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**TARIFF AUTHORITY FOR MAJOR PORTS**

**GNo. 34**

**New Delhi**

**28. January, 2010**

**NOTIFICATION**

In exercise of the powers conferred under Sections 48, 49 and 50 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal received from the Mumbai Port Trust for fixation of tariff for anchorage and lighterage charges at the extended port area as in the Order appended hereto.

**( Rani Jadhav )**  
Chairman

## **Tariff Authority for Major Ports**

### **Case No. TAMP/36/2009-MBPT**

**The Mumbai Port Trust**

**Applicant**

### **ORDER**

(Passed on this 30<sup>th</sup> day of December 2009)

This case relates to a proposal received from the Mumbai Port Trust (MBPT) for fixation of tariff for anchorage and lighterage charges at the extended port area.

2.1. This Authority passed an Order on 28 September 2006 in Case No. TAMP/57/2005-MBPT on general revision of the Scale of Rates of the Mumbai Port Trust. Section 2.14 of the SOR of MBPT approved by this Authority vide the said order pertains to anchorage fees.

2.2. Since September 2008 many vessel agents and Mumbai and Nhava Sheva Ship Agents' Association (MANSA) addressed this Authority about MBPT raising supplementary bills towards anchorage fees, after a lapse of more than a year, on vessels anchored and worked cargo during 2006-2007 at the extended port limits of Mumbai Port. MANSA contended that no charges can be legally levied on such vessels retrospectively as no rates have been approved by TAMP. According to it, the vessels for which supplementary bills have been issued by the Port were anchored and worked cargo on locations outside the then limit of Mumbai Port and not at any anchor points shown in the schedule of anchorage fees vide Section 2.14 of the SOR of MBPT.

3. The representations received from MANSA and other vessel agents were forwarded to MBPT for remarks. MBPT replied that its levying the charges on vessels anchored at the extended port limits on par with the charges notified at Section 2.14 of the SOR is in order since the vessels had anchored and worked within the port limit for cargo discharge. It also stated that if this Authority feels that separate approval is required for such levies, it may accord ex-post-facto approval thereto with effect from 26 October 2006.

4. While according approval to the Scale of Rates of MBPT vide this Authority's Order dated 28 September 2006, the extended port limits had not come into existence and, therefore, the Scale of Rates which contains rates for specific operational points of anchorages could not have covered the points falling in the extended port limit. In the existing anchorage schedule, location-specific differential rates have been prescribed. On the vessels anchored at the extended port limits, MBPT has levied the highest rates available in the schedule. Though MBPT suggested to this Authority to accord ex-post-facto approval to the extension of applicability of rates for the extended port area with effect from 26 October 2006, it did not furnish any justification for levying the highest rates available in the anchorage schedule. MBPT was, therefore, advised to file a well analysed

and self contained proposal with necessary justifications and revenue implications, to fix appropriate anchorage fees in the extended port limit.

5.1. On this backdrop, MBPT forwarded its proposal dated 28 August 2009 followed by letter dated 16 September 2009 for fixation of tariff for anchorage and lighterage charges at the extended port area. The salient features of the proposal are as under:-

- (i) The Port limits have been extended with Government's Notification on 26 October 2006.
- (ii) The notification of extending of the Port limit was subsequent to the approval of SOR by TAMP.
- (iii) No services are rendered by MBPT at the extended Port area. Physical operations are the same as were done prior to extension of port limit. As the area is now within the port limits, the Port is responsible for all safety, security and conservancy functions in this extended area and specifically in that part of the notified anchorage referred to by the Port as 'C' anchorage. Thus, while no day to day service may be provided in the form of the pilotage, towage, etc., considering the responsibility that comes with the area being brought under the port limits, the port is responsible to ensure safe passage, anchorage and operations.
- (iv) Vessels are undertaking lighterage operations by anchoring at extended port area. Since anchorage and lighterage charges are levied at the original port area, similar charges are being levied on ships undertaking the operations of lighterage and anchorage at extended port area also. This was done by taking the analogy of anchorage and lighterage charges at notified anchorage points in SOR. The maximum rates of notified anchorages have been applied with effect from October 2006 to the extended port area.
- (v) The Port has levied the charges on par with notified anchorages in consideration of the fact that the Port limit has been extended and the vessels have anchored and worked within the Port limit for cargo discharge.
- (vi) These activities are similar to that of notified anchorages as far as the anchorages and lighterage operations are concerned. Further, since the bills were raised applying the maximum rate in the SOR for anchorage / lighterage, the same is proposed to be charged and regularized accordingly.

