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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 137

New Delhi,

30 April 2010

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal from the New Mangalore Port Trust for fixation of wharfage charges for shipment of Iron Ore Concentrate and Pellets for the year 2007-08 as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/15/2009 - NMPT

New Mangalore Port Trust

- - -

Applicant

ORDER

(Passed on this 3rd day of March 2010)

This case relates to the proposal dated 20 April 2009 from the New Mangalore Port Trust (NMPT) for fixation of Wharfage charges for shipment of Iron Ore Concentrate and Pellets for the year 2007-08.

2.1. The NMPT has stated that the wharfage rate for the iron ore/pellets exported by the Kudremukh Iron Ore Company Limited (KIOCL) through the New Mangalore Port Trust (NMPT) is calculated annually with reference to actual expenditure following the methodology decided in the Inter-Secretarial meeting held on 27 May 1992 between the Secretary (Ministry of Surface Transport) and the Secretary (Steel). Accordingly, the following components are included for calculation of wharfage for shipment of iron ore or pellets of KIOCL from NMPT:

- (i). Share of operating expenditure of Traffic Department.
- (ii). Dredging expenditure proportionate to the traffic handled.
- (iii). Depreciation.
- (iv). Share of Management and Administration overheads.
- (v). Interest on Capital.
- (vi). Return on Capital @ 6%.

2.2. The NMPT has submitted that the method of calculation of wharfage has also been checked by KIOCL and after verification of records they have arrived at the final rate of Rs.49.70 per tonne for the year 2007-08. The NMPT has also forwarded the KIOCL letter No.KIOCL/FAC/MR/64 dated 6 April 2009 confirming the proposed rate in support of its statement.

2.3. In this backdrop, the NMPT has sought approval of wharfage rate of Rs.49.70 per MT for iron ore/pellets exported by KIOCL during the year 2007-08.

3.1. The KIOCL in its letter dated 6 April 2009, forwarded by the NMPT alongwith its proposal, has confirmed the calculation of wharfage rate of Rs.49.70 per MT for the year 2007-08 pending decision of this Authority on the following two issues:

- (i). Interest component @ 5.5% per annum is considered by the NMPT in the calculation of wharfage rate on the Government loan of Rs.27.57 crores. It has submitted that the NMPT has neither actually incurred nor provided for this component in the accounts and hence it should not be considered in calculation of wharfage rate;
- (ii). Disagreement by NMPT to calculate the wharfage rate by considering the total traffic handled by KIOCL through berth no.8 i.e. export of iron ore pellets by KIOCL and also the receipt of NMDC Baila iron ore fines from Vizag Port to NMPT berth through vessels.

3.2. The issue relating to the interest component considered by the NMPT in the wharfage calculation was brought out by the KIOCL earlier vide its letter No.KIOCL/FAC/MR/3376 dated 11 March 2008. The issues raised by KIOCL were forwarded to NMPT for resolution.

4.1. In accordance with the consultative process prescribed, a copy of the proposal was forwarded to the only user KIOCL for comments. In response, the KIOCL vide letter dated 7 May 2009 has requested to consider the comments forwarded by it earlier vide its letter dated 22 April 2009. The New Mangalore Port Trust vide letter dated 9 October 2009 has furnished its comments on the points made by the KIOCL.

4.2. To summarise, the main objections raised by KIOCL on the wharfage calculation through series of correspondence since March 2008 and the clarifications furnished by the NMPT are tabulated below:

Sl. No.	Points made by KIOCL	Reply received from NMPT
1.	Excluding interest component:	
	(a). A loan of Rs.27.57 crores was provided to NMPT for Kudremukh facilities by Government of India. The NMPT is considering interest @ 5.5% per annum for calculation of wharfage rate.	(a). The captive jetty was constructed with the funds given prior to its formation by the Central Government.
	(b). The NMPT is, however, neither paying interest to the Government nor has made any provision for payment in its accounts.	(b). Further, as per the MOU entered between the port and the KIOCL the interest on the capital employed is to be considered for the purpose of calculation of the wharfage.
	(c). The actual expenditure incurred on all the components is considered by the port for the wharfage rate computation except the interest on capital. Considering notional interest is not justifiable and is against the spirit of the minutes of inter-Secretarial meeting held on 27 May 1992.	(c). The interest @ 5.5% on Rs.27.57 crores capital provided by Government of India to NMPT exclusively for KIOCL facilities is included on notional basis for computation at a minimum rate of interest as the loan/interest account with Government has not been completely closed.
	(d). It has therefore requested to exclude the notional interest on capital for calculation of wharfage rate from the year 2007-08 onwards pending decision of the Government in the matter.	(d). The stated rate of interest was adopted with the understanding that the Government of India may not charge at higher rate than the rate at which already collected.
	(e). It has submitted that the request of the KIOCL for refund is rejected by the port. Since the Government Auditors are insisting for getting refund, the KIOCL had sought the intervention of the Authority.	(e). It is also submitted that final wharfage charges payable by KIOCL has been worked out taking all the elements into consideration as per the guidelines brought out in the minutes of the meeting held under the Chairmanship of the then Secretary (ST) held on 27 May 1992.
2.	Consider the total traffic handled at the berth no.8	
	The wharfage rate should be computed considering the total traffic handled by KIOCL limited through berth N0.8 i.e. export of iron ore pellets and receipt of NMDC Baila iron ore fines from Vizag Port to NMPT berth through vessels & discharge through berth no.8	The request of KIOCL has been considered and the import cargo i.e. import of NMDC Baila iron ore fines from Vizag Port has been taken into consideration while computing wharfage charge for the year 2008-09 and it will be followed in future also.

