rs.2550/-) Rs.1275/-

 - Total cost for handling a transshipment container with part coastal leg Rs.1938/-**

Container Shipping Lines Association of India (CSLA)

- (i). As per Ministry's communication dated 1 January 2005, TAMP introduced concessional rates for coastal cargo / container / vessels vide its Order dated 7 January 2005 and passed necessary instructions to the major port trusts and private terminals to amend their Scale of Rates.
- (ii). There is minimal domestic cargo moving between ports in India. The main pattern of the movement of coastal container is as follows:
 - (a). Import containers arrive at Indian port on foreign vessels and then move on coastal vessels to other Indian ports.
 - (b). Export containers arrive on coastal vessels from Indian ports and then are transshipped onto foreign vessels.
- (iii). This means that whichever way the coastal container moves, part of its voyage is on foreign ships. The concessional tariff should be made applicable for the leg which is undertaken by a coastal voyage.
- (iv). Though the JNPT currently passes the concession for vessel related charges, to the lines, it does not pass the concession on container handling/ transshipment tariff.
- (v). The points raised by MSL has got its merits and they should get the benefits of 60% concessional tariff for the part leg of coastal movement. JNPT has not got the matter clarified and not fixed tariff for the coastal movement leg. It has been billing the shipping lines the normal transshipment charges. Since the JNPT has not been passing on the benefits to the lines till date, they should retrospectively refund the shipping lines the excess amount they have collected for part coastal movements so far. Also, TAMP should *suo motu* take up with other major ports/ private terminals to fix clear tariff for such movements and refund the excess amount collected from the shipping lines.

2. A joint hearing in this case was filed on 27 November 2009 in the office of the Authority. The JNPT and the users made the following submissions:

JNPT

1. There are 3 categories of transshipment
 - (i). Foreign – JNPT – Foreign
 - (ii). Foreign – JNPT – Coastal
 - (iii). Coastal – JNPT – Coastal
2. We do double operations in case of transshipment but charge only once.

3. Concession as per SOR is already allowed. If we allow another 50% concession, then we will be charging 30% of single operation for transshipment.

MANSA

4. TAMP Orders are clear. 50% of foreign and 50% of coastal rate is in case of transshipment to Indian Port.

CSLA

5. We endorse the view of MANSA