5.2. The MBPT has sought approval to the proposed amendments to its Scale of Rates with retrospective effect from 26 October 2006.

6. In accordance with the consultative procedure prescribed, copies of the proposal received from MBPT were forwarded to the relevant organizations for their comments. The only comments received were from MANSA and it was forwarded to MBPT as feedback information. MBPT has responded to the comments of MANSA.

7. By this Authority's letter dated 3 November 2009, MBPT was requested to furnish certain details / clarifications. The Port's reply was received on 25 November 2009. The clarifications sought and the replies received thereto are as under:-

<b>Sr. No.</b>	<b>TAMP's query</b>	<b>MBPT's comments</b>
(i)	<p>MBPT has stated that the notification of extending of the port limits was subsequent to the approval of SOR by TAMP. MBPT's general rate revision proposal was approved by this Authority under Order dated 28 September 2006 . On this Order, on different issues MBPT had addressed this Authority vide its letter dated 30 December 2006. The MBPT however did not inform this Authority about the extension of its Port limits in its letter dated 30 December 2006.</p>	<p>The extension of Port limit was to facilitate JNPT for deepening and widening of channel and for inclusion of certain areas where lighterage and anchorage operations were taking place. The notification revising the Port limit was gazetted on 26.10.2006 after approval of the comprehensive tariff revision by TAMP on 28.09.2006. All the Port users were informed by circular dated 20.11.2006 of revision of Port limit and applicability of charges as per TAMP approved SOR. Since vessels operating within the Port limit are to be charged as per the SOR, revision of Port limit was not separately informed in the letter dated 30.12.2006.</p>
(ii)	<p>According to MBPT 'South off Shipping' was one more anchorage point within the port area before extension of the Port limits where vessels desired to carry out cargo operations which was not permitted earlier. The proposal includes location wise anchorage points in the original port limit and also the anchorage points at the extended port limit. Thus, the anchorage points "south of shipping" is not covered by the proposal filed with us.</p>	<p>One more anchorage point "South of shipping" will be added in Group (b) anchorages as many vessels desires to carry out the cargo operation at this point which was not permitted earlier. It is basically an anchorage for waiting vessels and is used only if other anchorages are full. The impending comprehensive tariff revision proposal proposes cargo related charges on lighterage operations at various areas including south of shipping</p>
(iii)	<p>The port has stated that a rate of Rs. 15/- per MT was proposed in the comprehensive revision for a similar service at the extended port area which was rejected by this Authority as the matter is subjudice. Para 9 (xLviii) (b) of the Order dated 28 September 2006 explains the Authority's decision to reject the proposal of the port. The issue is revived now in a separate proceedings</p>	<p>The levy of charge of Rs.15/- per MT for operation outside the Port limit was in respect of cargo that was transhipped through Port waters when the mother vessel anchored outside the Port limit. This issue is different than the issue now under consideration. This was brought out in the proposal for full disclosure of facts and transparency.</p>

