

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

TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 110

New Delhi, 20 July 2005

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 proposal received from the Central Warehousing Corporation (CWC) for an amendment to its Scale of Rates (SOR) for Container Freight Station (CFS) services rendered by it at the Kandla Port Trust (KPT) as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports

Case No. TAMP/12/2005 - KPT

Central Warehousing Corporation (CWC) - - - - -

Applicant

ORDER

(Passed on this 15th day June 2005)

This case relates to a proposal received from the Central Warehousing Corporation (CWC) for an amendment to its Scale of Rates (SOR) for Container Freight Station (CFS) services rendered by it at the Kandla Port Trust (KPT).

2.1. This Authority had passed an Order on 10 August 2004 fixing the existing tariff for the various services rendered by CWC at its CFS at the KPT.

2.2. The CWC had initially pointed out that the description of operation under Sl.No.A (1) under Chapter-II of the Scale of Rates inadvertently states 'including lift on charge'. As per the terms of the Licence Agreement between CWC and KPT, lift on / lift off operations in the ports / docks area are beyond the scope of the License Agreement. Hence, CWC had requested to delete these specific words from the approved Scale of Rates (SOR).

2.3. In this context, it was clarified to CWC that the description of the operations in Chapter-II of the SOR was prescribed as proposed by the CWC, and this Authority had not made any suo moto amendments. If a component of the composite services is deleted, it is necessary to adjust (scale down) the composite rate. The CWC was, therefore, advised to file a separate proposal for amending its Scale of Rates by making suitable adjustment in the rates.

3.1. In this backdrop, the CWC has filed the proposal in reference for amending its Scale of Rates.

3.2. The CWC has clarified that the cargo / container handling and transportation operations were outsourced and the tariff was proposed based on similar job description contained in the outsourcing contracts. The words 'service including lift on in the port' was wrongly included in its proposal due to clerical error. The work of lift on at the port is not under its purview. The question of reduction in tariff, in view of the proposed deletion of specific words, does not hold good in the instant case since it is only rectification of a clerical error.

3.3. The CWC has not proposed any change in the rates prescribed in its SOR in view of modification proposed in the services offered. It has requested to re-draft the description of service by deleting the words 'including lift on in the port' from Sl. No.A (1) and has also proposed some other minor modification in the description of services offered. The provision prescribed in the existing Scale of Rates vis-a-vis the proposed amendment thereto is as follows:

SI.No.	Brief description of service for import operations									
	As prescribed in the existing SOR	Proposed by the CWC								
A (1).	Providing road vehicle at Container Yard (CY), Kandla Port and taking over loaded containers placed by Kandla Port Trust operators on the vehicles provided by the contractor , after due inspection of the condition of the container, the locks & seals and on completion of the required formalities, transporting the same to the Container Freight Station, CWC, Kandla Port [within 24 hours of issue of job order irrespective of any detention due to off-loading / loading delays or traffic congestion (under Custom escort wherever/ whenever required)] including lift on in the port. (Rate in Rs.) <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER TEU</td></tr> <tr><td style="text-align: center;">Rs.807.50</td></tr> </table> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER FEU</td></tr> <tr><td style="text-align: center;">Rs.1211.25</td></tr> </table>	PER TEU	Rs.807.50	PER FEU	Rs.1211.25	Providing road vehicles at Container Yard (CY), Kandla Port and taking over loaded containers placed by CSY (Container stock yard) Terminal Operators on the vehicles provided by the CWC , after due inspection of the condition of the container, the locks & seals and on completion of the required formalities, transporting the same to the Container Freight Station, CWC, Kandla Port. (Rate in Rs.) <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER TEU</td></tr> <tr><td style="text-align: center;">Rs.807.50</td></tr> </table> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td style="text-align: center;">PER FEU</td></tr> <tr><td style="text-align: center;">Rs.1211.25</td></tr> </table>	PER TEU	Rs.807.50	PER FEU	Rs.1211.25
PER TEU										
Rs.807.50										
PER FEU										
Rs.1211.25										
PER TEU										
Rs.807.50										
PER FEU										
Rs.1211.25										

4.1. In accordance with the consultative procedure prescribed, the proposal of the CWC was forwarded to the KPT and the concerned port users / representative bodies of port users for their comments.

4.2. The comments received from the KPT and the user organisations were forwarded to the CWC with a request to furnish its comments on the objections raised by the user organisations and specifically with reference to recovery of lift on charge in addition to the rate approved by the TAMP. The CWC was also requested to furnish the break-up of the rate for composite services prescribed under serial number A (1).

4.3. In view of the complaints received from various user associations, the KPT was also requested to enquire and report the factual position about alleged recovery of charges by the CWC beyond the notified Scale of Rates.

