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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 141

New Delhi, 11 July 2011

NOTIFICATION

In exercise of the powers conferred by Sections 48 and 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of a reference received from the Indira Container Terminal Private Limited (ICTPL) regarding collection of wharfage and demurrage charges by Mumbai Port Trust (MbPT) on the containers handled at the Ballard Pier Station (BPS) container terminal as in the Order appended hereto.

(Rani Jadhav)
Chairperson

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/17/2011-ICTPL

M/s. Indira Container Terminal Private Limited

- - -

Applicant

ORDER

(Passed on this 29th day of June 2011)

This case relates to a reference made by the Indira Container Terminal Private Limited (ICTPL) regarding collection of wharfage and demurrage charges by Mumbai Port Trust (MbPT) on the containers handled at the Ballard Pier Station (BPS) container terminal operated by ICTPL.

2. The ICTPL vide its letters dated 20 December 2010 and 23 December 2010 made the following main submissions:

Letter dated 20 December 2010

- (i). Wharfage and demurrage charges for cargo on containers handled at ICTPL are being wrongly collected by MbPT.
- (ii). MbPT is collecting demurrage charges on the cargo even for the period of stay at ICTPL yard which is not at all acceptable to ICTPL and the trade.
- (iii). The Scale of Rates (SoR) for ICTPL approved by the Authority does not have separate provisions for all such charges. However, MbPT continues to collect these charges wrongly putting ICTPL to serious business strains.
- (iv). ICTPL had represented many times to MbPT to stop collecting these charges. However, MbPT still continues to collect these charges for reasons not known.
- (v). Since these charges are not applicable, the customers are forced to mobilize additional fund to pay to MbPT so as to avoid stoppage of the container movement.

Letter dated 23 December 2010

- (i).
 - (a). Wharfage charges are collected for the services of handling of containerized cargo carried out exclusively by ICTPL.
 - (b). Demurrage is collected for containerized cargo stacked solely in ICTPL yard. No service is rendered by MbPT in these two cases to apply its tariff for ICTPL containers.
- (ii). MbPT and ICTPL operate on clearly distinct TAMP approved tariff. Therefore, ICTPL had been following up with MbPT since the commencement of commercial operations at BPS to stop the wrong practice with immediate effect.
- (iii). The situation is highly frustrating and unviable for customers to operate through ICTPL for the indecisive approach so far shown in the matter. All the effort and hard work put in by ICTPL in mobilizing interest in trade to invest in container movement through Mumbai is being quashed by port itself.

3. In this backdrop, the ICTPL has requested this Authority to intervene in the matter to clarify and advise MbPT to immediately stop collecting any charges including wharfage and demurrage on any containers handled at ICTPL now or in future and to refund such charges collected from various parties.

4.1. A copy each of the letters received from the ICTPL was forwarded to MbPT seeking its comments on the issues raised by ICTPL. The MbPT was also requested to explain the relevant provisions of the SoR of MbPT under which the MbPT recovers wharfage and demurrage charges on the containers handled by ICTPL.

4.2. In the meanwhile, the ICTPL informed this Authority that the wrong practice of MbPT recovering wharfage and demurrage charges continues and due to this wrong action, one container line has already stopped shipment at the ICTPL. A copy of ICTPL letter was also forwarded to MbPT reminding MbPT to furnish its reply to immediately. The response of MbPT was forwarded to ICTPL for its comments. The ICTPL has responded on the comments made by the MbPT. A copy of the comments of ICTPL was forwarded to MbPT to offer its comments on the issues raised by ICTPL.

4.3. The issues raised by ICTPL and subsequent comments of MbPT and ICTPL are summarized and given in the following table:

Sr. No.	Issues raised by ICTPL	Comments of MbPT on the issues raised by ICTPL	Comments of ICTPL on the comments of MbPT	Comments of MbPT on the comments of ICTPL
(i).	MbPT and ICTPL operate on distinct TAMP approved tariff. Wharfage charges are wrongly collected by MbPT for the services of handling containerized cargo carried out exclusively by ICTPL.	MbPT collects container related charges under Chapter – V and cargo related charges under Chapter – III of the SoR (SOR). As per Section 5(H) (1) & (5) MbPT is entitled to collect wharfage on containerized cargo. Section 3.1(A) of Chapter – III (cargo related charges) lists out the rates of wharfage leviable on various cargo. Section 3.1. (B) of Chapter–III prescribes demurrage charges leviable in respect of all goods classified in the wharfage schedule in Section 3.1 (A) after expiry of free days.]	(a). The SOR approved by TAMP for MbPT is only applicable to the cargo / containers handled by MbPT in its berth / terminal. The operation at BPS is governed by separate SOR duly approved by TAMP and is applicable for the cargo / containers handled at ICTPL terminal. The cargo / container related charges pertaining to ICTPL terminal operation are not supposed to be collected by MbPT. (b). The infrastructure in the port as indicated by MbPT are part of the common usable areas in License Agreement (LA). MbPT cannot levy any charges for these facilities which are common and were there prior to signing of the LA with ICTPL also. (c). The gate passes issued by MbPT for	(a). In the tariff approved by TAMP for ICTPL, the wharfage and demurrage charges for the containerized cargo are not prescribed. However, they are prescribed under Section 5(H) (1), 5 (H)(4) and (5) of MbPT SoR. MbPT provides facilities for destuffing, storage and delivery of the import cargo. It provides facilities for receipt, storage and stuffing of export cargo in containers at the port's CFS. Therefore, for such cargoes handled at port's CFS after their movement out of the terminal operated by ICTPL, the MbPT is empowered to recover charges under the provisions of SOR. (In addition, MbPT has repeated its
(ii).	Demurrage is wrongly collected by MbPT for containerized cargo stacked solely in the ICTPL yard.	MbPT is entitled to collect demurrage charges under Section 3.1(A) and 3.1(B) on import containerized cargo.		

(iii).	No service is rendered by MbPT in these above two cases to apply its tariff for ICTPL containers.	MbPT provides facilities for receipt and delivery of the containerized cargo by providing the logistic support which includes gate staff, computers, passage upto ICTPL premises, processing the documents and generating gate pass at the docks terminal/ CFS terminal and verification at the respective gates. Hence, wharfage and demurrage on containerized cargo are recovered for the services rendered.	ICTPL containers are only for their control purpose. ICTPL issues all relevant papers to the containers which are handled at ICTPL. (d). The SOR of MbPT duly approved by TAMP cannot be made applicable to ICTPL customers since MbPT and ICTPL are separate entities in the context of separate SORs approved for respective terminals. (e). The collections on account of wharfage and demurrage by misinterpreting the Clauses of the SOR of MbPT for the reasons of provision of facilities are beyond any stretch of imagination. The same is unethical and unreasonable on the part of MbPT. (f). Wrong interpretations and undue taxing of our customers are abnormally affecting the business of ICTPL directly and results in huge financial losses. The clarification furnished by MbPT is an afterthought development only to substantiate its action in this regard.	earlier submissions like it provides gate pass, computers etc.)
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4.4. The MbPT has stated that as per the LA entered into by MbPT with ICTPL, the tariff is regulated under the provisions of Article 10 of the said LA. The said Article 10 does not specify about levy of wharfage and demurrage on cargo contained inside the container that are handled by ICTPL at its terminal and moved through MbPT gates.

5.1. A joint hearing in the case in reference was held on 25 March 2011 at the Office of this Authority. The ICTPL and MbPT have made their submissions.

5.2. The main points of the written submissions made by the ICTPL at the joint hearing are summarized below:

(A). LA provisions:

- (i). As per Article 2 of the LA the operation and management of BPS is licensed to the ICTPL for a period of 5 years from 3 December 2007.

