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Tariff Authority for Major Ports

G.No. 72

New Delhi, 10 May 2005

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal received from the Kandla Port Trust to amend its existing Scale of Rates (SOR) with reference to the conditionalities prescribed for shifting of vessels as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/18/2005 - KPT

Kandla Port Trust (KPT)

Applicant

ORDER

(Passed on this 25th day of April 2005)

This case relates to a proposal received from the Kandla Port Trust (KPT) to amend its existing Scale of Rates (SOR) with reference to the conditionalities prescribed for shifting of vessels.

2.1. The Scale of Rates of the KPT was last revised by this Authority vide its Order dated 8 April 2002. The Order along with the approved Scale of Rates was notified vide Gazette No. 81 dated 17 April 2002.

2.2. The term 'port convenience' is defined in the existing SOR of the KPT; and, no charge is leviable for shifting of vessels for port convenience.

3.1. The KPT in its proposal has narrated the various operational difficulties experienced on account of restriction of handling particular commodity at particular berth, handling restrictions due to reach of vessel's gear, draft restrictions in channel, etc. As a result of these operational restrictions, a vessel is required to be shifted to another berth/ anchorage. It has cited a few instances in this regard which are summarised below:

- (i). Out of 11 berths available at the Kandla Port, commodity restrictions are at cargo berth nos.1 to 5 where cargo such as sulphur, fertilizers, coal, scrap, zinc concentrate, lead concentrate, bentonite, etc., cannot be handled, whereas timber log vessels are not allotted berth Nos. 2 to 6. For example, a vessel working at berth No.7 loading rice or handling containers has to be shifted to berth no.3 in order to berth a zinc or sulphur vessel at berth no.7 as per the berthing policy. This shifting cannot be attributable to the rice or container vessel. At the same time, shifting charges cannot be levied on the incoming vessels on account of various reasons. On account of the restrictions in handling commodity at a particular berth, a vessel is required to be shifted which is otherwise not attributable to any vessel. Such a shifting, therefore, should be treated as for port convenience.
- (ii). Certain vessels calling at the port can handle cargo only at particular berths like berth no.1 and berth nos. 7 to 10 due to outreach of vessel's gears. Further, certain vessels can handle cargo at berth Nos.1 to 4 only due to old fenders at these berths and the outreach of vessel's cranes. Owing to such restrictions also, a vessel is required to be shifted to another berth.

3.2. Shifting of vessel on account of such operational difficulties are not attributable to any vessel but are actually for port convenience. If the shifting is for port convenience, the vessel which is asked to shift will not object, but if the shifting is for the convenience of the incoming vessel, the other vessel may refuse on the ground that it incurs certain costs on account of shifting such as fuel, operational loss, etc. It is, therefore, essential to prescribe such shifting of vessel as shifting for port convenience.

3.3. In this backdrop, the KPT has proposed to insert the following provisions in Note 4 (i); Scale 2.2, in Chapter II of its Scale of Rates:

- “(f). Whenever a vessel is shifted to accommodate another vessel on account of commodity restriction on any berth imposed by Port, it be considered as shifting for port convenience.*
- (g). Whenever a vessel is shifted to accommodate another vessel on account of handling restrictions on any berth imposed by Port, it be considered as shifting for port convenience.*

- (h). *Whenever a vessel is shifted to/ from anchorage due to tidal restrictions, it be considered as shifting for port convenience.*
- (i). *Whenever a vessel is shifted on account of draught restrictions in the channel/ bar it will be considered as shifting for port convenience.*
- (j). *Whenever a vessel is shifted to accommodate any other vessel due to difference in draught at different berths/ moorings it will be considered as shifting for port convenience.*
- (k). *Whenever a vessel is shifted to anchorage due to variation in permissible draught for day and night pilotage it will be considered as shifting for port convenience.*
- (l). *Whenever a vessel is shifted to anchorage due to allotted berth being occupied, it will be considered as shifting for port convenience.*
- (m). *Whenever a vessel is shifted to anchorage to prevent idling of berth it will be considered as shifting for port convenience.*
- (n). *Shifting a vessel carried out prior and after making fast buoy moorings for reasons other than the vessel not being in readiness will be considered as shifting for port convenience.*
- (o). *Shifting a vessel from anchorage to anchorage for Navigational convenience will be considered as shifting for port convenience.*
- (p). *If a vessel is shifted due to mal-functioning of port-equipment, clearance of berth, etc., it will be considered as shifting for port convenience.*
- (q). *To authorise Chairman, KPT to enlist any eventuality including commodity and handling restrictions as Port convenience based on the recommendations of a Committee constituted for the same from time to time."*

3.4. The KPT has also pointed out that the Kandla division is already in deficit and the proposed amendment will lead to additional burden of Rs.50 lakhs per annum. In view of this position, it has proposed to increase berth hire by 2½ % considering the shifting charges is almost to the tune of 30% of berth hire charges.

4. In accordance with the consultative process prescribed, the proposal of the KPT was forwarded to the concerned user organisations for their comments. The Kandla Stevedores Association Limited (KSAL) and the Kandla Port Steamship Agents Association (KPSAA) have furnished their comments.

5.1. The KPT was requested to furnish cost statements for the main activities / sub-activities. Since the SOR of the KPT is already due for revision, the KPT was requested to explain the reasons for such piecemeal proposal for revision/ amendment in its SOR.

