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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 128

New Delhi, 13 September 2005

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby amends Section III of the Scale of Rates of Mumbai Port Trust charged at the Docks as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/28/2005 – MBPT

The Mumbai Port Trust

Applicant

ORDER

(Passed on this 30th day of August 2005)

This case relates to a proposal received from the Mumbai Port Trust (MBPT) for an amendment to Section III - Licence (storage) Fees and Warehousing charges in its Dock Scale of Rates (DSR).

2. The main points made by MBPT in its proposal are summarised below:

- (i). M/s. Arya Offshore Services Pvt. Ltd. (AOSPL) have requested for a terminal on lease for 5 years as exclusive facility to be used as a shore based facility to support the offshore oil and gas exploration, drilling and construction operation of companies operating at the offshore installations at Panna Oil Fields. The AOSPL requires open and covered areas for storage of their materials and installation of bulk handling equipment at such areas. The AOSPL also requires some storage facility away from the terminal, having covered and open accommodation, for storage of its back up material.
- (ii). The existing provision in the Dock Scale of Rates (DSR) for storage of cargo in docks and outlying areas is applicable for storage up to 30 days. Thereafter, demurrage is leviable. By the very nature of offshore supply base, cargo stays beyond 30 days; and, therefore, it is necessary to prescribe a rate for storage beyond 30 days also. Accordingly, it is proposed to include a provision in the DSR for such long-term storage.
- (iii). The proposal of AOSPL would bring in additional incremental traffic with the utilisation of berths, open and covered areas presently lying unutilised. The total estimated earnings on account of the proposed arrangement at 60% occupancy level will be Rs.2.33 crores per annum, the break up of which is given below:

(a).	Storage Charges	Rs. 1,02,96,800
(b).	Wharfage and stevedoring	Rs. 78,24,000
(c).	Berth hire charges @ 60% Occupancy, Pilotage, port dues, etc	Rs. 51,93,408
		Rs. 2,33,14,208

- (iv). The MBPT has proposed insertion of the following provision in the DSR:

Licence fees for storage / cargo operation with or without installation of facilities, cargo handling equipment by the users.

Sr. No.	Period	Rates applicable
	From the date of permission till expiry, for	Per sq. mtr or part thereof per month or part thereof @
a.	Open Area	Rs. 50/-
b.	Covered Area	Rs. 60/-

Note: Installation of facilities / cargo handling equipment shall be subject to the clearance by Chief Engineer / Chief Mechanical Engineer and shall be dismantled and removed within 15 days.

- (v). In consonance with the TAMP's General Order dated 8 April 2002, the proposed rates will be applied on adhoc basis till the final rates are fixed by TAMP. The AOSPL has accepted the proposed rates vide its letter dated 21 February 2005.
- (vi). Though, AOSPL has requested for exclusive usage of rights of the facility, the MBPT proposes to allow usage of the berths on non-exclusive, common user basis with the right to MBPT to allot the berth as and when required by other users.

- (vii). As the proposed rates are mutually agreed rates, the cost details in the formats prescribed by TAMP are not furnished.
- (viii). The Board of Trustees of MBPT has approved the proposal in its meeting held on 8 February 2005.

3. Even though the proposal may be relevant immediately in a single user case, the proposed amendment, if effected, in the DSR will have common application. A copy of the proposal was, therefore, forwarded to the concerned user organisations for their comments.

4. A copy each of the comments received from the users was forwarded to MBPT as feedback information. MBPT has responded to them vide its letter dated 30 June 2005

5. On a preliminary scrutiny of the proposal, it was found that additional information / clarifications were required on various points emerging from the proposal. Accordingly, the MBPT was requested to furnish additional information / clarifications. Our queries and the response of MBPT are tabulated below:

