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Tariff Authority for Major Ports

G. No. : 192

New Delhi, 14 December 2004

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 of New Mangalore Port Trust (NMPT) for fixation of final rates of wharfage on cargo handled at its Jetty No.10 for the years from 1996-97 to 1999-2000 as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/31/2004-NMPT

The New Mangalore Port Trust (NMPT) -----

Applicant

ORDER

(Passed on this 18th day of November 2004)

This case relates to a proposal received from the New Mangalore Port Trust (NMPT) for fixation of final rates of wharfage on cargo handled at Jetty No.10 for the years from 1996-97 to 1999-2000.

2. The NMPT and Mangalore Refinery and Petrochemicals Limited (MRPL) had signed a Memorandum of Understanding (MOU) on 20 January 1995 for construction of a dedicated jetty to handle MRPL cargo. This MOU contains a specific provision regarding computation of wharfage rate, based on the actual operation and maintenance cost, sharing of administrative and general overheads, depreciation, interest on land and some percentage of capital employed to be fixed by the Government. The wharfage charge is subject to yearly review and consequent adjustment depending on tonnage involved. The NMPT and the MRPL both had disagreement on various issues relevant for computation of wharfage rate for Jetty No. 10, and hence fixation of final wharfage rate is still pending from the year 1996-97 onwards.

3. This Authority through its Orders dated 27 October 1998 and 19 July 2000 has set the principles to be followed for fixation of wharfage rate for Jetty No.10. Subsequently, in the Order passed on 9 August 2001 relating to general revision of tariff at NMPT, it was clarified that the instalment of loan repayment must be considered in computation of wharfage rate only to the extent it is in excess of the depreciation reckoned in the calculation.

4.1. Aggrieved at this Authority's Order, the MRPL has filed a Writ Petition No. 38445/2000 in the High Court of Karnataka challenging some of the guidelines issued by this Authority for calculation of wharfage particularly with reference to the return on capital employed allowed in the calculation.

4.2. The Hon'ble High Court of Karnataka has passed an interim Order on 18 April 2001 directing the Petitioner to pay Rs. 60/- PMT of wharfage charge for cargo handled at Jetty No.10 until further orders; and allowed the first Respondent (NMPT) liberty to fix the wharfage charges in accordance with the MOU for the subsequent period.

4.3. Subsequently, the Hon'ble High Court vide its Order dated 10 April 2002 has referred to another Order of this Authority whereby adhoc rate of Rs.71/- PMT for the year 2001-02 was fixed based on mutual consent of both the parties. The Hon'ble Court directed the MRPL to file an application within four weeks time and also ordered this Authority to pass an order clarifying this position. The NMPT filed a Writ Appeal to set aside the Court's Order dated 10 April 2002. This was heard by the Division Bench which vide its order dated 30 April 2002 set aside the Order of the single judge bench since the amount of Rs.71/- PMT was fixed by mutual consent of the parties.

5.1. On its part, the NMPT had filed three petitions before this Authority for review of the Orders on three specific issues i.e. credit back of vessel related income, credit back of escrow account interest and credit back of depreciation for repayment of loan. This Authority has passed Orders on 21 March 2002 rejecting these review petitions.

5.2. The NMPT has stated to have filed Writ Petition bearing Nos.28684 – 28686 of 2002 in the Hon'ble High Court of Karnataka *inter alia* seeking directions to allow the review Petitions. We have not received any further intimation so far about these cases either from the NMPT or from the High Court.

6. The NMPT had earlier submitted a proposal for fixation of wharfage rate for jetty No.10 for the years 1996-97 to 1999-2000. At the joint hearing set up in this case, both the NMPT and the MRPL agreed to file a revised proposal by jointly re-working the rates including final wharfage rate for 2000-01 and 2001-02. Accordingly, this Authority vide its Order No.TAMP/13/2003-NMPT dated 13 October 2003 had closed the relevant tariff case and advised the NMPT to submit a revised agreed proposal by November 2003.