	<p>based on the direction of the Hon'ble High Court of Bombay. Even otherwise, the proposal of MBPT was to levy a charge of Rs. 15/- per MT for cargo operations outside its port limits. The issue now under consideration in this case is the charges leviable for use of facilities inside the port limits. Therefore, the relevance of the disputed charge of Rs. 15/- per MT in the case under consideration is not understood</p>	
(iv)	<p>Port has confirmed in letter dated 28 August 2009 that no services are rendered to the vessels at the extended port area. It is also stated that the physical operations are the same both at the areas before and after the extension of the port limits. This statement leads to the conclusion that at the concerned anchorages neither before extension of the port limits nor after they became part of the port limits, MBPT renders any services to the vessels at the anchorage points. Kindly confirm.</p>	<p>As the area is now within the port limits, the Port is responsible for all safety, security and conservancy functions in this extended area and specifically in that part of the notified anchorage referred to by the Port as 'C' anchorage. Thus, while no day to day service may be provided in the form of the pilotage, towage etc., considering the responsibility that comes with the area being brought under the port limits, the port is responsible to ensure safe passage, anchorage and operations. To this end, we have had the area surveyed and new navigational charts have been published. The activities for anchorage and lighterage operations are the same as that of notified anchorages.</p>
(v)	<p>The approved SOR prescribes charges leviable at four groups of anchorage points specified at Section 2.14 (A) and (B). MBPT is requested to list out the different services provided by it and facilities made available at each of these groups of anchorage points. MBPT is also requested to list out the services provided and the facilities made available by it at the anchorages falling in the extended port limits.</p>	<p>The services and facilities at all anchorages including the Lighterage Anchorage which now falls within the Port on account of revision of port limits is the same such as notification of depths, pilotage, towage, water supply, fire fighting, conservancy and ensuring safe navigation and cargo operations. The only difference is that at this anchorage area, pilotage is not compulsory. However, this service if requested for is separately charged as explained above.</p>
(vi)	<p>In the existing anchorage schedule, location specific rates have been prescribed distinguishing between better located anchorages and other anchorages. Higher rates have been provided for anchorages</p>	<p>The charges for anchorages have been fixed keeping in view the utility of the anchorage and suitability for carrying out cargo operations, especially taking into account the draft available. In this connection, it may be pointed out that the Lighterage &amp; Anchorage at extended Port limits is considered far</p>

	<p>which are closer to the docks and probably on either side of the main harbour channel and lower rates for other anchorages. On the vessels anchored at the extended port limits, MBPT has levied the highest rates available in the schedule, which is sought to be regularized. MBPT is once again requested to justify the highest rates levied by it at the extended port limits.</p>	<p>superior to the anchorages within the Compulsory Pilotage Area due to higher draft available thereat (over 14 mtrs. at Chart Datum) and being away from the main shipping channel. Thus, for determining charges, it needs to be compared to the notified anchorages where deep drafted vessels can be anchored within the Compulsory Pilotage Area.</p>									
(vii)	<p>MBPT is requested to state the additional revenue per year its proposal is estimated to generate within the next 3 years. Also please furnish a break up of the estimated additional revenue under anchorage charges and lighterage charges.</p>	<p>The additional revenue p.a. on account of lighterage and anchorage charges at extended port area was as follows :</p> <table border="1" data-bbox="873 762 1328 997"> <thead> <tr> <th></th> <th>Lighterage charges</th> <th>Anchorage charges</th> </tr> </thead> <tbody> <tr> <td>2006-07</td> <td>Rs. 1.08 crores</td> <td>Rs. 0.16 crores</td> </tr> <tr> <td>2007-08</td> <td>Rs. 1.06 crores</td> <td>Rs. 0.25 crores</td> </tr> </tbody> </table> <p>However, since MBPT started charging lighterage and anchorage charges, the trend is to shift the operations to inner anchorages to the extent possible. We are not maintaining separate data of vessels operating at extended port limit. Hence, the information called for is not readily available</p>		Lighterage charges	Anchorage charges	2006-07	Rs. 1.08 crores	Rs. 0.16 crores	2007-08	Rs. 1.06 crores	Rs. 0.25 crores
	Lighterage charges	Anchorage charges									
2006-07	Rs. 1.08 crores	Rs. 0.16 crores									
2007-08	Rs. 1.06 crores	Rs. 0.25 crores									
(viii)	<p>The port has requested for levy of anchorage and lighterage charges at the extended port area with effect from 26 October 2006. As per clause 2.17.4 of the revised tariff guidelines, the rates approved by this Authority would ordinarily be effective only prospectively. The compelling circumstances warranting this Authority to approve the rates retrospectively may please be explained.</p>	<p>By circular dated 20.11.2006 revision of the Port limit was brought to the notice of Port users stating that charges at rates under the approved SOR will be leviable on the vessel for cargo operations within the revised Port limit. Accordingly, charges are proposed to be regulated from 26.10.2006, the date of revision of Port limit.</p>									
(ix)	<p>MBPT has proposed to introduce "extended port limits" in Section 2.14 (A), 2.14 (B), 2.14 (C) and 2.2 (c) in Chapter II of its Scale of Rates. The 'extended port area' has been defined as the area marked in the chart with latitude</p>	<p>We confirm the latitude and longitude as under :</p> <p>A Latitude 18° 57' N Longitude 72° 41' E  B Latitude 18° 55' N Longitude 72° 41' SE  C Latitude 18° 55' N Longitude 72° 43' SE  D Latitude 18° 57' N Longitude 72° 43.5' SE</p>									