Sr. No	Our Queries	Response of MBPT
1.	Rates of storage fees, for storage in sheds and in the open yards, have been prescribed under section – III A of the DSR of MBPT. The circumstances under which these rates can be applied include special circumstances. The rates prescribed under Section – III A of the DSR can be applied for storage for a period even beyond 4 months. The MBPT is, therefore, requested to clarify the reason for proposing separate rates for the allotment of storage space to AOSPL, when a specific tariff is available in the notified SOR.	The provisions of Section III A are applicable only to over dimensional packages of given specifications. This clause was inserted under Order no. TAMP/62/99-MBPT dated 12 May 2000. As such, the question of applying these provisions in the case under reference does not arise.
2.	The MBPT may confirm whether the proposed rate is derived based on the existing notified tariff for comparable services. The basis and working for the proposed rates may be furnished.	The proposed rate is derived based on the existing notified tariff for comparable services under Section III (B), III C (I) and III C (II). Section III C (I) prescribes a rate of Rs.25/- per sq.m for covered areas and Rs.20/- per sq.m for open areas, as storage fees upto 30 days and demurrage payable thereafter. Since by permitting long-term storage under the proposed provisions, MBPT will have to forego demurrage for the stay beyond 30 days, it was felt necessary to prescribe a rate higher than the rate under Section III C (I). The rates for long-term storage for the bonded cargoes prescribed under Section III B are graded scale of rates i.e after 4 weeks the rate of storage is Rs.60/- per sq.m per month for sheds and Rs.48/- per month for open areas. The proposed rates of Rs.50/- for open areas and Rs.60/- for covered areas are kept at much lower rates than the rates under Section III C (II) which applies to the Licence fee for management of cargo operation (for occupation other than for cargo storage).

Sr. No	Our Queries	Response of MBPT
3.	The MBPT has stated that the proposed rates are mutually agreed rates between MBPT and the sole user. However, no documentary evidence in support of the consent of the user for the proposed rates has been furnished.	MBPT has furnished a copy of the letter from AOSPL dated 21 February 2005 accepting the terms and conditions for use of berths and storage area.
4.	The Note of discussion at the Board meeting mentions that the proposed arrangement would be for a period of 11 months, and renewable for a further period of 11 months. But, this prescription is not proposed for inclusion in the SOR.	The proposed arrangement period of 11 months, and renewable for a further period of 11 months mentioned in the Note of Discussion is for the specific project of AOSPL. The prescription of the period will vary from case to case. Hence the conditionality regarding the period is not included in the SOR.
5.	Confirm if the General Guidelines issued by the Government for Berth Reservation Scheme will not cover the proposed arrangement of allotment of berths to AOSPL.	The berths have been earmarked for use on common user basis. Therefore, the Berth Reservation Scheme will not be applicable.
6.	The AOSPL has to guarantee a minimum throughput and in consideration the proposed storage rates are allowed. Since the amendment to SOR will have common application, MBPT may examine whether MGT requirement needs to be included as conditionality in the SOR.	Though the proposal envisages a minimum guaranteed throughput (MGT), the rates for storage is not linked to MGT. The MGT is prescribed so that the turnover of cargoes and the ship calls are generated to justify the earmarking of storage areas and the permission to use berths

6. A joint hearing in this case was held on 30 June 2005 at the office of this Authority. At the joint hearing, the MBPT and the concerned users made their submissions.

7. The proceedings relating to consultation in this case are available on records at the office of this Authority. These details are also available at this Authority's website <http://tariffauthority.gov.in>

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

- (i). The Dock Scale of Rates (DSR) of Mumbai Port Trust (MBPT) contains a provision for levy of storage fees on weekly basis for long term storage of cargo. This provision is, however, applicable only when the cargo bonded under the provision of Customs Act is stored in the port. Another prescription approved by this Authority in its Order of September 2001 relates to rates of license fee for storage of cargo upto 30 days; and, Demurrage is leviable from 31st day at the rates prescribed for import cargo. Yet another prescription approved in the Order of September 2001 is with reference to levy of license fee for occupation of space allotted to the users for management of cargo operation. In effect, the existing DSR does not contain any provision for levy of license fee for storage of cargo beyond 30 days without the element of demurrage.
- (ii). With an objective of optimally exploiting the under-utilised facilities, the MBPT has come up with this proposal for levy of license fees for storage as well as cargo operation on long term basis. Since the existing tariff arrangement, in which a combination of rental terms and demurrage terms is applied for long term storage, is found to be not attractive enough to evoke response to achieve the desired objective, the port has proposed to prescribe rental terms for long term storage within the docks.