7. In this backdrop, the NMPT has filed the instant proposal for fixation of wharfage rate for Jetty No.10 for the years 1996-97 to 1999-2000 without prejudice to the writ petitions pending before the High Court. The NMPT has made the following main points in its proposal:

- (i). Pursuant to the TAMP Orders, deliberations were held with the representatives of the MRPL on several occasions during November 2003 to June 2004.
- (ii). Most of the issues / disputes in the computation of wharfage rate has been settled as confirmed by the MRPL also except for three issues on which no settlement is reached between them.
- (iii). The following three issues are referred to the TAMP for resolution with respective stand points taken by both the parties as tabulated herein under:

Sr. No.	Issues under dispute	MRPL's claim	NMPT's stand point
1.	Treatment of pilotage charges.	In case a vessel berthed at jetty No.10 shifts to any other berth / berths, pilotage charge collected is at 50% between the two berths. This is not correct. In case of crude vessels even if vessel is shifted for any reasons, full pilotage should be accounted against MRPL.	When a vessel is shifted from jetty No.10 to another berth or vice versa and sails out from there, then 50% of pilotage charges and actual berth hire is shared between the berths. This is uniformly adopted in all the cases in the same analogy when two agents are involved or voyage conversion takes place.
2.	Depreciation charged on common assets of the NMPT.	The TAMP Order stipulates that the loan repayment is to be considered in the computation of wharfage rate to the extent it is in excess of depreciation. The NMPT, however, while giving credit to depreciation, has not considered the total amount of depreciation. Depreciation relating to the common assets are not credited by the NMPT against the repayment of loan instalment.	Depreciation is to be set off against loan repayment as per TAMP order and the depreciation referred here is to that portion of assets which is created for MRPL out of borrowed funds. The MRPL shall, however, have no claim over depreciation considered on NMPT's common assets as MRPL does not share the payment of interest or repayment of loan due to the Central Govt.
3.	Reduction in dredging cost on account of remission of wharfage charge with reference of the virtual jetty.	As per MOU of virtual jetty, the NMPT had given remission of 50% of wharfage charge after recovering pro-rata maintenance dredging cost on the basis of quantity of cargo. The extent of this maintenance dredging needs to be reduced from the dredging cost while allocating the same to jetty No.10 for computation of wharfage rate.	Two MOUs are distinct and do not relate to each other. The dredging cost is apportioned to MRPL, NMPT and KIOCL based on the ratio of cargo handled. There is no actual recovery of dredging cost in the remission on account of the formula adopted. Since the cargo handled at virtual jetty is taken in the total cargo handled by the port for arriving at cargo ratio, the NMPT has assumed more burden of dredging cost including the portion of dredging cost of virtual jetty. The MRPL automatically gets lesser burden by the formula adopted.

- (iv). Subject to the above points, the wharfage rates proposed by the NMPT for jetty No.10 for the years 1996-97 to 1999-2000 are as follows:

Year	Proposed wharfage rate (in Rs. per tonne)
1996-1997	87.73
1997-1998	78.01
1998-1999	84.53
1999-2000	79.30

- (v). It has stated that the wharfage rate for the years 2000-01 and 2001-02 will be submitted separately once the same is verified by the MRPL.

8.1. In accordance with the consultative procedure prescribed, the NMPT proposal was forwarded to the MRPL for their comments.

8.2. The MRPL has furnished its comments in support of its claim as summarised below:

- (i). The Pilotage charge is a composite fee levied for both inward and outward pilotage and one shifting. Merely because a ship moves from a working berth to take bunkers at another berth cannot be a reason for apportioning the pilotage charge equally among the two berths. The NMPT has adopted this methodology in these revised calculation only because, as per the directions of the TAMP while calculating wharfage rate for Jetty No.10, pilotage charges realised from ships operating in the oil berth is to be credited to the cost of operating the berth.
- (ii). The ratio of apportionment of pilotage fee at 50:50 is also arbitrary and is devoid of any logic.
- (iii). The TAMP in its Order has not made any distinction between depreciation pertaining to the assets of oil jetty and other common assets belonging to the port and hence it has reiterated that the entire depreciation amount must be set off against loan repayment while arriving at wharfage rate for jetty No.10.
- (iv). As regards the third issue, it has pointed out that the NMPT as per the separate MOU entered with the MRPL has remitted 50% of wharfage after recovering pro-rata maintenance dredging cost. Its claim is based on the fact that the NMPT has charged dredging cost based on the cargo handled at oil berths. It has argued that while working out the remission of virtual jetty, some portion of dredging cost amount is already collected by the NMPT, and hence the same must to be reduced from the total dredging cost irrespective of the fact that this recovery has been done under a different MOU or else it will amount to NMPT collecting more dredging cost than it has actually incurred.