	<p>and longitude marked therein and identified for the lighterage and anchorage operations within the extended</p> <p>port limits of Mumbai Port Trust. The map enclosed to the proposal indicates the area covered A, B, C and D as having the latitude and longitude as under.</p> <p>A      Latitude    18°    57'    N Longitude 72° 41'E</p> <p>B      Latitude 18°57' Longitude 72 °43.5' SE</p> <p>C      Latitude    18°55'    N Longitude 72°43' SE</p> <p>D      Latitude    18°55'    N Longitude 72 °41' SE</p> <p>Kindly confirm that the anchorage points at the extended port limits are confined to these areas where the lighterage operations would also take place.</p>	
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8.1. A joint hearing in this case was held on 26 November 2009 in the office of this Authority. The MBPT and the concerned users made their submissions.

8.2. 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>

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

- (i) The Port limits of Mumbai Port Trust have been extended by the Central Government in the Ministry of Shipping, Road Transport and Highways in exercise of powers conferred on it by the Indian Ports Act and Major Port Trusts Act vide Notification No. GSR 672 (E) dated 26 October 2006 which was subsequent to the approval of the existing Scale of Rates by this Authority vide Order dated 28 September 2006.
- (ii) MBPT by circular No. DC/C-PR (Port limits) /5530 dated 20 November 2006 has drawn attention of MANSA, INSA, Ship-Owners and Charterers, Shipping Agents and all the concerned port users to the Gazette Notification dated 26 October 2006 issued by the Government regarding extension of the port limits. By the said circular all concerned have also been informed that vessels

entering the revised port limits for carrying out any operations shall be liable to pay all port charges as applicable under the port's scale of rates.

- (iii) The MANSA and other vessel agents have pointed out that MBPT has raised bills belatedly on vessels which had carried out operations at the extended port limits subsequent to 26 October 2006. On this issue at the Joint hearing, MBPT has stated that Section 56 of the MPT Act, 1963 permits a period of two years to levy short charges, if any. The reference to Section 56 of the Act may be relevant only in respect of charges leviable under Chapter VI of the Act, which will be the charges notified by this Authority. As pointed out by MANSA, at the material time, there was no specific rates approved for the anchorages at the extended port limit. That MBPT also recognizes this position is evidence from its request for retrospective approval of the tariff item. That being so, the contention of MBPT that its action was covered by Section 56 of the Act cannot be admitted.
- (iv) MANSA has argued that MBPT cannot charge any rate in the extended area till this Authority approves rates for those areas. It is a fact that while according approval to the Scale of Rates of MBPT vide this Authority's Order dated 28 September 2006, the extended port limits had not come into existence and, therefore, the Scale of Rates which prescribes rates for specific operational points of anchorages could not have covered the points falling in the extended port limits. The moot question is whether the port is statutorily eligible to levy a charge at the anchorages situated at the extended port limit. Section 49 (1) of MPT Act reads as follows:-

“The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder:----]

- (a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;
- (b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;
- (c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;
- (d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.”

By virtue of the Notification of the Government, the areas covered by the said notification form part of the port limit, which included the area referred in this proceeding as the extended port limits. If the port trust is not entitled to levy a charge, it will be infructuous to statutorily empower this Authority

to prescribe a rate therefor. Anchorage charges and lighterage charges at MBPT are not a new tariff item to be introduced. They already exist in the present Scale of Rates. If the port can levy such charges at the original port limits, it can continue to levy them at the enlarged port limits also. It may be significant here to note that no pointed objection is raised in respect of levy of such charges in the original port limits. Therefore, the issue to be decided is the quantum of such charges leviable at the new anchorage points and the request of the port seeking retrospective approval to such rates.