- (ii). As per Article 10.1, the ICTPL has the exclusive entitlement to levy and recover tariff from the concerned parties who use the project facilities and services as per SOR.
- (iii). Article 10.2 clarifies the above further wherein it is stated that for BPS vessel related charges shall only accrue to the MbPT, making it explicit that container related (empty containers and full containers with cargo) charges to accrue to ICTPL.
- (iv). As per Article 11.2, ICTPL shares the revenue with MbPT for the revenue accrued through BPS operations and management.
- (v).
 - (a). Wharfage charges are collected for services at wharf (a landing place or pier where ships may tie up and load or unload).
 - (b). Demurrage charges (detention of container / cargo during loading or unloading beyond the scheduled time of departure) are collected for stay of a container at a certain premises. The project site for the BPS operations was taken over by ICTPL as per BPS project site and assets specified in appendix 3 –A (II) of the LA against payment of license fee as per Appendix 28 of LA and the services are provided by ICTPL. ICTPL provides services at wharf and collects dwell time charges as per the SOR for the containers, during its stay at ICTPL premises.
- (vi). Different tariff items for various services are included in SOR. No specific mention of wharfage and demurrage charges are mentioned in Article 10 of LA, as they being part of the charges related to container / cargo handling. LA distinguishes only between container related and vessel charges and not individual tariff items. The rates and items are governed by the tariff approved by TAMP from time to time as mentioned at Article 10.4 / 10.5 of LA. It may also be noted that the tariff items approved by TAMP for various container terminals also includes items like shut-out charges, Via change charges, different slabs of dwell period etc. These type of charges may also form part of ICTPL tariff at later stage as per the operational and service requirements of the terminal prevailing then. Therefore, it is against the spirit of LA to mention that the collection of wharfage and demurrage is not mentioned in LA separately.
- (vii). LA does not entitle MbPT to collect any container / cargo related charges like wharfage, demurrage etc., on containers (with or without cargo) handled at BPS terminal or during its stay in ICTPL premises.

(B). Scale of Rates:

- (i). ICTPL and MbPT have separate SOR duly approved by TAMP, independently applicable for respective terminals.
- (ii). ICTPL tariff is based on box rate and the box rate includes all services of handling of containers at wharf, yard and its storage in ICTPL premises. During the handling of containers or storage of containers / cargo at ICTPL premises, the rates prescribed in the SOR of ICTPL only are applicable. As the tariff of ICTPL is a consolidated tariff and all concept of wharfage, demurrage etc., are all included in the box rate. ICTPL's box rate tariff structure is also in line with tariff of container terminals in other major ports.
- (iii). MbPT tariff is approved by TAMP for services provided by MbPT at its premises only and not applicable to ICTPL containers / cargo, which is operating on a separate SOR approved by TAMP.

- (iv). Therefore, the SORs approved by TAMP does not entitle MbPT to collect charges like wharfage, demurrage etc., for containers (with or without cargo) handled at BPS terminal or during its stay in ICTPL premises.

(C). Infrastructure facilities:

- (i). Appendix 3 A (II) of the LA states that

“the existing roads will be common to both licensee and licensor”.

Article 8.12 (iv) of LA (general obligations of Licensor) states that the licensor

“provide and maintain all general port infrastructure, other than those covered the license required for the project”.

From the stated obligations of the Licensor (MbPT), it can be seen that free access and upkeeping of the infrastructure for ICTPL containers / cargo are part of the obligation of the licensor and does not entitle them to levy any charges now or later on this account.

- (ii). ICTPL issues all relevant documentation required for handling of containers / cargo in ICTPL premises and that done by MbPT at their gate are for their control purposes only.

(D). Other factors:

- (i). Tariff at ICTPL is comparatively less by a range of 28 to 60% as compared to the container terminals handled by JNPT, NSICT and GTIPL. However, with wrong collection of wharfage and demurrage by MbPT, ICTPL becomes the costliest terminal to the users. With comparatively much less infrastructure in Mumbai, the cost at ICTPL/ MbPT is extremely high.
- (ii). After taking over the operations and management of BPS from MbPT in June 2008, ICTPL achieved improvement in productivity of cranes, availability of crane, improvement in stacking yard, etc. Even with the improved productivity and services at ICTPL, the users are finding it not viable to operate through ICTPL because of the extra cost.
- (iii). Some of the effects of wrong collection of wharfage / demurrage by MbPT are as given below:
 - (a). Coastal service newly started between Porbander and ICTPL has been stopped.
 - (b). One new service shifted to Nhava-Sheva.
 - (c). Even though the freight charges of barges has come down to about half after taking over of operations at BPS by ICTPL major lines have stopped bringing containers from Nhava-Sheva by barges. Instead, they bring the containers by road from Nhava-Sheva to MbPT CFS as no wharfage is applicable for such containers moved by road.

5.3. The ICTPL has further stated that it is estimated to handle only 51,000 TEUs for the year as against 1,50,000 TEUs stated in the LA as minimum guaranteed throughput and about 120,000 TEUs projected in its proposal to TAMP for approval of tariff. ICTPL is much below the traffic projections and is incurring serious losses. Though ICTPL requested for an increase of 25% in its tariff in the proposal submitted to TAMP, tariff was reduced by 10% by TAMP with the aim to provide competitive service at competitive rates. On the contrary the customers of ICTPL spent more than what is payable as per ICTPL tariff because of the wrong collection of wharfage and demurrage by MbPT on the customers of ICTPL.

Even though MbPT agreed to stop collecting wharfage and demurrage charges for ICTPL containers in response to request made by ICTPL from March 2009 onwards, the MbPT continues the practice till date.

6.1. At the joint hearing held on 25 March 2011, the MbPT agreed to provide its considered view on the "Cut-off Date" from which the storage period will commence for levy of demurrage on the cargo inside the containers arrived at the terminal of ICTPL but subsequently shifted to MbPT CFS. MbPT also agreed to clarify on the issue of wharfage levied by the port on the cargo containers landed at ICTPL. At the joint hearing, ICTPL requested to hear the case again.

6.2. As agreed at the joint hearing, the MbPT furnished on 4 May 2011 a copy of the Resolution passed by the Board of Trustees of the MbPT in its meeting held on 26 April 2011 on this subject. The Board of Trustees of MbPT have resolved to continue the recovery of cargo related charges on cargo inside containers handled by ICTPL at BPS.

6.3. It appears that the MbPT has endorsed a copy of its letter dated 4 May 2011 to the ICTPL. The ICTPL vide its note submitted on 5 May 2011 has furnished its comments on the main submissions made by the MbPT. A comparative position of the main submissions made by the MbPT and the comments of the ICTPL thereon is given below:

Sl. No.	Submissions of MbPT	Comments of ICTPL				
(1)	<p>Some containers landed at other Indian Ports, particularly at JNPT are moved to Mumbai Port by Road for destuffing and delivery of cargo to the consignees. Such containers are received at respective nominated site at CFSs and delivery is permitted to consignees, either for factory destuffing or by destuffing at CFSs. There is a specific provision in the SoR under Sec.5 (E), Note 7 for such containers and containerized cargo and the charges are recovered accordingly.</p> <p>The free days for levy of License Fee on containers and demurrage charges on containerized cargo are allowed as per T.R. No.4 of 8.6.2010.</p>	ICTPL has not furnished any comments.				
(2)	<p>Though ICTPL and MbPT are two separate entities, cargo of ICTPL containers is being routed through MbPT and MbPT is rendering all cargo related services for the same. The containers handled by ICTPL at BPS berth are treated at par with containers handled by MbPT in MbPT areas. As such, the concessional free days for levy of demurrage on containerized import cargo and licence (storage) fees on containers are being allowed to the ICTPL containers as applicable to MbPT under T.R. No.73 dated 28.10.2010.</p>	ICTPL has not furnished any comments.				
(3)	<p>Therefore, demurrage on containerised cargo of ICTPL containers is being charged by MbPT from the date of landing of the container from the vessel in ICTPL premises till the date of delivery from CFS. However, concessional free days as per T.R. No.73 dated 28.10.2010 is allowed while recovering demurrage.</p>	ICTPL has not furnished any comments.				
(4)	<p>The containers handled by ICTPL are given more benefit compared to containers received from JNPT by road. A comparative position of free days applicable in respect of JNPT and ICTPL containers are given below:</p> <table border="1" data-bbox="316 1966 1003 2024"> <thead> <tr> <th data-bbox="316 1966 778 2000">ICTPL containers</th> <th data-bbox="778 1966 1003 2000">JNPT containers</th> </tr> </thead> <tbody> <tr> <td data-bbox="316 2000 778 2024">Free days</td> <td data-bbox="778 2000 1003 2024">Free days</td> </tr> </tbody> </table>	ICTPL containers	JNPT containers	Free days	Free days	ICTPL has not furnished any comments.
ICTPL containers	JNPT containers					
Free days	Free days					