5.2. The KPT has furnished cost statement for berth hire activity which shows deficit of 317.35% for the year 2004-05 after considering return on capital employed @ 17.5%. It has reiterated that the proposed amendment to the treat certain movement of vessels as port convenience will put further financial burden on the port and hence has requested this Authority to approve the proposed increase in berth hire charge. It has also stated that formulation of a comprehensive proposal for revision of its SOR is under process and will be submitted in due course.

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

7.1. The proposal of the KPT consists of two components. The first one is to prescribe certain movements of vessels as shifting for port convenience and second is to increase the existing berth hire charge by 2½ % to compensate the loss on account of the proposed amendment in the conditionalities. As reported by the KPT, the proposal to classify the identified movement of vessels as shifting for port convenience is in recognition of the fact that such movements are unavoidable due to the various restrictions imposed by the port. Justifiably, movement of ships in such cases is to be done by the port without levy of any shifting charges. The proposal for expanding the definition of 'port convenience' will undoubtedly benefit the user since no shifting charge will be levied for such movements. The KSAL and KPSAA have also endorsed the proposed amendment. That being so, this Authority is inclined to approve the proposed amendment to list the various movements of vessels as shifting for port convenience.

7.2. One of the clauses proposed to be included allows a discretionary power to Chairman of KPT to classify any of the unenumerated movements as shifting for port convenience based on the recommendation of the Committee. The KSAL and the KPSAA have made a suggestion to modify this clause to authorise only the Chairman to list any eventuality as port convenience. Generally, this Authority, in the past, has not considered such provisions favourably on the ground that SOR should be definite in application. In the instant case, the KPT has made an exhaustive listing of most of the eventualities to be termed as port convenience. The residual clause is proposed to tackle any unforeseen circumstances. Recognising the fact that classification of any movement of ship as port convenience will only go to provide relief to users, the proposed residual clause is also approved.

8.1. The KPT has proposed upward revision in the berth hire by 2½% to compensate the likely loss on account of the proposed amendment in the conditionalities. Shifting is an activity associated with pilotage tariff head. The reasons why berth hire, assuming any increase is justified from cost point of view, should be increased for the possible reduction in revenue due to elaboration of the term port convenience has not been explained. The users have strongly objected to the proposed increase in berth hire. The users have reported that the KPT already allows such shifting of vessels on account of port convenience though these movements are not incorporated in the definition of port convenience in its existing SOR.

Be that as it may, it is rational and objective to deal with the relevant tariff item instead of subjecting any of the convenient tariff item for a review. Besides, the KPT has highlighted only the deficit in Kandla Division without referring to the fact that the financing model considered while framing the existing SOR took into account the heavy flow of cross-subsidisation from its Vadinar Division. Any appraisal now, therefore, has to primarily consider the position for the port as a whole. Such an analysis is not furnished. For these reasons, no meaningful decision can be taken relying solely on the stand alone cost statement for berth hire activity at Kandla furnished by the port.

8.2. This Authority in its recent Order dated 15 March 2005 relating to revision in the rates for Tuna Port, has already advised the KPT to file a comprehensive proposal for review/ revision by 30 June 2005. Since the proposal for comprehensive review of its SOR is already in the process of formulation as reported by the KPT, a general review can be undertaken early bearing in mind the recently announced revised tariff guidelines. That being so, the proposal of the KPT for upward revision in the berth hire is not accepted at this juncture.

9.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the insertion of the conditionalities relating to port convenience as proposed by the KPT in paragraph 3.3 above in the Scale of Rates of the KPT in note 4 (i); Scale 2.2 under Chapter-II. The KPT is directed to file its comprehensive proposal in line with the revised guidelines for review/ revision of its SOR by 30 June 2005 latest.

9.2. This amendment to the existing SOR will come into effect 30 days after the date of notification of this Order in the Gazette of India.

(A.L. Bongirwar)
Chairman

**SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS /
DIFFERENT USER ORGANISATIONS**

F. No. TAMP/18/2005 – KPT - Proposal from the Kandla Port Trust (KPT) for amendment to the conditionalities in its Scale of Rates.

1. In accordance with the consultative procedure prescribed, the proposal received from the KPT was forwarded to the concerned user organisations seeking their comments. The comments received from them are summarised below:

Kandla Stevedores' Association Ltd. (TCCI)

- (i). The modification proposed by the KPT are absolutely essential and it endorses the same. The proposed provision (q) may, however, be amended so as to authorise only the Chairman, KPT to enlist any eventuality including commodity and handling restrictions as port convenience.
- (ii). It is understood that the proposed amendment to include various eventualities within the scope of port convenience has arisen due to an audit objection as these eventualities are not clearly specified in the Scale of Rates (SOR).
- (iii). Even under the existing SOR, pre-audit objection, shifting of vessels due any of the eventualities was carried out under 'port convenience' at the existing Berth Hire Charges simply due to the fact that these eventualities were already considered in the existing Berth Hire charges. Hence, there is no justification for any increase in the Berth Hire charges due inclusion of these eventualities.
- (iv). In view of the above, the proposed increase in the berth hire charges should not be approved.

Kandla Port Steamship Agents Association (KPSAA)

It has reiterated the points made by the Kandla Stevedores' Association Limited.