5. Subsequently, the KIOCL vide its letter dated 31 October 2009 has reiterated its earlier submissions with a request to resolve the same. It has also stated that the Government Auditors during the course of audit have issued audit inquiry stating that non-reckoning of iron ore fines during 2006-07 and 2007-08 in the cargo handled has resulted in extra expenditure on wharfage charges to the extent of Rs.218.34 lakhs. In view of that the auditors have advised the KIOCL to get refund of this amount from the NMPT.

6.1. A joint hearing in this case was held on 17 December 2009. At the joint hearing the KIOCL and NMPT made the following submissions:

KIOCL

- (i). Entire traffic handled at the berth no.8 should be calculated.
- (ii). Interest on pre formation loan should not be counted

NMPT

- (i). We exclusively provide in the accounts or not, the effect of loan is shown in Capital Reserves.
- (ii). Government has not waived pre formation loan. It is still under consideration.

6.2. Subsequently, the KIOCL, vide letter dated 19 December 2009, has furnished written submission reiterating its request to reckoning with the receipt of iron ore fines discharged through berth no.8 along with export of iron ore pellets for calculation of wharfage for the year 2006-07 and 2007-08; and to exclude notional interest component.

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

- (i). The proposal of the New Mangalore Port Trust (NMPT) is for fixation of wharfage rate on iron ore exported by the Kudremukh Iron Ore Company Limited (KIOCL) through the berth no.8 for the year 2007-08. As already brought out earlier, fixation of wharfage rate for iron ore exported by the KIOCL through the berth no.8 is based on the methodology decided in the Inter-Secretarial meeting held on 27 May 1992 by the (then) Ministry of Surface Transport. The wharfage rate on the iron ore handled by the KIOCL for the previous years has also been fixed on the same methodology based on the rate agreed by the KIOCL.
- (ii). The port has reported that the calculation of wharfage rate based on actuals for 2007-08 has also been checked by KIOCL and after verification of records they have arrived at the final rate of Rs.49.70 per tonne for the year 2007-08. The KIOCL has reportedly verified such details and confirmed the calculation subject to the two issues which are discussed in the subsequent paragraphs. The figures furnished by NMPT in its proposal are relied upon. The issue before this Authority is limited to decide on the two points referred for settlement and modify the figures furnished in the proposed calculation of NMPT relating to these issues, depending on the decisions thereon.
- (iii). The contentious issues involved in this case are -
 - (a). To consider the total traffic handled by KIOCL through berth no.8 i.e. export of iron ore pellets and receipt of iron ore fines from Vizag Port to NMPT and discharged through berth no.8 or restrict the traffic figures to iron ore pellets exports of KIOCL only.
 - (b). Inclusion or otherwise the interest component on the loan of Rs.27.57 crores in the calculation of wharfage rate.
- (iv). With reference to the point mentioned at (iii) (a), it is stated that since all the relevant cost of operating the berth are considered for calculation of the wharfage rate, the claim made by the KIOCL to reckon the total traffic handled by it i.e. both exports and receipt of iron ore / pellets at berth no.8 in the computation of wharfage rate is very logical and merits consideration. The NMPT has, in its letter dated 9 October 2009, in principle agreed to consider the receipt of iron ore fines received by KIOCL also in the computation of the wharfage rate. The port has, however, not effected this modification in the calculation of wharfage rate for the year 2007-08. It has, however, agreed to consider the suggestion made by KIOCL while computing the wharfage rate for the subsequent year i.e. 2008-09. Having conceded to the point made by the KIOCL, there is no reason why the total traffic handled by the KIOCL should not be considered in determining the wharfage rate for the year 2007-08. The KIOCL has indicated that the iron ore received at berth no.8 is 528521 tonnes during the year 2007-08. The NMPT has not disputed the total traffic figure of 2498468 tonnes considered by the KIOCL in its calculations furnished vide letter dated 22 April 2009. The wharfage rate computed by the NMPT is, accordingly, modified considering the total traffic of 2498468 tonnes handled by KIOCL for the year 2007-08 at berth no.8.
- (v). Consequent to the modification in the traffic figure, the revenue dredging cost allocated to the KIOCL activity based on the share of traffic also stands modified.