	T.R. No.73 of 28.10.2010	T.R. No.4 of 08.06.2010	
	<ul style="list-style-type: none"> (i) Containerised Cargo: 10 calendar days following the date of vessel completing discharge operations (ii) Loaded Import containers: 3 days from the date of completion of vessels' import operations. (iii) Loaded Export containers: 15 days from the date of stuffing of containers at Port's CFSs or from the date of bringing in fully loaded containers in Port premises. (iv) Empty Containers: 5 days from the date of completion of vessel import operations or from the date of receipt of export containers. (v) ICD Containers: 15 days from the date of completion of vessel's import operation or from the date of completion of vessel's import operation or from the date of receipt of export containers. (vi) Transshipment – Loaded / Empty containers and Export containers brought under Shipping Bills by sea from other ports for shipment: 15 days from the date of completion of vessels import operations. 	<ul style="list-style-type: none"> (a) In case Container destuffed in Port CFSs: <ul style="list-style-type: none"> (i) 3 free days for containers. (ii) 5 free days on containerised cargo. (b) In case container removed out of Port without destuffing: <ul style="list-style-type: none"> (i) No free days on containers. (ii) 3 free days on containerised cargo. 	
(5)	Wharfage is being charged by MbPT on cargo inside containers handled by ICTPL.		ICTPL has not furnished any comments.
(6)	As per LA dated 3.12.2007, the container berth at BPS and TT yard have been licensed to ICTPL. In term of Article No.10, condition 10.1, the Licensee (ICTPL) had to frame their own SoR (SOR), to be charged for container operations at BPS. In the TAMP approved the SoR for operations at BPS by ICTPL, initially approved in November 2008 and revised in December 2009, wharfage and demurrage on containerised cargo is not prescribed, whereas the same has been prescribed in case of Port's SoR under Section 5 (H) and made applicable as per Section 3.1 (A) and (B).		<p>ICTPL commenced operations taking related tariff part of MbPT's then existing SoR with TAMP's approval. Therefore, the same remains as SoR of ICTPL as a start up.</p> <p>ICTPL SoR is as per Box Rate and all elements like wharfage, stevedoring, etc. for services provided at wharf are part of the box rate.</p> <p>SoR of MbPT is applicable for services provided by MbPT and not for that provided by ICTPL or for that matter, provided by JNPT. There exist TAMP approved distinct tariff for individual entities.</p>
(7)	Initially ICTPL had proposed to recover cargo related charges on containerised cargo by their proposal dated 14.5.2008 to the TAMP. However, after discussion and correspondence between TAMP and ICTPL on this issue, ICTPL had withdrawn the clause for recovery of cargo related charges in its revised proposal. TAMP was not in favour of recovery of cargo related charges by ICTPL since they were not rendering any cargo related services.		<p>This is misleading and ill informed statement. The correspondences between TAMP, ICTPL & MbPT clearly state that as ICTPL being container terminal, it will have box rate concept, merging all elements like wharfage, demurrage, stevedoring, etc. in the box rate like any other private container terminals.</p> <p>ICTPL tariff also do have cargo related items to meet</p>

		exigencies like inspection in yard by Customs, DRI, Owners, etc.
(8)	<p>As per article 8.1 of LA, ICTPL is entitled to provide cargo related services to the port users on recovery of charges for such services. However, ICTPL is providing only container related services to the port users at BPS berth and even their SOR provides rates only for container related services. Cargo related services, such as Custom's examination, stuffing / destuffing of cargo in / from containers, storage of cargo, recovery of octroi charges, verification of Delivery Order / Bill of Entries before delivery, accounting for containerised cargo to Customs under Section 45 (2) of the Customs Act, 1962, as a custodian etc. are being complied by MbPT even for containerised cargo of containers handled by ICTPL.</p>	<p>ICTPL collects charges as per approved tariff for services rendered by ICTPL only, whether it pertains to consideration as a box or for cargo on exceptional cases as stated at Sl. No.7.</p> <p>The services mentioned pertains to CFS, and MbPT may apply tariff as approved by TAMP for the purpose.</p> <p>(In this regard, ICTPL has quoted the statement made by the MbPT that specific provision is made in the SOR under Section 5 (E) Note 7 for billing of such containers and containerised cargo. Note 7 of Section 5 (E) of Chapter V of SOR of MbPT is reproduced against point made by MbPT at Sl. No.1 above.)</p>
(9)	<p>Article 10.2 of LA provides clarification for recovery of Berth Hire Charges. In case of BPS, the vessel related charges including Berth hire charges shall accrue to MbPT. For OCT project, excepting the Berth Hire charges all other vessel related charges shall accrue to the MbPT. The ICTPL shall have the right to collect berth hire charges at OCT.</p> <p>However, Article 10 of LA is silent on cargo related charges and no specific clarification is provided in the License Agreement. Since all cargo related services for containerised cargoes are rendered by the port, the charges for the same are recovered from the consignees / shippers by the Port, failing which these services would be treated as 'free'. To avoid such situation it may be appreciated that the port is entitled for charges for cargo related services.</p>	<p>LA doesn't state tariff items separately like cargo charges, so as other tariff items like shutout, via change, shifting charges etc in other terminals. Individual tariff items are guided by SoR approved by TAMP.</p> <p>For the services at Wharf and in ICTPL yard during their stay in its premises, the box rate tariff of ICTPL includes all elements like wharfage, demurrage etc. MbPT collecting them for ICTPL containers during the period in ICTPL premises is against the SoR of MbPT approved by TAMP and illegal.</p>
(10)	<p>Further, Article 12.1, 12.2 and 12.3 of the LA state that the ownership of Licensor's assets handed over to the Licensee at all times shall remain with Licensor, i.e. MbPT.</p> <p>Article 10.2 read with Article 12 of the LA can be interpreted that since infrastructure of BPS berth is created</p>	<p>MbPT remains the owner for the facilities created by ICTPL at BPS and OCT.</p> <p>As per the various clauses in the tender document for OCT</p>