- (v) The Port has proposed to apply the highest rate of anchorage charges available in the SOR to the extended port limits also. The Port has argued that a draft of over 15 meters above Chart Datum is available for lighterage and anchorage operations at the extended port limits and those points are hence far superior to the other anchorage points available in the original port limits where the draft ranges between 5 meters and 9.3 metres. The anchorage charges presently prescribed in the SOR of MBPT are arrived at after analyzing various factors like proximity, depth and commercial utility of different anchorage locations. It is understood that the anchorages available at the extended port limit are approximately 12 nautical miles away from the Port Pilot Station, whereas the anchorage points available within the original port limits (prior to the extension of port limits) are within 6 nautical miles. The Port has considered that no cost based analysis could be done exclusively for the anchorages at the extended port limit but asserted that the same facilities as in the inner anchorages are provided at this place also. The difficulty of the Port in furnishing stand alone costing for anchorage points alone is understandable in view of various indivisible elements involved. In such a scenario, the only option left is to derive rates from the existing rates already available for the anchorage points in the original port limits. It is noteworthy that no challenge to the existing rates is made in these proceedings. Presently, depending upon the proximity, depth and utility of the anchorage points, two rates are prescribed in the SOR in respect of foreign going vessels for their stay from 1<sup>st</sup> day upto 30<sup>th</sup> day viz. 0.0442 US cent per GRT per hour and 0.0216 US cent per GRT per hour or part thereof. For stay beyond 30<sup>th</sup> day the rates prescribed are 0.0896 US cent and 0.0442 US cent per GRT per hour or part thereof. The corresponding rates for coastal vessels for their stay from 1<sup>st</sup> day upto 30<sup>th</sup> day are 0.4499 Paisa and 0.2249 Paisa per GRT per hour or part thereof and 0.8999 paisa and 0.4499 paisa for stay beyond the 30<sup>th</sup> day. As mentioned earlier, the proposal of MBPT to adopt the highest prevailing rate to the extended port limit cannot be accepted in view of the distance involved. At the same time, the lowest rate also cannot be applied in view of the higher draft availability and the commercial utility of the anchorages at the extended port limits. As a via-media, it is not unreasonable to consider a rate which will be an arithmetical mean of the existing rates. Though it will still be an ad-hoc method, this approach takes into consideration the difference in the various parameters recognized earlier for prescribing the existing anchorage charges. This Authority, therefore accords approval to the Port's levying 0.0329 US cent (which is the mean of 0.0442 US cent and 0.0216 US cent) per GRT per hour or part thereof for foreign going vessels' stay at the extended port area from 1<sup>st</sup> day upto 30<sup>th</sup> day and 0.0669 US cent (which is the mean of 0.0896 US cent

and 0.0442 US cent) per GRT per hour or part thereof for their stay beyond the 30<sup>th</sup> day.

- (vi) The exchange rate considered while issuing the Order dated 28 September 2006 was one US Dollar = Rs. 46.10. The exchange rate prevalent on 4 December 2009 has been 1 US Dollar = Rs. 46.00. Since there is no appreciable exchange fluctuation presently vis-à-vis September 2006, this Authority accords approval to the Coastal rate at 0.3374 paisa (which is the mean of 0.4499 paisa and 0.2249 paisa) per GRT per hour or part thereof for coastal vessels' stay at the extended port area from 1<sup>st</sup> day upto 30<sup>th</sup> day and 0.6749 paisa (which is the mean of 0.8999 paisa and 0.4499 Paisa) per GRT per hour or part thereof for their stay beyond the 30<sup>th</sup> day.
- (vii) Lighterage charge is not an issue as it is not location specific. The MBPT has proposed to amend the existing schedule to make it amply clear to show that this levy is applicable at the extended port limit also. This Authority accordingly approves the amendment proposed.
- (viii) Various other conditions to the existing anchorage schedule is proposed to be amended to include the extended port limit also. These amendments are consequential in nature and the Authority, therefore accords approval to them.
- (ix) The MBPT has sought the approval to the proposed amendments with retrospective effect from 26 October 2006. i.e. the date from which the port limits were extended by the Central Government. The MANSAs on the other hand, vehemently opposed the introduction of the tariff item retrospectively and even indirectly questioned the competence of this Authority to accord retrospective approval. This Authority is well aware of the billing complication that could be created if rates are approved retrospectively and, therefore, generally does not entertain proposals on piecemeal basis and that too seeking retrospective approval. But, in exceptional cases, this Authority has approved tariff on retrospective basis. The tariff guidelines of 2005, which were issued as a policy direction by the Central Government, in clause 3.2.8 permits fixing tariff with retrospective effect in exceptional cases for reasons to be recorded. In the instant case, as has been explained earlier, the Port has the right to levy a charge at the extended port limit. The Port has also alerted the user community about extension of port limit and the need to make payment for using the facilities thereat. The MANSAs have not denied using such facilities nor is ignorant about the MBPT's condition of levying charges therefor. If at all, the lapse on part of the Port is in not getting the tariff leviable in such anchorages notified by this Authority. The MANSAs have laid stress on this point alone. But this Authority does not like to take a narrow and procedure oriented stand to reject the proposal of the Port merely on a technical ground. Such a rejection would amount to negation of the right available to the Port to charge for the facilities at the extended port limit. Though this Authority is inclined to take a lenient view on procedural matter this time, the MBPT is advised to strictly adhere to the tariff setting arrangement envisaged in the Act and to ensure that such a procedural lapse does not recur in future.