The total (revenue) dredging cost reported by the port is Rs.2563.54 lakhs for the year 2007-08 of which Rs.177.82 lakhs is allocable to KIOCL activity based on the revised share of traffic as against Rs.140.20 lakhs considered by the NMPT. The revised figure incidentally matches with the share of dredging cost considered by the KIOCL vide its letter dated 22 April 2009.

- (vi). As regards the point (iii) (b) above, the KIOCL has objected to the inclusion of interest component considered in the wharfage computation citing that the port neither pays any interest nor has made any provision in the Annual Accounts.

It is relevant to state that prior to the tariff guidelines of 2005, return was allowed on capital employed which was determined based on interest rate on Government of India loan plus 6% contribution by the port towards the two mandatory reserves i.e. Development and Renewal fund. In the 2005 tariff guidelines, return is allowed on the capital employed which is determined based on CAPM method. The return admissible presently is 16%. This Authority is not concerned with the sources of the funds whether it is debt or own fund of the port.

In the instant case, however, the wharfage rate is to be determined following the methodology agreed upon in the meeting held on 27 May 1992 at the Inter-Secretarial level. The formula prescribed recognises interest on capital. The return prescribed at 6% in the formula is with reference to two statutory reserves of 3% each towards Development and Renewal fund. It is notable that the agreed formula for determining the wharfage rate makes no provision for contribution to be made by the KIOCL operation towards some common assets of the port to which the KIOCL may also be a beneficiary.

Notwithstanding the above, the point relevant is that the formula prescribed in the Inter-Secretarial meeting held in 1992 is an agreed formula between the parties and the wharfage rate based on the agreed formula has been approved by this Authority since the year 1995-96 till 2006-07. The KIOCL has also admitted that the captive jetty was constructed from funds given by the Government prior to formation of the port trust. The loan obtained from the Government is captured under the capital reserves in the books of accounts as reported by the port. The pre-formation loan has not yet been waived by the Government. As rightly stated by the port, interest accrued on the loan is payable by the port. It is to be noted that repayment of loan and interest thereon should be the concern of the Lender i.e. Government in this case and NMPT. It is not necessary for the KIOCL to factor an extraneous consideration to argue its case. The relevant issue is whether the concerned loan is applied in the capital employed for the facility utilised by the KIOCL. NMPT confirms this position and KIOCL does not deny it. The port is, therefore, entitled to claim interest accrued on such loan. In case, the Government decides to waive the said loan, then the effect will be captured in tariff computation accordingly.

- (vii). Subject to the above analysis, the wharfage rate computed by the NMPT is modified. As per the modified calculation, the wharfage rate works out to Rs.40.69 per tonne as against Rs.49.70 per tonne proposed by the port. A copy of the cost statement is attached as **Annex**.
- (viii). As per the revised tariff guidelines, the tariff to be approved by this Authority generally has a prospective effect except under special circumstances. The instant case is for retrospective approval as the proposal is to determine the wharfage rate considering the actual share of expenditure and the traffic handled for the 2007-08. This methodology of retrospective approval in these items has been in vogue for more than 10 years and hence is approved.

8. In the result, and for the reasons give above, and based on collective application of mind, this Authority approves the wharfage rate of Rs.40.69 per MT for the year 2007-08 in respect of iron ore and pellets handled by the KIOCL.

(Rani Jadhav)
Chairperson

						Annex
Cost Statement for calculation of wharfage rate for KIOCL facilities for the year 2007-08						
						in Rs.
Sr.No.	Particulars			Cost considered by the NMPT	Cost considered by the TAMP	
I	Operating Cost					
	i	Salaries of traffic department debited to KIOCL		3022682	3022682	
	ii	Share of revenue dredging - Traffic ratio		14020390	17781949	
	iii	Depreciation		4468405	4468405	
	iv	Share of management expenses - Wharf length ratio		36839792	36839792	
II	Interest:					
		a)	Actually paid	214467	214467	
		b)	At 5.5% on balance as on 1/4/1980	15164000	15164000	
III	Return @ 6% on Rs.40.3 crores			24180000	24180000	
IV	Total Expenditure plus Return			97909736	101671294.6	
V	Traffic handled in Metric Tonnes					
		a)	Export of iron ore pellets Metric Tonnes	1969947	1969947	
		b)	Receipt of NMDC iron ore fines in Metric Tonnes	0	528521	
		Total quantity handled		1969947	2498468	
VI	Wharfage Rate per Metric Tonnes (in Rs.)			49.70	40.69	