	by MbPT, though licensed to ICTPL and since its ownership, even during licence period is with MbPT, Berth Hire Charges for container vessels berthed at BPS berth and handled by ICTPL are being accrued to MbPT which shall not accrue to MbPT in case of OCT project as OCT infrastructure shall be created by ICTPL and ownership of OCT berth during license period shall be with ICTPL.	project, the bidders offered the revenue share to MbPT. Mis-interpretation of facts. Request to honour LA.																																													
(11)	As the infrastructure of BPS berth and T.T. yard is created by MbPT, containers handled by ICTPL at BPS berth cannot be treated at par with containers handled at JNPT and similar to berth hire charges, cargo related charges are being accrued to MbPT.	Refer to provisions of License agreement and SoR approved by TAMP. As per Appendix- 3A and Article 8.12 of License agreement, providing infrastructure and maintaining facilities are obligations of MbPT. ICTPL pays all applicable fess like rent for the place and revenue share offered is to meet obligations on the part of MbPT.																																													
(12)	For BPS project, it is specified in Article 10.2 of LA that vessel related charges including berth hire charges are due to MbPT as services are being provided by MbPT. As container related services are being provided by the ICTPL, charges are being recovered by them. On the similar lines, in case of cargo related charges (wharfage and demurrage on containerised cargo), services are being provided by MbPT and ownership of the BPS wharf/TT yard even during license period is with MbPT. In view of Article 10.2, it may be appreciated that such charges should accrue to MbPT for such services provided by the MbPT in case of BPS project. In view of the foregoing, cargo related charges on cargo inside containers handled by ICTPL are due to MbPT and are being correctly recovered.	Services at wharf for ICTPL containers are provided only by ICTPL at its wharf licensed by MbPT to ICTPL against payment of License Fees. So MbPT is not entitled to collect wharfage. During the period of stay at yard, dwell time charges are applied by ICTPL as per SoR of ICTPL. The yard is licensed to ICT and ICT pays applicable License Fee as specified in the LA. The rationale of the statement made by MbPT on ownership of BPS wharf and TT yard with MbPT is not understood.																																													
(13)	The details of number of TEUs and containers handled by ICTPL from June 2008 and wharfage and demurrage charges earned by MbPT on containerised cargo inside the containers handled by ICTPL are given below: <table border="1" data-bbox="316 1541 1007 1939"> <thead> <tr> <th>Sl. No.</th> <th>Particulars</th> <th>2008-09 (from Sep'08)</th> <th>2009-10</th> <th>2010-11</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>No. of TEUs</td> <td>18110</td> <td>34071</td> <td>41032</td> </tr> <tr> <td>2.</td> <td>No. of containers</td> <td>13967</td> <td>23870</td> <td>29320</td> </tr> <tr> <td>3.</td> <td>Income earned by MbPT</td> <td colspan="3" style="text-align: center;">(₹ in crores)</td> </tr> <tr> <td>(i)</td> <td>Wharfage – Import</td> <td>4.71</td> <td>12.90</td> <td>11.09</td> </tr> <tr> <td>(ii)</td> <td>Wharfage – Export</td> <td>0.51</td> <td>0.36</td> <td>0.21</td> </tr> <tr> <td>(iii)</td> <td>Demurrage – Import</td> <td>4.94</td> <td>6.64</td> <td>7.28</td> </tr> <tr> <td>(iv)</td> <td>Demurrage – Export</td> <td>0.27</td> <td>0.04</td> <td>0.01</td> </tr> <tr> <td></td> <td>Total (i) to (iv)</td> <td>10.43</td> <td>19.94</td> <td>18.59</td> </tr> </tbody> </table>	Sl. No.	Particulars	2008-09 (from Sep'08)	2009-10	2010-11	1.	No. of TEUs	18110	34071	41032	2.	No. of containers	13967	23870	29320	3.	Income earned by MbPT	(₹ in crores)			(i)	Wharfage – Import	4.71	12.90	11.09	(ii)	Wharfage – Export	0.51	0.36	0.21	(iii)	Demurrage – Import	4.94	6.64	7.28	(iv)	Demurrage – Export	0.27	0.04	0.01		Total (i) to (iv)	10.43	19.94	18.59	ICTPL has a separate tariff approved by TAMP as per the tariff formulae followed for all major ports including private terminals operating therein. ICTPL's average revenue per TEU including all revenue from handling and dwell time services is approximately Rs.1,425/- The wharfage and demurrage collected by MbPT on ICTPL containers works out to Rs.5,261/ per TEU. The amount collected by MbPT is approx 3.5 times more than what is earned by ICTPL, even after actually providing the services. Total cost for handling
Sl. No.	Particulars	2008-09 (from Sep'08)	2009-10	2010-11																																											
1.	No. of TEUs	18110	34071	41032																																											
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(iv)	Demurrage – Export	0.27	0.04	0.01																																											
	Total (i) to (iv)	10.43	19.94	18.59																																											

		containers at ICTPL works out to Rs.6,686/- per TEU compared to average revenue of say about Rs.3,000/ TEU even in a much advanced terminal like GTIPL/ NSICT at JNPT.
(14)	The ICTPL is not rendering any cargo related services like destuffing of containers, storage of cargo, facilitate custom's examination, delivery, etc. to importers, the MbPT is performing them. Though the ICTPL is entitled to render cargo related services and give delivery to importers directly, without involving MbPT, they have taken a conscious decision not to do so.	<p>This pertains to CFS activity provided by MbPT and not about the services that is provided by ICT at wharf or in yard.</p> <p>The subject of direct delivery, CFS services, cargo related charges, terminal services are all mixed up.</p>
(15)	The MbPT is recovering cargo related services only from the importers who come forward to take delivery from the MbPT's premises and hence ICTPL has no locus standi to raise the issue with the TAMP or any other Authority. ICTPL is mostly handling JNPT containers brought by barges and MbPT was recovering cargo-related charges on such containers, even when such containers were being handled by the MbPT earlier at Victoria Dock.	<p>MbPT collecting charges on services provided by ICTPL is wrong and illegal whether collected from shipping lines or agents or importer or exporter or transporter. Importers may be paying the amount unknowingly or because of no other option presently available with them. But the same does not justify wrong collection of charges.</p> <p>The direct impact of this wrong collection of charges are:</p> <ul style="list-style-type: none"> - the cost of charges to handle through ICTPL is working out to `6,686/ per TEU compared to much lesser charges at any of the modern terminal anywhere in India. - The throughput of ICT is affected, resulting in revenue loss and also payment of penalty to MbPT for not achieving MGT. - These actions are affecting the credibility and trust of ICT and also the negative impact it will have through the License Period.
(16)	The BPS was licensed to ICTPL almost 3 years back and no cargo interest had objected to the recovery by MbPT of wharfage and demurrage on cargo inside containers handled at BPS.	Wharfage charges for ICTPL containers are already included in ICTPL's box rate. As MbPT is not offering services at wharf for ICTPL containers, collection of these charges are illegal.

		It is not correct that no cargo interest have objected. Even ICTPL had forwarded one of the objections received from one of the parties to MbPT and to TAMP. Nevertheless, criteria for collecting charges should be the services provided and tariff as approved by TAMP.
(17)	More benefits are being containers handled at BPS berth by ICTPL when compared to containers received from JNPT by road. Like berth hire charges on all vessels handled at BPS, including container vessels handled by ICTPL, the MbPT is entitled to recover wharfage and other cargo related charges on all goods handled thereat including cargo inside containers handled by ICTPL.	<p>No benefits are extended for ICTPL containers.</p> <p>Instead, an amount of `5,261/ per TEU is additionally collected on ICT containers on account of elements which are already included in ICTPL tariff and for services not rendered by MbPT against the distinct tariff approved by TAMP for MbPT and ICTPL.</p> <p>The statement is highly misleading and against facts.</p>

6.4. The additional submissions made by ICTPL in its note submitted on 5 May 2011 are summarised below:

- (i) The cost of container handled by customers through ICTPL works out to even more than double that paid by them at JNPT terminals. This is due to the wrong collection of wharfage and demurrage charges by MbPT. In addition, the vessel related charges at MbPT are more than twice that applicable at JNPT even though MbPT infrastructure is quite old with comparatively much less present investment and infrastructure than JNPT. The charges as mentioned above are making it highly unviable for customers to operate through ICTPL. The ICTPL is being wrongly pushed to that extent which ultimately could be detrimental to the OCT project of MbPT itself.
- (ii) ICTPL handled about 51,000 TEUs in the last one year against Minimum Guaranteed Throughput of 1,50,000 TEUs projected in the LA. Even the figures are much less than that projected in ICTPL's tariff proposal. In view of wrong practices by MbPT, ICTPL is not only losing on its revenue but also its claim of penalty for the shortfall by MbPT.
- (iii) The volume which is expected to be handled at BPS, more importantly for OCT, is much higher than that is presently available in Mumbai. It requires a very positive approach from port authority to attract containerised cargo to MbPT. For this, MbPT should be supportive instead of taking every action against the efforts of its Licensee in making the OCT project of MbPT a success.