5.1. The CWC has furnished its response to the comments furnished by the user organisations. The CWC has also furnished the break-up of services and analysis of cost under item no. A (1) as tabulated below:

Sl. No.	Operation	Amount payable to the outsourcing agency (Rs.)		Amount charged by CWC from users as per prevailing TAMP approved rate (Rs.)		CWC margin (Rs.)	
		TEU	FEU	TEU	FEU	TEU	FEU
A	Lift on inside the port	150.00	250.00	Nil	Nil	(-) 150.00	(-) 250.00
B	Transportation of loaded container from CSY-KPT to CFS-KPT	555.00	950.00	807.50	1211.25	252.50	261.25
C	Royalty presently payable to port per TEU	107.50	215.00	Nil	Nil	(-) 107.50	(-) 215.00
		812.50	1415.00	807.50	1211.25	(-) 5.00	(-) 203.75

The above data shows that if the anomaly crept in due to printers devil is not removed, it will have to provide this service (which is also a major item) at a loss against the TAMP directions to allow proportionate administrative and other expenses and return on investment.

5.2. The CWC has reiterated that the lift-on / lift-off service within the CY do not fall in the domain of the CFS operator, as it is the work area to be performed by the terminal operator. At Kandla, as the CFS, incidentally and ironically, has come much ahead of the terminal, this service is tried to be hived off by the trade to CWC. Till the terminal is in place, the port or the users themselves have to undertake this facility on their own and hence, the cargo interest has to bear these costs till the terminal is in place. Subsequently, the CY/ Terminal operator will charge the trade for this service. In view of the above points, it has requested to notify the following amendment in brief description of service under item no. A (1) of Chapter II of its Scale of Rates.

“Providing road vehicles at Kandla Port taking over the loaded containers to the CWC / CFS at Kandla Port after verification of locks and seals and completion of required formalities.”

5.3. It is relevant to mention that the CWC has revised the amendment proposed earlier by deleting few more words / services without making any specific mention about the same.

6. As regards the complaint made by the user organisations about levy of lift-on charges by the CWC in addition to the charges prescribed at Sr. No. A (1) of its Scale of Rates, the KPT while furnishing comments on the proposal has clarified that this issue has not been raised by any of the port users in the meetings held by the Chairman / Traffic Manager of KPT. It has, however, agreed to examine the matter and report the factual position to the TAMP.

7. A joint hearing in this case was held on 31 May 2005 at the KPT premises. At the joint hearing, the CWC, KPT and the user organisations have made their submissions.

8.1. As decided at the joint hearing, the KPT was advised to file its report on the alleged recovery of excess charges by Central Warehousing Corporation (CWC) alongwith its comments on the responsibility of the CWC to perform the lift-on operations at the Container Yard (CY) as envisaged in the L.A.

8.2. In response, the KPT has furnished its submission as summarised below:

- (i). As per the clause 3.8.1(ii) (e) of the L.A., it is the responsibility of the licensee i.e. CWC to transport the containers to CFS including lift on from CSY. Lift on operations in the container yard is not within the scope of the KPT as per the terms of the L.A.
- (ii). It has conducted an enquiry on the alleged recovery of excess charges by the CWC and has confirmed that CWC does not charge anything extra over and above the notified tariff.

9. 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>

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

- (i). Like in the proceedings relating to the initial fixation of tariff for the CWC-CFS, some of the users have raised their grievances on additional cost to them due to operation of the CFS and questioned the wisdom of granting exclusive rights to CWC for operating CFS. This issue has already been dealt by this Authority in its earlier Order of August 2004 and it has been held that it is not for this Authority to sit in judgement over the policy decisions relating to port development which fall within the domain of the Govt. and the port trust. Since the licence to CWC has been granted under the provisions of Section 42(iii) of the MPT Act, which was confirmed by the KPT, this Authority, as required under law, has prescribed the Scale of Rates. Some of the users associations have moved the Hon'ble High Court of Gujarat questioning, among other things, the jurisdiction of this Authority to fix the Scale of Rates for CWC-CFS. As per our record, there is no order of the Hon'ble Court to stay the operation of the earlier order of this Authority. This case is, therefore, limited to the specific reference to consider the amendment proposed by CWC to the specific tariff item in its notified Scale of Rates. This Authority does not like to be drawn into the controversy raised on the other policy and managerial issues including (even) interpretation of the licence agreement between KPT and CWC.
- (ii). The CWC has claimed that the lift on operation at the port yard for import boxes is not to be performed by it; but, such a prescription has been made in the Scale of Rates due to 'clerical error'. The Federation of Port Users (FPU) and KPT have countered this claim by pointing out the CWC's own analysis of cost to users for CFS operation on its facility vis-a-vis elsewhere, which was submitted by it as part of its proposal for fixing the existing Scale of Rates. Our record reveals that the CWC did submit such a comparative analysis vide its letter No. CWC/RO-AHD/Bus.CFS-KPT/2003-04/11928 dated 23 March 2004 which shows no cost to the users for lift on / lift off operation inside the CFS and KPT. It is not, therefore, possible to readily admit that wordings in the Scales of Rates for the relevant tariff item have been formulated due to any oversight. In the absence of any justifiable grounds given by CWC to negate the position contained in the comparative statement furnished by it earlier, it can be reasonably assumed that the lift on operation for import boxes at the KPT yard was envisaged to be provided by CWC against levy of the composite rate proposed.
- (iii). The existing Scale of Rates of the CWC was fixed with reference to the cost and investment projections furnished by CWC. As correctly pointed out by the users, the outsourcing arrangement made by CWC cannot be the sole determining factor for framing the Scale of Rates. On the contrary, it is incumbent on CWC to arrange to provide the services prescribed in the Scale of Rates against levy of the notified rate.