9. The comments received from the MRPL were forwarded to the NMPT as feedback information. In response, the NMPT has furnished the following clarifications:

- (i). Treatment of Pilotage charges.

The operation of any berth starts when a vessel is moored to it and ends when the vessel is unmoored from it. Hence, the income realised for servicing a vessel at other berth cannot be treated as revenue under the MRPL project in terms of TAMP Order as the shifted vessel avails the facilities provided in that berth.

- (ii). Depreciation charges on NMPT's common assets.

- (a). The existing assets of the NMPT are those created by Govt. funds / internal resources or loans raised from the Central Government. It has not loaded

the MRPL with Govt. loans and interest payable for creation of existing assets but, only considered depreciation on common assets in the calculation sheet.

- (b). This Authority has allowed the additional amount equivalent to repayment of loan to be considered in the calculation of wharfage rate only to take care of the cash flow problems.
 - (c). Since the amount of depreciation is also available for repayment of loan, instalment of repayment of loan to the extent it is in excess of the amount of depreciation already accounted under the operating expenditure is considered while calculating the wharfage rate.
- (iii). Reduction in dredging cost on account of remission pertaining to virtual jetty:
- (a). Merely because the remission mechanism specifies recovery of per ton dredging cost, the MRPL is not entitled to claim reduction in the total dredging cost to that extent for the simple reason that the port has not actually recovered the dredging cost.
 - (b). The share of dredging cost of virtual jetty was taken under NMPT's allocation and the benefit in reduction in cargo ratio was reaped by MRPL. In fact, NMPT has forgone its revenue from wharfage at Virtual Jetty to the extent of actual remission.

10.1. A joint hearing in this case was held on 8 September 2004 at the NMPT premises. At the joint hearing, the following submissions were made:

The New Mangalore Port Trust

- (i). There were about 15 outstanding issues with MRPL. We could mutually settle all except the 3 issues referred to TAMP.
- (ii). We follow 50:50 basis in case of change of Steamer Agents to apportion the composite pilotage fee.
- (iii). Confirming whether expenditure is booked for outward pilotage or not is difficult. Because, for costing purposes we only apportion total cost to MRPL jetty cost centre.
- (iv). Virtual jetty was used for two years 1999-2000 and 2000-01. Investment of Rs.20 crores was made by MRPL.
- (v). There was a separate MOU which says pro-rata dredging cost can be recovered.
- (vi). We allow pro-rata allocation of dredging cost to MRPL cost centre. They cannot claim credit for Virtual Jetty.

Mangalore Refinery and Petrochemicals Limited

- (i). We compliment the port for their efforts in sorting out the disputes.
- (ii). Pilotage is a composite fee. It was not the intention of the vessels to call at NMPT for casual bunkering. The free shifting in the composite service should take care of the movement from our berth to elsewhere.
- (iii). The vessel has come for a commercial activity of handling MRPL cargo. The credit should be given to MRPL cost centre.
- (iv). We have paid dredging cost at Virtual Jetty. This should be deducted from the total dredging cost before allocating to our cost centre.

10.2. At the joint hearing, the NMPT has made written submissions reiterating the points made by it earlier. In addition to that, it has submitted the following in support of its claim:

- (i). Treatment of Pilotage charges:
 - (a). When a vessel is shifted from one berth to another berth or vice versa and sails out, then Pilotage charges are to be notionally shared by both the berths because Pilotage charge is a composite one which includes charges for inward & outward movement, tug hire charges, mooring & unmooring at berths and one shifting. This apportionment is necessary to arrive at the profitability of each activity of the berth/Floating craft/pilot etc. In the absence of individual tariff for each activity, notionally the income is shared at 50%.
 - (b). This analogy has been uniformly adopted in all the cases when two agents are involved or voyage conversion takes place. Even when a foreign flag vessel is converted into coastal vessel two difference rates are charged for the same vessel based on the classification of the vessels. Hence, it is submitted that composite pilotage is also required to be split on the practical situations within the overall notified rates.
 - (c). As per the statement attached, out of 724 vessels handled at Jetty No.10 during 1996-2000, only 14 vessels have shifted to other berths either for bunkering or at the request of the user or for any other reasons.
- (ii). Depreciation charges on NMPT's common assets:
 - (a). The MRPL is charged with Govt. loans and interest component for creation of the existing assets apportioned. Depreciation on common assets like capital dredging, navigational aids, wharves & pavements, electrical supply, etc., is apportioned to this cost centre. The depreciation in respect of many common assets like plant & machinery, estate and railways, etc., has not been charged to the MRPL.
 - (b). The TAMP Order about reducing depreciation from loan repayment is with reference to the depreciation charged on the assets created out of the loan taken for the MRPL Jetty. The TAMP order is very clear to this extent and there is no ambiguity in this regard.
- (iii). Reduction in dredging cost on account of virtual jetty remission.
 - (a). The clause No.11 (Tariffs) MOU in respect of Virtual Jetty provides as follows:

“75% of the Berth hire charges recovered for berthing the tankers at the Virtual Jetty and 50% of wharfage charges after recovering pro-rata maintenance dredging cost on the basis of quantity of cargo will be remitted to MRPL by NMPT as the consideration towards handing over the entire facility to NMPT by MRPL after agreement period free of cost..... This arrangement shall remain in force for a maximum period of two years from the date of first handling of cargo at the Virtual Jetty.”
 - (b). It is thus clear that, the MOU merely provides for a mechanism to arrive at remission of wharfage @ 50% in addition to remission of 75% of berth hire charges of vessels. It should not be construed as recovery of Dredging cost in other MOUs which are not at all connected. The port has instead forgone the revenue in form of wharfage to the extent of actual remission.

- (c). Though the Virtual Jetty was constructed by the MRPL to handle its cargo, the total volume of cargo (year-wise) handled at Virtual Jetty was not included for the purpose of calculation of wharfage charges for Jetty No.10 by the MRPL on the grounds that the two MOU's are distinct and do not relate to each other. The port has, however, included the same in the total cargo handled for arriving at the ratio of cargo handled at Jetty No.10 as against the total cargo handled. This means, the share of dredging cost incurred at the virtual jetty was actually borne by NMPT and the benefit of reduction in cargo ratio has been reaped by the MRPL.

10.3. At the joint hearing, to a specific query raised, the Senior Counsel of MRPL has clarified that pendency of Writ petitions filed by both the MRPL and NMPT on different issues arising out of the earlier Orders of TAMP before the Hon'ble High Court of Karnataka will not affect the current proceedings before the Authority since the Hon'ble Court has not passed any Order restraining the Authority from adopting its earlier orders. The NMPT has also agreed with this position.

10.4. It was decided at the joint hearing that both the NMPT and the MRPL would once again discuss among themselves to mutually resolve the three issues referred for adjudication and file a joint report of the discussion.

10.5. In response, the NMPT and the MRPL have informed that they had a joint discussion on 8 October 2004 but, could not arrive at any amicable settlement.