6.5. The ICTPL has requested this Authority for necessary orders advising MbPT to stop billing wharfage, demurrage, etc. for ICTPL containers handled at ICTPL premises with immediate effect and also to refund all such charges collected by MbPT to the respective customers with applicable interest on the amount.

7.1 A second joint hearing in this case was again held on 5 May 2011 at the request of ICTPL. The MbPT and the ICTPL made their submissions at the joint hearing.

7.2 The MbPT was advised at the joint hearing to furnish a flow chart showing the various activities involved and services rendered by MbPT alongwith the charges levied therefor in the import and export cycles of the containers handled at the terminal operated by the ICTPL. The MbPT was also advised to furnish the details of cargo related charges levied at its CFS and a detailed note on wharfage and demurrage levied by the port on the containers landed at JNPT and moved to MbPT CFS.

7.3 As agreed at the joint hearing, the MbPT vide its letter dated 9 May 2011 furnished common flow chart for import and export operations carried out by ICTPL and MbPT. The sequence of activities and the tariff levied as furnished by MbPT in each of the flow charts are listed below:

(i) Containers destuffed at CFS in import cycle

- a. Submission of advance list by Agent and data entry in system.
- b. Discharging of import containers from vessels.
(Composite box rate under Section 5 (A) & 5 (B) of SoR)
- c. Recording tally of import containers discharged and data entry in the system.
- d. Stacking container in the yard.
- e. Movement of container from Docks to nominated CFS point for destuffing.
 - i. Preparation of computerised gate pass for despatching of container from Docks to CFS.
 - ii. Passing out of container through Docks.
 - iii. Confirming in the system, the passing out of container from Docks through gate.
 - iv. Passing in of container received from Docks to CFS in gate.
- f. Offloading of import container by the transporter of respective agents in the nominated CFS yard.
- g. Destuffing and taking tally of containers and storage of destuffed cargo inside the shed.
(Destuffing charges under Section 5 (G) of SoR. However, destuffing charges being recovered as per T.R. No.110 of 25.02.11 @ Rs.2,800/- per TEU. Licence (storage) fees on the stay of container excluding free days as per Section 5 (E) of SoR).
- h. Forwarding / passing of import related documents.
- i. Examination of cargo by customs.
- j. Verification of documents and preparation of gate pass.
- k. Delivery of cargo.
(Charges of container cargo as per Section 5 (H) and rate as applicable under Section 3.1 (A) & 3.1 (B) of SoR for wharfage and demurrage respectively).
- l. Removal of empty destuffed container from the yard.
(Licence (storage) fees as per T.R.No.30 dated 27.07.10).

(ii) Loaded containers delivered for factory destuffing in import cycle

- a. Submission of advance list by Agent and data entry in system.
- b. Discharging of import containers from vessels.
(Composite box rate under Section 5 (A) & 5 (B) of SoR. This is received by ICTPL and not by MbPT)
- c. Recording tally of import containers discharged and data entry in the system.
- d. Stacking container in the yard.
- e. Movement of container from Docks to nominated CFS point.
 - i. Preparation of computerised gate pass for despatching of container from Docks to CFS.
 - ii. Passing out of container through Docks gate.
 - iii. Confirming in the system, the passing out of container from Docks gate.
 - iv. Passing in of container received from Docks to CFS in gate.

- f. Offloading and stacking of import container by the transporter of respective agents in the nominated CFS yard.
- g. Storage of loaded container in the nominated site of the CFS yard.
(Licence (storage) fees on the stay of container excluding free days as per Section 5 (E) of SoR).
- h. Forwarding / passing of import related documents.
- i. Examination of containerised cargo by customs.
- j. Verification of documents and preparation of gate pass.
- k. Delivery of loaded container from CFS to the importer's premises for factory destuffing.
(Charges of container cargo as per Section 5 (H) and rate as applicable under Section 3.1 (A) & 3.1 (B) of SoR for wharfage and demurrage respectively).

(iii) Containers stuffed at CFS in export cycle

- a. Carting Order of export cargo by the Shipping Agent.
- b. Receipt of export cargo at the gate and pass in of the export cargo inside the CFS on verification of export documents by the gate staff.
- c. Offloading and storage of export cargo in the shed by the shed staff.
- d. Customs examination of export cargo.
- e. Receiving and storage of empty container at the gate and CFS yard.
- f. Stuffing and tallying of export cargo in the container.
(Container related charges: Stuffing charges under Section 5 (G) of SoR. However, stuffing charges being recovered as per T.R. No.110 of 25.02.2011 @ Rs.2,600/- per TEU. Cargo related wharfage and demurrage charges as per Section 3.1 (A) and 3.1 (B) of SoR).
- g. Generation of gate pass and movement of loaded container to Docks.
- h. Receipt of export cargo stuffed container at Dock in gate.
- i. Storage of export container at pre-stack point in the Docks.
- j. Shipment of export container and recording tally.
(Licence (storage) fees excluding free days under Section 5 (E) of SoR. Composite box rate under Section 5 (A) and 5 (B) of SoR).

(iv) Factory stuffed containers received at CFS in export cycle

- a. Receipt of factory stuffed container at CFS in gate on verification of relevant export documents.
(Wharfage on cargo inside the factory stuffed export container as per Section 5 (H) (5) of SoR).
- b. Offloading and storage of container at the nominated point in the yard.
- c. Payment of port charges on shipping bill.
- d. Generation of gate pass and movement of loaded container to Docks.
- e. Receipt of factory stuffed container at Dock in gate.
- f. Storage of export container at pre-stack point in the Docks.
- g. Shipment of export container and recording tally.
(Licence (storage) fees under Section 5 (E) of SoR. Composite box rate under Section 5 (A) and 5 (B) of SoR. This is received by ICTPL and not by MbPT).

(V). Import containers received from JNPT by road

- a. Submission of advance list / TP document by Agent and data entry in system.
- b. Receipt of JNPT container by road at CFS in gate on verification of relevant documents.
(Composite box rate under Section 5 (A) and 5 (B) of SoR. This is received by ICTPL and not by MbPT).
- c. Offloading of import container by the transporter of respective agents in the nominated CFS yard.

- d. Destuffing and taking tally of containers and storage of destuffed cargo inside the shed.
(Destuffing charges under Chapter V of Section 5 (G) of SoR. However, destuffing charges being recovered as per T.R. No.110 of 25.02.11 @ Rs.2,800/- per TEU. Licence (storage) fees on the stay of container excluding free days as per Section 5 (E) of SoR and ground rent charges as per T.R. No.4 of 8.6.2010).
- e. Forwarding / passing of import related documents.
- f. Examination of cargo by customs.
- g. Verification of documents and preparation of gate pass.
- h. Delivery of cargo.
(Demurrage charges of container cargo as per Section 5 (H) and rate as applicable under Section 3.1 (B) of SoR).
- i. Removal of empty destuffed container from the yard.
(Licence (storage) fees as per T.R. No.30 dated 27.7.2010).