10. In the result, and for the reasons elaborated above and based on a collective application of mind, this Authority approves amendment of the existing schedule

under Section 2.2 of the MBPT Scale of Rates pertaining to Charges on vessels/Barges/boats for arranging alongside other vessel for working of cargo in mid-stream (Double Banking) and Section 2.14 ibid pertaining to Schedule of Anchorage Fees as attached in the **Annex**.

11. The amended schedule should be deemed to have come into effect from 26 October 2006, i.e. from the date on which the Port Limits of MBPT was extended by the Central Government by its Notification no. 5221 dated 26 October 2006.

**( Rani Jadhav )**  
Chairman

The existing schedule under Section 2.2 of the MBPT Scale of Rates pertaining to Charges on vessels/Barges/ boats for arranging alongside other vessel for working of cargo in mid-stream (Double Banking) and Section 2.14 ibid pertaining to Schedule of Anchorage Fees are replaced with the following :-

**“2.2 Charges on vessels/Barges/ boats for arranging alongside other vessel for working of cargo in mid-stream and Port Lighterage Anchorage Area (Double Banking)**

Sl. No.	Nature of Movements	Rate per GRT	
		Coastal vessel (in Rs.)	Foreign-going Vessel (in US \$)
(a).	Double Banking with tug assistance	6.424	0.2350
(b).	Double Banking without tug assistance	4.536	0.1658
(c)	Lighterage dues on Mother Vessels discharging / receiving cargo - On foreign-going vessels and coastal vessels lighterage dues respectively at the rate of US dollar 0.0046 and Rs.0.127 per GRT for a period of one hour or part thereof shall be levied from the time it is anchored / occupies the place in stream and Port Lighterage Anchorage Area for working cargo. Anchorage charges shall be levied during the period vessel is not working cargo. The lighterage dues shall not be levied on the vessels engaged in mid-stream discharge at Port Lighterage Anchorage Area Port Limit for (1) vessel which discharges part cargo for reducing the draft of the vessel for calling at the Docks / Pier of MBPT and if subsequently calls at Docks or Piers of Mumbai Port, (2) vessels which discharge entire cargo into barges for subsequent discharge at Docks / Bunders of Mumbai Port and sail out from stream / Port Lighterage Anchorage Area and the discharged cargo is subsequently brought at Docks / Bunders and (3) mother vessels which receive cargo brought by the barges loaded from the MBPT Docks/Bunders.		

**2.14 Schedule of Anchorage Fees**

(A) If any vessel or self propelled barge except Lash Barge or Dumb Barge remains at any anchorage points shown in column No.2 of the table below, anchorage fees shall be levied as per column 3 ibid.

Sr. No.	Anchorage Point	Rates per GRT per hour or part thereof		
		Period of stay	Coastal/Inland Vessel Rs.	Foreign going vessel US\$
1	2	3		
(a)	A,B,C,D,E,F,G, TA1,TA2, New explosive Karanja.	From 1 <sup>st</sup> day upto 30 <sup>th</sup> day	0.4499 paisa	0.0442 US Cent
		beyond 30 <sup>th</sup> day	0.8999 Paisa	0.0896 US Cent
(b)	H,I,J,K,V,W,X,Y,Z,	From 1 <sup>st</sup> day onwards	0.4499 Paisa	0.0442 US Cent