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

- (i). Despite a definite MOU signed between the NMPT and MRPL and clear guidelines issued by this Authority nearly 6 years ago, this case could not be finalised so far in view of the divergent views held by the parties on issues relating to treatment of various cost items for the purpose of computing wharfage. Some of the issues are also subject of litigation. Nevertheless, for the first time both the parties could resolve many of the issues, barring three, among themselves and presented a near-mutually agreed proposal. This Authority likes to compliment both NMPT and MRPL for their efforts to reach an amicable settlement to this long pending matter.
- (ii). Both the NMPT and MRPL have filed Writ Petitions before the Hon'ble High Court of Karnataka against some of the principles set by the earlier Orders of this Authority. The MRPL has pointed out that the litigations pending before the Hon'ble High Court will not hit the current proceedings before this Authority. The NMPT has also agreed with this opinion. It is relevant here to mention that no order of the Court restraining this Authority to take up the matter for fixing rates from 1996-97 onwards has been brought to our notice. It is a proposal filed by NMPT and the MRPL has no reservation in participating in these proceedings. In any case, the prayer before this Authority is to decide the case based on the principles set by it earlier, without prejudice to the rights and contentions of the parties in the litigations before the Hon'ble High Court. By way of abundant caution, it will be appropriate if both NMPT and MRPL bring the Order of this Authority in this case to the notice of the Hon'ble High Court before implementing it.
- (iii). This case relates to fixing wharfage rate for cargo handled at Jetty No.10 retrospectively for the years from 1996-97 to 1999-2000. The relevant cost and operational data are available at actuals in the relevant records of NMPT. The MRPL has reportedly verified such details. That being so, the figures furnished by NMPT in its proposal are relied upon. The issue before this Authority is limited to decide the three points referred for settlement and modify the figures furnished in the proposed calculation of NMPT relating to these issues, depending on the decisions thereon.
- (iv). The three points referred for consideration of this Authority are –

- (a). Treatment of pilotage charges on vessels shifting from/to Jetty No.10,
 - (b). Counting of Depreciation on NMPT's common assets for the purpose of repayment of loan,
 - (c). Credit of dredging cost levied at Virtual Jetty.
- (v). Position with respect to iv (a) above:

The issue may not be very significant from the point of view of its impact on the final rates as only 14 vessels fall under this area of dispute against a total of 724 vessels handled at this Jetty during the relevant period. Nevertheless, the issue is to be settled as a matter of principle.

The NMPT has quoted an observation of this Authority in its earlier Orders which holds that all revenue earned through the project of the New Jetty should be credited to the escrow account and such income shall be taken into account for computation of wharfage. The argument of NMPT is that income generated out of a particular berth should be limited to the operation of a vessel in that berth only and, therefore, income realised at other berth where the vessel shifted cannot be credited to Jetty No. 10. The argument of NMPT deserves to be admitted. At the same time, it is to be recognised that the tariff item involved here is pilotage fee which is levied not for any specific services provided at the berth. In view of the special provisions in the MOU, net vessel related income is also included in calculation of wharfage rate in this case, even though such a treatment is not given generally while determining cargo-related charges.

As pointed out by MRPL, pilotage fee is a composite rate inclusive of one shifting at the request of users. Vessels have called at the port with the primary intention of using the Jetty No.10 to handle cargo meant for MRPL. Shifting to other berths for bunkering or agent's request is incidental. The analogy of charging 50% of pilotage fee from each of the Agents when such agency change takes place is not found to be relevant in this case. This is a procedural approach adopted only for the purpose of charging the correct party to the extent of responsibility owned by them.

It is relevant here to note that expenditure on account of port and dock facilities is apportioned to the cost center of Jetty No.10 based on GRT of vessels handled. This is because corresponding income is also levied on GRT basis. In the absence of anything to the contrary specifically pointed out by the NMPT, it is to be presumed that the GRT considered for such allocation of expenditure includes GRT of all vessels berthed at the Jetty. This means, the GRT of the 14 vessels in reference which used Jetty No.10 are also considered for allocation of expenditure to this cost center. It is, therefore, logical that the relevant pilotage income of these vessels are recognised under the same cost center. It may be significant to note that port due is another major tariff item like pilotage which is not relevant to the services at any specific berth. In the case of the 14 vessels in reference, it is presumed that the NMPT allocated the relevant port dues income to this cost center, since no dispute in this regard is raised. A similar approach is to be reasonably adopted in case of pilotage also.

In view of the position explained above, the contention of NMPT in this regard cannot be accepted. Therefore, the calculation furnished by it is amended to allow credit of full pilotage fee levied on vessels shifted from/to Jetty No.10.

- (vi). Position with respect to iv (b) above:

This Authority has already decided that excess of repayment of loan availed for the project relating to Jetty No.10 over the actual depreciation is to be accounted under the operating expenditure. The depreciation charged to this cost center has two distinct components– (i). Depreciation on assets created under the Project and (ii).

Depreciation on other assets of NMPT allocated to this cost center. The demand of MRPL is that both the components should be reckoned for arriving at the balance repayment of loan amount to be charged under this cost center.