7.4. The MbPT has submitted that the cargo related charges for the containerised cargo handled at MbPT CFS are being recovered as prescribed under Section 5 (H) and rates as applicable under Sections 3.1 (A) and 3.1 (B) of SoR for wharfage and demurrage respectively. It has also reproduced the relevant clauses which have already been furnished by MbPT and brought in the earlier part of this note. The MbPT has further stated that for the containers landed at JNPT and moved to MbPT by road for destuffing/delivery of cargo to the consignee, charges are recovered under the provision in SoR under Section 5 (E), Note (7), which was also referred by MbPT already and brought out in the earlier part of this note.

7.5. As per the existing SoR of MbPT, the wharfage and demurrage charges are leviable on all the traffic dealt within the relevant areas specified in Appendix 'G' to the MbPT Dock Bye-laws. At our request, the MbPT has furnished a copy of Appendix 'G' to the MbPT Dock Bye-laws.

8. The proceedings relating to consultation in this case are available in records at the office of this Authority. Extract of the submissions made by the concerned parties will be sent separately to them. These details will also be made 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) This case was initiated based on a reference of ICTPL about the recovery of wharfage and demurrage charges by the MbPT on the cargo inside the containers handled by ICTPL at BPS berth and moved out through MbPT gate. As a matter of abundant caution, it is stated that by way of a direction and subsequent clarification issued by the Ministry of Shipping vide its letters No.PR-14019/36/2001-PG dated 9 September 2002 and dated 26 March 2003 respectively, this Authority is refrained from entertaining representations made by individual parties, except in the matter of entertaining requests for interpretation / clarification in respect of Orders passed by this Authority relating to Scale of Rates (SoR). Though this Authority is not the appropriate forum for interpreting a License Agreement and settling the disputes between a Landlord Port and a BOT operator, the issues raised before this Authority by the ICTPL mainly relate to the SoR approved by this Authority for MbPT and ICTPL. Accordingly, the issues raised by the ICTPL in reference are not hit by the direction dated 9 September 2002 issued by the Ministry. It is clarified that the matter is taken up by this Authority only for the purpose of issuing clarifications, as is necessary, on the SoR of MbPT. The arguments and counter arguments made by the ICTPL and MbPT with reference to the provisions contained in the LA entered between them are not gone into since it is not for this Authority to interpret the provisions of the LA.
- (ii) (a). The ICTPL is a private terminal which is presently operating the container terminal at the BPS berth at Mumbai Port from 23 June 2008, in terms of

the Licence Agreement entered by it with MbPT in December 2007. The ICTPL and MbPT operate their respective facilities on distinct Scale of Rates approved by this Authority for them.

- (b). The ICTPL is operating the Terminal applying the SoR approved by this Authority vide its Order dated 30 December 2009. The handling rate prescribed in the SoR of ICTPL is a composite charge, which includes wharfage, on-board stevedoring charges and charges for shore handling operations. Wharfage on containerised cargo is not prescribed separately in the SoR of ICTPL.

The SoR of ICTPL also provides for levy of storage charges on containers, whether empty or loaded and it does not prescribe storage charges on containerised cargo separately.

- (c). The MbPT is operating its facilities applying the SoR approved by this Authority vide its Order dated 28 September 2006. The SoR approved for MbPT in September 2006 prescribes at Section 5 (A) & (B) composite charges for containers and storage fees on containers are prescribed at Section 5 (E). As per Note (iii) to Section 5 (A) & 5 (B), the composite charges do not include wharfage. The wharfage charges are separately leviable on the containerised cargo as per Section 5 (H) (1), (4) and (5) of the SoR. The demurrage charges on containerised cargo is also separately leviable as per Section 5 (H) (1) and (4) of the SoR.
- (d). Looking to the above said provisions contained in the respective Scale of Rates of ICTPL and MbPT, while the SoR of MbPT prescribes levy of wharfage and demurrage on the containerised cargo handled by them separately apart from the composite box rate for containers, the SoR of ICTPL does not prescribe for separate levy of wharfage and demurrage on the containerised cargo.
- (e). As per the position reported by both ICTPL and MbPT, the ICTPL is levying the composite box rate on the containers handled by it at BPS as per the provisions of its Scale of Rates and MbPT is levying the wharfage and demurrage charges on the cargo inside the containers handled by ICTPL and brought to MbPT CFS for destuffing / delivery, as per the provisions contained in the port's SoR. It is evident from the above position that MbPT is not levying any charges prescribed in the SoR of ICTPL. The charges levied by the port are as per its SoR. That being so, the ICTPL and MbPT are not levying the same charges and the question of double levy of charges on the containers / containerised cargo handled by the ICTPL for the same services / facilities provided does not arise.

It is noteworthy that MbPT has stated that even before the advent of ICTPL, the MbPT was levying composite box rate on containers as well as wharfage and demurrage on containerised cargo separately. The same position continues even after the ICTPL came into picture with the ICTPL levying composite box rate on containers and the MbPT levying charges on the containerised cargo.

- (iii). (a). Section 5 (H) (1) of the SoR of MbPT provides for levy of wharfage and demurrage charges as per the relevant Sections on the import containerised cargo which come to the MbPT CFS for destuffing and delivery. In respect of export cargo for shipment in containers which enter MbPT CFS for stuffing, wharfage and demurrage charges are leviable as per Section 5 (H) (4) of the SoR of MbPT. Wharfage on export cargo received by the port as loaded container also is leviable as per Section 5 (H) (5) of SoR of MbPT.

- (b). The flowchart of activities furnished by the MbPT for the import and export operations are seen to be common for the containers handled by both ICTPL and MbPT. Since the case in reference is confined to the containers handled by the ICTPL, the flowcharts furnished by the MbPT are taken as the flow charts for the containers handled by ICTPL at BPS and brought to the MbPT CFS for destuffing and delivery in the import cycle and vice versa in the export cycle.

It is evident from the flowcharts that the containers handled at the BPS enter the MbPT CFS both in import cycle and export cycle and MbPT renders some services to such containers / containerised cargo at its premises.

- (c). Considering that the containers handled at BPS by ICTPL enter MbPT CFS and keeping in view the provisions prescribed in the existing SoR of MbPT brought out earlier, levy of wharfage and demurrage charges by MbPT on the cargo inside the ICTPL containers which enter the MbPT CFS, either for delivery as loaded container or for destuffing and delivery of cargo in the import cycle and vice versa in the export cycle, is seen to be as per the prescriptions available in the SoR of MbPT. No violation of provisions prescribed in the existing SoR on the part of MbPT is noticed in this regard.
- (iv). The estimated income on account of wharfage and demurrage charges on containerised cargo was captured in the financial / cost position considered while fixing the SoR of MbPT in September 2006 and accordingly the cargo related charges were fixed. The levy of wharfage and demurrage charges on the containerised cargo made by MbPT is thus as per the rates fixed by this Authority in September 2006. That being so, no case emerges to require MbPT to refund the wharfage and demurrage charges collected on cargo inside the containers passing through its CFS yards. The request of the ICTPL for refund of the charges collected by the MbPT, cannot, therefore, be considered.
- (v). It has to be recognised that the finding of no violation of the SoR of MbPT is relevant only in the context of establishing the legitimacy of collection made by the port so far and not an endorsement that the existing arrangement being logical should continue unaltered in future.

Before the licence was granted to ICTPL to operate BPS, MbPT itself was handling containers either at BPS or at any of other berths and providing a range of services / facilities from ship-shore transfer of containers till point of delivery / receipts at the nominated CFS yards. Since the whole range of services / facilities were provided by the port, no separate charge for services rendered at CFSs and receipt / delivery was prescribed as the wharfage levied on containerised cargo was taken to include the said services / facilities also. The existing SoR of MbPT which was approved in September 2006, before the advent of ICTPL, reflects this position as no separate charge for CFS / delivery or receipt services is prescribed. The only charge provided was for supply of labour for stuffing / destuffing.