(c)	L,M, (N1, N2, N3 at New Pir Pau), N1(BUOY), N2 (BUOY), North N3, O,P, Q,R L/F OFF DARUKHANA OFF COAL BUNDER OFF HAY BUNDER OFF KASARA BASIN OFF FERRY WHARF OFF MAZGAO AND P&V CHANNEL	From 1 <sup>st</sup> day upto 30 <sup>th</sup> day	0.2249 Paisa	0.0216 US Cent
		Beyond 30 <sup>th</sup> day	0.4499 Paisa	0.0442 US Cent
(d)	Port Lighterage Anchorage Area	From 1 <sup>st</sup> day upto 30 <sup>th</sup> day	0.3374 paisa	0.0329 US cent
		Beyond 30 <sup>th</sup> day	0.6749 paisa	0.0669 US cent

Note: Port Lighterage Anchorage area encompasses the following co-ordinates:

Point A – Latitude	18°57' N	Longitude	72°41'E
Point B – Latitude	18°55'N	Longitude	72°41'E
Point C – Latitude	18°55'N	Longitude	72°43.5'E
Point D – Latitude	18°57'N	Longitude	72°43.5'E

(B) If any Lash Barge or Dumb Barge remains at any of the anchorage points mentioned in column No.1 of table below, anchorage fees shall be levied as per column No.2 ibid.

Anchorage Point	Rates per GRT per hour or part thereof		
	Period of stay	Coastal/Inland Vessel	Foreign going vessel
OFF DARUKHANA OFF COAL BUNDER	From 1st day upto 60 <sup>th</sup> day	0.0899 Paisa	0.0112 US Cent
OFF HAY BUNDER OFF KASARA BASIN OFF FERRY WHARF OFF MAZAGAO NAD P&V CHANNEL	Beyond 60 <sup>th</sup> day	0.1799 Paisa	0.0224 US Cent

(C) Every Vessel, Boat, Barge and craft irrespective of the size or the GRT, engaged in Lighterage operations in midstream and in Port Lighterage Anchorage Area for

conveyance of cargo to the Ports other than Mumbai Port shall during the period of their not working cargo be charged anchorage fees as per section 2.14 (A) above depending on the place of anchorage. This differential tariff will not apply to barges coming into the Mumbai Port

**Note :-**

For the purpose of calculating the period of stay of a vessel at an anchorage :

- (1) the anchorage fees shall be levied from the time a vessel drops the anchor till the time it leaves the anchorage berth ;
- (2) in the event of a vessel which had stayed at an anchorage taking berth or entering a dry dock and returning thereafter either to the same anchorage or to another anchorage, the number of hours the vessel was away from the anchorage will be excluded, but the period of occupation except for such exclusion will be treated as a continuous period for computing the Anchorage Fees;
- (3) for levy of anchorage fees, a barge is a craft operating within the limits of Mumbai Port (including extended port limit) for the purpose of lighterage of cargo or supply of fuel, water and provisions but shall not include lash or any other type of barges/boats discharged or loaded by mother ships outside the limit of Mumbai Port (including extended port limit) for all purposes of conveyance of cargoes;
- (4) no anchorage fees will be recoverable from the vessel, boat, barge and craft (including lash barge) which has paid the licence fees for water conveyance as per Section 2.10 above;
- (5) no anchorage fees will be charged to the vessel classified as Indian Naval Vessels and Coast Guard Vessels and
- (6) No anchorage fees will be charged to the vessel / ships anchored outside the Mumbai Port limits notified by the Central Government.

**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/36/2009-MBPT - Proposal from the Mumbai Port Trust for fixation of tariff for anchorage and lighterage charges at the extended port area.**