- (iii). The MBPT has finalised an arrangement with a private operator for allotment of berths on common user and non-exclusive basis along with storage areas in the berths and away from the berths. The Government of India in the (then) Ministry of Surface Transport (MOST) had issued general guidelines in June 1992 to give operational freedom to port trusts while deciding the terms and conditions with users for advance berth reservation. To a query in this regard, the port has confirmed that since the berths have been earmarked for use on common user basis the berths reservation guidelines are not applicable in this case. In any case, allotment of berths and back up area is a managerial decision of MBPT and this Authority is concerned only with prescription of licence fees for storage of cargo.
- (iv). As mentioned earlier, the MBPT has proposed the storage fee of Rs.50/- per sq. mtr. per month for open area and Rs.60/- for covered area. There is no cost justification given by the MBPT in support of the proposed rates. As mentioned earlier, the MBPT has authorisation under the existing provisions to levy Rs.60 per sq. mtr. per month or part thereof for closed area and Rs.48/- per sq. mtr. per month or part thereof for open area for storage of goods bonded under the Customs Act.
- The rates proposed more or less fit into the existing rates prescribed for bonded cargo. Considering the undertaking given by the MBPT at the joint hearing to furnish full cost details in its forthcoming general revision proposal and the proposed rates are mutually agreed between the MBPT and the only relevant user of the facility for the present, this Authority is inclined to approve the operation of proposed rates as an interim measure till implementation of the general revision of Scale of Rates of the port.
- (v). The Indian Merchants Chamber (IMC) has argued for a rate of Rs.30/- for open area against the proposed rate of Rs.50/- per sq. mtr. per month with the idea that vacant areas of MBPT can be gainfully utilised. As rightly pointed out by MBPT, the rates fixed by this Authority will be ceiling levels in terms of clause 2.16.1 of the revised tariff guidelines and the port can operate the rates at a lower level based on its commercial considerations.
- (vi). (a). The private operator without prejudice to his consent to the proposed rates, has suggested for differential rates for the facilities away from the port and for the facilities inside the port on the ground of cost of transportation and other incidental cost. While the reasons cited by AOSPL cannot be fully accepted, the basic issue agitated about different rates for different location merits consideration. The value of the property, cost of providing service, etc., may not be the same across the 15 KM stretch mentioned by the MBPT. The MBPT should bear in mind this aspect while formulating the cost based rates.
- (b). The plea of the AOSPL for prescription of lower rates for long term storage of cargo merits consideration. That the MBPT will have to forego demurrage if long term storage is permitted does not appear to be a sole justification for prescription of rates which should compensate (notional) income that may arise due to levy of demurrage. It has to be recognised that one of objectives of allowing rental terms is to make better use of the facilities of the port. Demurrage which is a deterrent and has a penal connotation, is generally prescribed in an ascending scale. Since rental terms is different from demurrage and in view of assured revenue generation from such arrangement, it may be worthwhile to consider a sliding scale of rate for different period of time within the maximum tenure of licence the port may like to grant. The MBPT may consider this suggestion also while formulating its proposal for the next general review of its Scale of Rates.
- (vii). The 'note' proposed under the item detailed in paragraph 2(iv) above seeks to delegate discretionary powers in this regard to the Chief Engineer / Chief Mechanical Engineer. It has been a consistent approach of this Authority that delegation of authority to different functionaries of a port trust is not prescribed in the Scale of Rates. In all such cases, we have been naming the port (in place of the functionary proposed) and leaving it to the port trust to decide on the delegation. Accordingly, the words 'MBPT or any person

authorised by it' should be included in place of 'Chief Engineer / Chief Mechanical Engineer'.

- (viii). Ordinarily, tariff orders are implemented prospectively. Unless special circumstances warrant such an authorisation, this Authority does not give any retrospective effect

In the present case in reference, the MBPT has implemented the proposed rates on ad-hoc basis with the consent of the private operator for the rates. This Authority in its Order dated 8 April 2002 has given general authorisation to the major ports and private terminal operators to levy adhoc rate for the interim period till the final rate is approved by this Authority. This prescription is subject to the condition that the adhoc rate to be operated in the interim period must be derived based on the existing notified tariff for comparable services and it must be mutually agreed upon by the port trust and the concerned user. Since the proposed rates are approved and considering the mutual consent to the proposed rates, approval to the rates for retrospective application may not create complications. The date of retrospective implementation of proposed rate on ad-hoc basis by the port is not clear from the port's proposal. Since its Board of Trustees has accorded approval for implementation of the proposed rates on ad-hoc basis till the final rates are fixed by this Authority in its meeting held on 8 February 2005, the proposed rates are approved with retrospective effect from 8 February 2005.

- (ix). The MBPT has already agreed to file its proposal for comprehensive revision of its tariff by 15 August 2005 before this Authority (A subsequent request received to extend this time limit is processed separately). As brought out earlier, the present proposal is not cost based; and, the port has agreed to furnish the cost details in its next general revision proposal. The proposed rates, therefore, are approved for operation till implementation of the revised Scale of Rates of MBPT.

8.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves insertion of the following as sub-section C(II) below the existing sub-section C (I) of section III of the Scale of Rates charged at the Docks and renumber the existing Section C (II) as C (III).

"C(II) – Licence fees for storage / cargo operation with or without installation of facilities, cargo handling equipments by the users.