In the changed operational scenario, MbPT's role is confined to providing services at its yard to the containers handled at ICTPL or even JNPT. This calls for prescription of separate charge for cargo management at CFS. Such a charge need not differ with reference to types of cargo as is the case with wharfage. At any rate, there may not be any justification in allowing wharfage on containerised cargo to be levied for the services mainly rendered at CFS yards.

The MbPT is advised to file a separate proposal within 3 months with justification for introduction of cargo management charges for the services provided by it to the containerised cargo.

- (vi). While continuance of the existing arrangement of levying wharfage on containerised cargo does not appear to be logical, it cannot be ordered to be discontinued forthwith as it may amount to require the MbPT to provide free services / facilities to such cargo. When a separate cargo management charge is approved, as explained in the preceding paragraph, the wharfage on containerised cargo should fully be discontinued. In the interregnum, it is necessary to introduce some adhoc arrangement.
- (vii). It is relevant to mention here that the Cochin Port Trust (CoPT) also licensed its Container Terminal to India Gateway Terminal Pvt. Ltd. (IGTPL) but retained the CFS with it. Some of the containers from the terminal moved to the CFS of CoPT but the port SoR did not have any separate charge for CFS and wharfage was the only other approved rate. In that case, this Authority advised CoPT in the year 2006 to formulate a separate proposal to introduce cargo management charges at CFS which eventually could be approved only in the year 2010 for various reasons. Till such separate rate was approved, this Authority introduced adhoc arrangement of levying 90% of wharfage on LCL cargo as 'LCL cargo management charges'.
- (viii). As MbPT does not provide any services at wharf to the containers which are handled at berths operated by others, levy of full wharfage may not be justified. Cargo management charge for CFS and delivery / receipt related services are prescribed as an interim measure as equivalent to a fraction of wharfage charges, as was done, in the CoPT case earlier. This will purely be an adhoc arrangement and the validity of the interim tariff approved will be only for six months from the date of its introduction. Within this period, MbPT should ensure introduction of cargo management charges, not linked to wharfage.
- (ix). For the import containers received at its CFS for destuffing and delivery of cargo in the break bulk form, the MbPT renders only CFS related services and does not provide shore handling services. For the containers received for destuffing and delivery in import cycle and cargo received at its CFS for stuffing in the container and shipment in export cycle, as seen in the activity flowcharts furnished by the port, and in the absence of cost details, 'Cargo management charges' equivalent to 90% of existing wharfage rates notified at Section 3.1 (A) of Chapter III of the SoR of MbPT is prescribed on adhoc basis both for import and export cycle.
- (x). For import containers received at MbPT CFS for delivery without destuffing, the MbPT renders only CFS related services and does not provide shore handling services, as seen from the relevant flowchart. Secondly, the services rendered by MbPT at its CFS are only for the loaded container and the container is not destuffed and the cargo is not handled in break bulk form by MbPT for cargo accountal and delivery. Therefore, 'Cargo management charges' equivalent to 50% of the cargo management charges is prescribed for the containers which are subjected to destuffing and delivery at the MbPT CFS is prescribed.
- (xi). For the factory stuffed loaded export containers received at MbPT CFS in the export cycle, the relevant flowchart furnished by MbPT shows that the MbPT provides only CFS related services and does not render shore handling services. Therefore, 'Cargo management charges' equivalent to 90% of existing wharfage rates notified at Section 5 (H) (5) of Chapter V of the SoR of MbPT is prescribed. In that case, the rate works out to ₹900/- per TEU for foreign container and ₹540/- per TEU for coastal containers.
- (xii). Another issue brought before this Authority is the exemption from the incidence of wharfage enjoyed by the containers brought to MbPT CFS for delivery either as loaded container or delivery of cargo in break bulk form after destuffing. As per clause 5 (E) (7) of Chapter V of existing SOR of MbPT, the import containers discharged at an Indian port other than Mumbai and brought to Mumbai by Road / Rail for giving delivery are exempted from payment of wharfage on the cargo

inside the containers irrespective of the position whether the container is delivered for factory destuffing or destuffed at MbPT CFS for delivery of cargo in break bulk form. It is reported that the containers landed at JNPT and moved to MbPT by road enjoys this concession and this concession is not extended to the ICTPL containers.

As seen from the flowchart furnished by the MbPT in respect of import container received from JNPT by road at its CFS, the CFS related services rendered by MbPT to JNPT containers are at par with the services rendered to the containers received from ICTPL terminal. This is seen to be an inconsistent tariff arrangement. This inconsistency has not been brought to the notice of this Authority so far. Since the JNPT containers receive the CFS related services at MbPT CFS and wharfage levied on containerised cargo is mainly on account of services / facilities provided at CFS / delivery or receipt related functions, there is no justification why such containers should be exempted from payment of wharfage charges as per the provisions contained in the SoR of MbPT. Therefore, the existing clause in the SoR granting such exemption in wharfage is deleted. The rates approved in the interim tariff arrangement for management of cargo in the CFS will apply to all containers availing services at MbPT CFS except those handled at the berths operated by MbPT, which will pay full wharfage since shore handling operations are done or facilities are provided by MbPT.

However, the MbPT, if it so desires, for reasons like improving the utilisation of its CFS facilities, may extend the concession using the flexibility given to it in the SoR to charge lower rates and / or allow higher rebates and discounts. The revenue implication arising from such rebates and discounts, if allowed, shall not, however, be recognised in the tariff fixing exercise.

- (xiii). As stated earlier, the above provisions are approved as an interim arrangement for a period of six months subject to the MbPT filing a cost based proposal within a period of three months for the services provided at its CFS, after which the interim arrangement will automatically lapse.
- (xiv). (a). Another issue posed before this Authority is regarding levy of demurrage on the cargo inside the containers by the MbPT even for the period of stay of such containers at the ICTPL premises. As per Section 5 (H) (1) of the existing SoR of MbPT, demurrage charges is payable on import containerised cargo at the rates prescribed under Section 3.1 (B) of the existing Scale of Rates of MbPT. Note (1) governing Section 3.1 (B) states that all import goods will be allowed storage in the docks free of demurrage for three days from the date following the day of complete discharge of vessel's cargo. As far as the export goods are concerned, free days will be allowed for storage in the docks for 7 days commencing from the date of admission of cargo into the port.
- (b). It is the case of ICTPL that MbPT is collecting demurrage charges on the cargo even for the period of stay at ICTPL yard. The MbPT maintains that it is entitled to collect demurrage charges under Section 3.1 (B) of its SoR on import containerised cargo. The MbPT counts the free period for the cargo from the date of completion of vessel operations at ICTPL premises, reportedly on the ground that note (1) prescribed under schedule 3.1 (B) stipulates for counting of free period from the date of completion of vessels' operation. The MbPT has stated that it allows concessional free period of 10 days to the containerised cargo of ICTPL containers also treating such cargo at par with the cargo inside the containers handled by the MbPT at its docks.
- (c). However, during the proceedings of this case, the MbPT has agreed that the port's entitlement for levy of charges starts only when the container / cargo passes on to its custody. But, the MbPT counts free period from

the date of completion of vessel working at BPS, where ICTPL operates. Therefore, it has requested this Authority to clarify the existing provision prescribed in its SoR relating to counting of free period from the vessel completion date.

- (d). The relevant provision in the SoR of MbPT for allowing free period is for the containers handled by MbPT at its wharf. With the advent of ICTPL, application of the said provision needs to be modified. Endorsing the position of MbPT that its entitlement for levy of charges starts only when the container/ cargo passes on to the port's custody, the "cut-off" date for counting the free period for the purpose of levy of demurrage charges on the cargo inside the containers handled by ICTPL at BPS and subsequently moved to MbPT CFS for destuffing/ delivery will be the date of entry of containers at the MbPT's premises. A suitable provision in this regard is inserted in the relevant chapter of the SoR of MbPT which governs the prescription of free period and cut off date for counting of free period.