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

Sr. No.	Comments of MANSA	Remarks of MBPT
1	MBPT could not have charged any rate in the extended area until TAMP had approved and notified the same, which has admittedly not been done.	MBPT was charging Rs.6/- per ton at the extended port limit. The extension of port limit was an event after the approval of comprehensive tariff revision. However, the trade was informed vide letter No. DC/C-PR(port limits)/5530 dated 20.11.2006 that the charges as per SOR are leviable. The present proposal is to notify the charges at the anchorage points to regularize the levy of charges from October 2006
2	Any approval / rate fixation by TAMP now in respect of the extended port limits cannot have retrospective effect and will only be prospective.	If the area is considered outside the port limit for SOR, MBPT was to charge cargo charges. Since part of the area has fallen within the port limit subsequent to the proposed tariff revision, the tariff may be approved with retrospective effect.
3	MBPT cannot draw analogy as they have sought to do, in respect of the extended area inasmuch as the Major Port Trusts Act is clear that the Port can only charge and recover rates that have been notified by TAMP in the Scale of Rates and Statement of Conditions for the Port, which, for the extended Port limits, has not been hitherto done. Therefore, there is no right at all for the Port to levy any charges in respect of that area.	After gazette notification dated 26.10.2006 the vessels operating within the Port limit are to be billed as per TAMP approved SOR. MBPT has jurisdiction to levy the charges approved under SOR within the Port limit and proposal is to regularize the levy accordingly made by MBPT
4	From MBPT's letters and representations, it is clear that they are in breach of the charge/levy provision of the Major Port Trusts Act.	As in 3 above.
5	There is no provision / authority for TAMP to regularize charges from October 2006 onwards.	The services and facilities at all anchorages including the lighterage anchorage which now falls within the Port on account of revision of Port limit is the same such as notification of depths, pilotage, towage, water supply, fire fighting, conservancy and ensuring safe navigation and cargo operations. The only difference is that at this anchorage area, pilotage is not compulsory. However, this service if requested for is separately charged.
6	No retrospective Notification of tariff is permissible.	The proposal with effect from October 2006 is to regularize the levy already made by MBPT.

7	Admittedly no services rendered in the extended area and the Port is unable to furnish any cost sheet for the anchorage and lighterage charges for the extended Port area. Therefore, Port is not entitled to levy any charges in respect of these areas.	The rates for anchorage and lighterage charges have already been specified in the notified anchorage of S. Similar charges are proposed for the extended port limit in the proposal. Hence, may be admitted.
8	There is no way that the agents can seek any reimbursement of the charges if now regularized; which is not permissible in law in any case.	By circulars dated 20.11.2006 revision of the Port limit was brought to the notice of Port users stating that charges at rates under the approved SOR will be leviable on the vessel for cargo operations within the revised Port limit. Accordingly, charges are proposed to be regulated from 26.10.2006, the date of revision of Port limit
9	We therefore, request TAMP to pass order rejecting the request for any charges or hike in charges on to the vessels calling outside the pilot station area which is now being called by MBPT as extended port limit.	TAMP may consider and approve the proposal for fixation of anchorage and lighterage charges at the extended port limit with effect from 26 <sup>th</sup> October 2006.

2. A joint hearing in this case was held on 26 November 2009 in the office of this Authority. The MBPT and the concerned users have made their submissions. The gist of the joint hearing held is as under:

**MBPT**

- (1) Different rates are fixed for different anchorages based on the facilities available. The rates are fixed. Mainly it depends on the draft availability and the commercial utility of the anchorages.
- (2) At the extended port limit, a depth. of 14 mtrs available. We provide the same facilities at these anchorages as we do at other anchorage points.
- (3) The extended port area falls under our jurisdiction and, therefore, we have the right to levy charges.
- (4) The depths available are above 9.3 mts at Sr. Nos.(a), and (b) of Section 2.14 of the SOR of MBPT and below 5 mts at (c) ibid.
- (5) We don't need dredging at anchorages due to natural flushing.
- (6) Immediately on extension of Port limits, we did inform trade and gave options to vessels either to work inside the limits or outside.
- (7) Customs notified area is available outside our limit even after the extension. Trade could have operated outside, if they do not want to pay to MBPT.

- (8) When we informed trade in 2006 about extension, there was no objection from trade.
- (9) It is admitted that no pilotage is provided at the extended port limit and we do not charge any pilotage fee.
- (10) MPT Act allows us a time of 2 years to levy short charges.

**MANSA**

- (1) MBPT cannot retrospectively levy a charge when TAMP had not notified any rates.
- (2) VTMS, general conservancy, dredging etc. are already covered by Port dues. Anchorage fee is a double charge.
- (3) The port has admitted in its proposal that no services are provided. Levying a charge in this case is not a tariff but akin to tax, which port cannot do.
- (4) Prior to extension of limits, the same operation took place at the same location but the Port did not levy any charges. Operation remaining the same, there is no logic in MBPT demanding a charge, retrospectively at that, when the Port does not provide any service/facility.
- (5) MBPT only informed about extension of its port limits in 2006. But the Port did not raise any bills. They woke up after 1 ½ years and demanded charge retrospectively.
- (6) MBPT has no power to levy any charge which is not approved by TAMP.

**CSLA**

We endorse the view of MANSA.

**SKS Logistics**

Raising any rate at this juncture is deterrent to trade.

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