Period	Ceiling Rates Applicable
From the date of permission till expiry of the licence period for	Per sq. mtr. or part thereof per month or part thereof at
a. Open area	Rs.50/-
b. Covered area	Rs.60/-

Note: Installation of facilities / cargo handling equipments shall be subject to the clearance by MBPT or any person authorised by it and shall be dismantled and removed within 15 days."

8.2. The above rates will be deemed to have come into effect from 8 February 2005 and will be in force till the date of implementation of the revised Scale of Rates of MBPT.

(A.L. Bongirwar)
Chairman

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

F. No. TAMP/28/2005-MBPT - Proposal from the Mumbai Port Trust (MBPT) for amendment to Section III - Licence (storage) fees and Warehousing charges in the Scale of Rates (SOR).

1. The comments received from the port users / representative bodies of port users are summarised below:

M/s. Arya Offshore Services Private Limited (AOSPL)

(i). MBPT has allotted open and covered areas at Wadala & Victoria Docks to AOSPL. The tariff proposed is similar to both the areas. Generally, the tariff for facilities away or distant from the port are lesser than the tariff inside the port, as transportation and entry / exit factors have time / cost implication.

Paradip Port Trust (PPT) has two different tariff for open and paved area. The rate for open plots, which are away from the ports by more than 1 km is lower by 25%.

(ii). Tariff for fixed long-term storage could be levied on lesser rate than short-term storage, because, utilisation factor would be higher and revenue is guaranteed for the whole period.

(a). The PPT SOR, where though, the tariff is per month or part thereof, a surcharge of 10% is payable for leases of less than one year.

(b). The Cochin Port Trust (COPT) where the tariff (for covered storage space) is same irrespective of the time upto 5 years.

(iii). It is agreed that every port has its own cost, investment and revenues and cannot be uniformly compared with other ports.

(iv). The comments are purely suggestive and should not be construed as disputing the rates proposed by MBPT, as AOSPL has already agreed to the proposed rates of MBPT.

Indian Merchants' Chamber (IMC)

(i). Rate for storing the cargo in the open area should not be more than Rs. 30 per sq. mtr. or part thereof per month.

(ii). If the above mentioned suggestion is considered and accepted, similar vast areas lying vacant within MBPT would be gainfully utilised.

2. MBPT has responded vide its letter dated 30 June 2005 and furnished its comments on the comments of users which are summarised below:

On the comments of M/s. Arya Offshore Services Private Limited (AOSPL)

- (i). MBPT has many plots / areas spread all over the port limits which stretch about 15 kms from one end to other. It is not practicable to prescribe lower rates merely on distance factor and, therefore, not acceptable.
- (ii). By permitting long term storage MBPT will have to forego demurrage for the period of stay beyond 30 days. It is, therefore, necessary to prescribe rate higher than the rate prescribed under Section III (C) (i) which is Rs.20/- and Rs.25/- per sq. mtr. or part thereof per month or part thereof for open yards and sheds respectively.
- (iii). Condition prevailing in MBPT cannot be compared with that of other ports. Moreover, MBPT has to consider its own cost of rendering the service.

On the comments of Indian Merchants' Chamber (IMC)

The rate of Rs. 30 per sq. mtr. or part thereof per month or part thereof for open areas suggested by IMC is too low and not acceptable. However, if, the purpose is to utilize the vast areas lying vacant, then, based upon the merits of case, the MBPT is empowered to prescribe rates less than the rates prescribed by TAMP in the Scale of Rates.

3. A joint hearing in this case was held on 30 June 2005 at the office premises of the Authority. At the joint hearing, the MBPT and the users made the following submissions:

Mumbai Port Trust (MBPT)

- (i). Explained the proposal.
- (ii). The existing SOR does not contain any provision to levy storage charges beyond 30 days. We do not want to apply demurrage after 30 days because the impact on users will be high.
- (iii). We agree that the rate proposed could be approved for operation till next general revision. In the next general revision proposal, we will give full cost details.

- (iv). We ensure that long-term storage does not hamper our operation. Only when we are convinced, we consider allotting space for long-term storage.

M/s.Arya Offshore Services Private Limited (AOSPL)

- (i). We generally agree with the proposal.
- (ii). The rates inside the Dock and outside at Wadala cannot be the same.
- (iii). Our suggestion need not be taken as disputing the proposal of MBPT.
- (iv). The average storage period of off shore materials is around 2 to 3 months.

Mumbai and Nhava Sheva Ship Agents' Association (MANSA)

MBPT should ensure that such reservation does not create space constraint in the operational area, which may affect vessel productivity.