10.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following:

- (i) The following clauses are added after the existing clause (5) of Section 5 (H) of Chapter V:

"(6) The existing clauses at Sl. No. (1), (4) and (5) under Section 5(H) – Charges on containerised cargo in Chapter-V (Container related charges) will not be applicable for the containers not handled by the MbPT at its berths but brought to its CFS for cargo management operations and vice-versa and delivery / receipt purposes.

(7) (a) In case of import containers brought from other than MbPT operated berths to MbPT CFS for destuffing and cargo delivery, a cargo management charge equivalent to 90% of the wharfage rates prescribed in Schedule 3.1 (A) of Chapter III is payable.

(7) (b) In case of import containers brought from other than MbPT operated docks to MbPT CFS for delivery as loaded container, cargo management charges equivalent to 50% of the charges prescribed in Section 7 (a) above is payable on the cargo inside the container.

(7) (c) In case of export cargo received and stuffed inside the containers at MbPT CFS and moved to ICTPL Terminal as loaded containers for shipment, cargo management charges equivalent to 90% of the wharfage rates prescribed in Schedule 3.1 (A) of Chapter III is payable.

(7) (d) In case of export loaded containers received at MbPT CFS and moved to ICTPL Terminal for shipment, a consolidated charge of Rs.900/- per TEU for foreign container (Rs.540/- per TEU in the case of coastal containers) is payable on the cargo inside the container.

7 (e) The provisions at 7 (a) to 7 (d) above shall automatically lapse immediately on the expiry of six months from the date of notification of the this Order unless specifically extended by this Authority."

- (ii) The following note is inserted under the 'General Notes to Section 3.1 (B)' of Chapter-V, as Sl. No.1 (a), after the existing note (1).

"In case of containers handled by ICTPL at its Terminal and subsequently moved to MbPT CFS for delivery either as loaded container or for destuffing of the container and delivery of the cargo, as the case may be, the free period will be

counted from the date of entry of containers at the MbPT CFS for the purpose of levy of demurrage charges on the cargo inside the containers.”

- (iii). The last sentence “No wharfage on the cargo inside the containers shall be levied” in the existing Note (7) under Section 5 (E) - Licence (storage) Fees on container in Chapter V (Container related charges) is deleted.

10.2. The above provisions shall come into effect from the date of notification of the Order in the Gazette of India and Clauses 7(a) to (e) inserted in the Scale of Rates shall remain valid for six months or further orders, which ever is earlier.

10.3. The MbPT is advised to come up with a well analysed proposal for levy of separate cargo management charges for the services provided by the port at its CFS, duly justified by cost details, within a period of three months from the date of notification of the order passed in this case.

(Rani Jadhav)
Chairperson

**SUBMISSIONS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE
AUTHORITY.**

No. TAMP/17/2011-ICTPL : Reference received from the Indira Container Terminal Private Limited relating to wrong collection of wharfage, demurrage charges etc. by Mumbai Port Trust on containers handled at the terminal operated by the ICTPL.

1. A joint hearing in this case was held on 25 March 2011 at the Office of the Authority. The Indira Container Terminal Private Limited ICTPL and Mumbai Port Trust MBPT have made following submissions:

ICTPL

- (i). Before the terminal was taken over by us, MBPT used to levy wharfage charges separately.
- (ii). As recorded in TAMP Order of 2 March 2010 at para 2 (8), MBPT has suggested that ICTPL should have all inclusive composite rate. They suggested to TAMP not to approve wharfage separately. Accordingly, no wharfage on cargo is separately shown in our SOR.
- (iii). License Agreement clearly mentions about separate SOR for ICTPL. No provision in License Agreement permits MBPT levy wharfage on containers handled by ICTPL. On the contrary, the License Agreement specifies the charges to be levied by MBPT. They are mainly VRCs.
- (iv). The argument of providing common facility to justify levy of wharfage is wrong. License Agreement requires Licensor to arrange for roads, etc.
- (v). We pay revenue share as well as License fees for the premises of MBPT under our control. We don't find any justification in MBPT's recovery of wharfage on containers handled by us.
- (vi). Levy of wharfage and demurrage levied by MBPT on the containers handled by us has driven away many of our customers.
- (vii). For import containers brought from JNPT by road to MBPT CFS, the MBPT does not collect wharfage. But when it goes from our terminal to MBPT CFS, wharfage is levied. The discriminatory approach adopted remains unexplained.

MBPT

- (i). Wharfage is for provision of labour, supervision / management, common infrastructure etc. We provide services to containerised cargo at CFS. Wharfage & demurrage are, therefore, levied as per our SOR.
- (ii). We agree that our entitlement starts only when it passes on to our custody. We levy demurrage only after the cargo / container is passed on to our custody. We, however, count free period from the vessel completion date.
- (iii). TAMP may clarify SOR which says "3 free period from the date of landing"
- (iv). We have no objection to clarifying the SOR prospectively. Any decision to effect alteration of the system followed so far retrospectively will have problems.
- (v). We confirm, wharfage is not levied on containers coming from JNPT and demurrage on cargo is charged after allowing free period after the cargo / container reaches our premises.

2. A joint hearing in this case was again held on 5 May 2011 at the request of ICTPL. The MBPT and the ICTPL made the following submissions at the joint hearing:

MBPT

- (i). All charges are collected as per approved the Scale of Rates. Sections 5 (H) (1) and 5 (H) (4) and 5 (H) (5) of the Scale of Rates of MBPT are applicable. The recovery of charges is legal and as permitted by the SOR.
- (ii). We had box rate but collected wharfage and demurrage on containerised cargo separately even before ICTPL came into picture. After the transfer of terminal operations to ICTPL, they are collecting box rate and MBPT continues to levy wharfage and demurrage on the containerised cargo which go to MBPT CFS for delivery.
- (iii). We have given license to ICTPL only to operate the terminal. The CFS where cargo operations take place is with us.
- (iv). We are recovering cargo related charges from the importers who come to MBPT to take delivery of cargo / container ICTPL has no locus standi to object recovery of wharfage and demurrage charges.
- (v). We are providing cargo related services such as customs examination, stuffing / destuffing, recovery of octroi charges, etc.
- (vi). Berth belongs to MBPT. Free period starts from the date of unloading of the containers at the berth. 10 days free period is allowed before levying demurrage.
- (vii). We levy wharfage on containerised cargo at CFS even if containers are not destuffed at our CFS. Likewise, cargo wharfage is levied even on factory stuffed containers.

ICTPL

- (i). We have received objections from importers / exporters from day one for levy of wharfage and demurrage by MBPT.
- (ii). We requested TAMP in fixation of our tariff for approval of separate wharfage. TAMP rejected our proposal and prescribed box rates inclusive of wharfage. The charges levied by MBPT are duplication.
- (iii). The provisions in the Scale of Rates of MBPT for levy of wharfage and demurrage cannot be extended to the containers handled by us. Revenue share paid by us under License Agreement covers the services reported to have been provided by MBPT.
- (iv). Please see para 2.2 at page no. 1-2 of the MBPT Board Note. It states that no wharfage on the cargo inside the containers will be levied.
- (v). We expect MBPT to be more supportive to ICTPL, which operates in their own port. Container handled by us cannot be treated differently from those coming from JNPT.
- (vi). Our approximate average revenue is ₹ 1425/-. The wharfage and demurrage recovered by MBPT on our containers is ₹ 5261/-. The total cost for handling containers at MBPT is ₹ 6686/- as compared to average cost of ₹ 3000/- at the terminals of JNPT.