- (iv). Subsequently, the CWC has argued that the cost of providing the composite service as envisaged in the SOR is more than the corresponding rate prescribed and, hence, it would incur a loss if the 'clerical error' is not rectified. It is significant to note that the existing Scale of Rates for CWC operation has been framed based on an analysis of financing model for the of CWC operations as a whole at the relevant facility. Admittedly, individual tariff items may not be strictly cost based in view of the overall cost plus approach adopted. This means, deficit, if any under one activity/sub-activity is made good by surplus available elsewhere. This position has been correctly appreciated by some of the users who have demanded review of the entire SOR instead of an isolated tariff item. It is noteworthy that royalty payable by CWC to KPT was not considered as an item of cost, for stated reasons, while fixing the existing Scale of Rates. If such an exclusion is made from the analysis given by CWC at para 6.1 (iv), the relevant service is likely to meet the direct cost and generate surplus which goes to meet the general overheads and return requirements of CWC.
- (v). One of the main arguments in favour of the amendment proposed by CWC is that the concerned LA does not permit it to carry out lift off operations at the KPT yard. When asked to clarify the correct position, KPT has quite emphatically pointed out that such an operation by CWC is envisaged in the LA. Since the operation is to be performed by CWC as per the LA, and also for the reasons, given in the preceding paragraphs of this analysis, the claim of 'clerical error' made by CWC has not been established. That being so, the arguments of the users that the proposal is not for rectification of any 'clerical error' but an attempt of abdication of responsibility cannot be brushed aside lightly. The amendment proposed cannot also be considered as segregation of composite activity, as CWC has not proposed any adjustment in the corresponding rate.
- (vi). Even though the CWC has come up with various reasons for deletion of 'lift-on' operation, it has not given any grounds for deletion of the performance conditions relating to shifting the containers within 24 hours of issue of job order. There has to be a performance condition governing this operation. The users have demanded that the penalty should be prescribed for non-performance. This Authority endorses this request; but, such a prescription in tariff can be made meaningfully at the time of next general review of the Scale of Rates of CWC based on operational data for a sufficiently longer period which will be available by then. Nevertheless, the KPT as licensor is advised to take appropriate actions under the provisions of LA, if it is convinced that CWC is not making sincere efforts to fulfill its performance assurance.
- (vii). In the entire sequence of container handling, there can be more than one lift on/off operation at various stages. By way of abundant caution, it is pointed out that the issue before this Authority relates only to the lift on activity at the Port yard in the case of import boxes moving to CFS. The users have alleged that CWC was recovering lift on charges which was beyond the scope of the notified tariff. The documents submitted by the users in this regard do not, however, support their argument. The documents produced are copies of bills for the charges levied by a private firm for providing lift-off services to export containers. The CWC is on record clarifying that such charges were not levied under their account for any lift on operation of import boxes. It is clarified that if users can prove that in addition to approved Scale of Rates on account of lift on operation for import box if any charges are levied they shall be refunded. The report available from KPT categorically denies any excess charges levied by CWC. The question of ordering refund by CWC, as demanded by the user, does not, therefore, arise.

11. After the case was closed for orders, the CWC has requested to withdraw the proposed amendment. It may be relevant here to mention that the amendment proposed by the CWC is, in any case, fit for rejection in view of the analysis contained in preceding paragraphs. This Authority, accepts the request of the CWC to withdraw its proposal, and decides to treat this case as withdrawn. This issue cannot be re-opened before the next general review of the Scale of Rates of the CWC. Even if any amendment to the composite services is proposed at that stage, it should be accompanied with corresponding adjustment in the composite rate.

12. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides to close this case as withdrawn.

(A.L. Bongirwar)
Chairman