It is to be admitted that this issue has arisen primarily because of inadequacy of expression in the concerned Order of this Authority. Even though the formulation in the Order does not categorically mention about reckoning different components of depreciation, the issue is linked to allowing return on investment which has been analysed in detail in the Order of this Authority dated 19 July 2000. In the proposal considered in that proceedings, the NMPT sought 6% return on assets created for jetty No.10 and 18% return on port's common assets allocable to this cost center. This Authority allowed return on port's common assets but restricted return on assets created for Jetty No.10 project to 3% only but in addition, decided to allow actual repayment of loan. The 3% contribution allowed was towards Renewal Fund. The other 3% generally allowed for major port trust towards development and repayment of loan fund was disallowed in favour of allowing actual repayment of loan. Subsequently, this Authority decided that actual repayment of loan in excess of depreciation should only be considered since the expenditure charged towards depreciation is also available for repayment of loan. From the position leading to the earlier decision explained above, it becomes clear that the relevant decision of this Authority is confined only to the assets created under Jetty No.10 project and not to the common assets of NMPT. It is, therefore, clear that the adjustment to be made in the actual repayment of loan is only the depreciation on the assets of Jetty No.10 project.

As correctly pointed out by NMPT, the relevant loan was availed to create assets under Jetty No.10 project and not the other common assets of NMPT. The repayment of the relevant loan is, therefore, to be adjusted only against the depreciation of assets created under the project which was funded by such loan.

This Authority has already held the principle of allocating common expenditure and return on common assets to this cost center. Depreciation on allocated common assets being in the nature of overhead allocation, can be charged to this cost center but, need not be adjusted against actual repayment of loans availed to create facilities under Jetty No.10 project. Since NMPT has followed this principle, no modification of its calculation in this regard is necessary.

(vii). Position with respect to iv (c):

At the outset, it is to be clearly understood that operation at the Virtual Jetty was governed by a separate MOU and this facility was not created under the Jetty No.10 Project. The issue at hand is fixing wharfage charges for cargo handled at Jetty No.10 which is regulated by a specific MOU and not wharfage rate for all cargo of MRPL handled at NMPT.

As pointed out by NMPT, maintenance dredging cost is apportioned between the facilities of Oil Jetty, Iron Ore berths and other General berths on the basis of cargo share. The allocated cost to the dedicated berths are borne by the respective users through the existing special arrangement for fixing wharfage for their cargo handled at the relevant facility. The cost allocable to other general berths are taken under NMPT account and considered as cost item while fixing general tariff. It may be true that the cargo handled at Virtual Jetty may relate to MRPL. As certified by the port, this cargo volume has been considered under general category for the purpose of apportioning the dredging cost. This means, the dredging cost recovered from MRPL at Virtual Jetty is only the portion of cost allocated to NMPT general category and not the cost allocated to Jetty No.10. The maintenance dredging cost allocated to Jetty No.10 based on cargo volumes should, therefore, be fully considered for fixing wharfage rate for cargo handled at this facility. Since the proposal of NMPT is in the above lines, no modification of its calculations in this regard is necessary.

- (viii). Based on the discussions above, and relying on the figures furnished by NMPT, the wharfage rate calculation for the period 1996-2000 has been modified. A statement of the calculation is attached as **Annex - I**.
- (ix). Fixation of final wharfage rate for the year 2000-01 onwards is still pending. In view of the facts that most of issues are already settled among NMPT and MRPL and the three issues referred to this Authority are also decided now, both the parties are advised to sit together and finalize the wharfage rate for the year 2000-01 to 2003-04 and submit a proposal by end of January 2005 to this Authority for consideration.

12.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following final rate of wharfage charges leviable by NMPT on cargo handled at its Jetty No.10:

Year	Rate (Rs. per tonne)
1996 - 1997	87.59
1997 - 1998	78.01
1998 - 1999	84.46
1999 - 2000	79.27

12.2. As mentioned earlier these rates should be implemented only after NMPT and MRPL bring the Order in this case to the notice of the Hon'ble High Court of Karnataka.

(A.L. Bongirwar)
Chairman