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**TARIFF AUTHORITY FOR MAJOR PORTS**

**G. No. 184**

**New Delhi, 3 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 received from the NMPT for revision of the existing levy to recover wage arrears paid to the RCHW workers from the stevedores as in the Order appended hereto.

**( A.L. Bongirwar )**  
Chairman

**Tariff Authority for Major Ports**  
**Case No. TAMP/78/2003-NMPT**

The New Mangalore Port Trust

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Applicant

**O R D E R**

(Passed on this 18th day of November 2004)

This case relates to a proposal received from the New Mangalore Port Trust (NMPT) for revision of the existing levy to recover wage arrears paid to the Registered Cargo Handling Workers (RCHW) for the period 1 January 1998 to 31 August 2000 from the stevedores.

2.1. The NMPT has made the following main points in its proposal:

- (i). As per Section 24 of the New Mangalore Port Cargo Handling Workers (Regulation Employment) Scheme 1990, the wages, allowances and incentives payable to the workers/staff under this scheme are to be recovered from the stevedores.
- (ii). In pursuance of the wage revision effected (retrospectively) from 1 January 1998, the port collected revised wages, allowances and incentives with respect to the RCHW from the stevedores from September 2000 onwards. For the period 1 January 1998 to 31 August 2000, the same was not recovered from the stevedores though the port has already paid the arrears of the wages.
- (iii). The Statutory Audit has raised an objection on this point. The (then) Ministry of Shipping on examination of this audit objection has directed the port to recover the wage arrears from the stevedores.
- (iv). The differential wages to be recovered from the stevedores for the period 1 January 1998 to August 2000 amounts to Rs.1.97 crores. (Subsequently, the exact quantum of arrears paid has been indicated as Rs. 1,97,47,611.60).
- (v). Based on discussions with the stevedores on this issue, it has proposed to increase the existing levy by 5% on all gangs booked for general cargo and bulk cargo (excluding container handling) till the differential of Rs.1.97 crores is recovered.
- (vi). The increase in levy is not proposed for container handling as a special case as the container traffic is at the take-off stage.
- (vii). The existing levy vis-à-vis the proposed levy on all gangs booked through RCHW for general cargo and bulk cargo, except for container handling is tabulated below: -

Sl. No.	Particulars	Existing (Percentage of levy on the basic wages of the worker concerned)	Proposed (Percentage of levy on the basic wages of the worker concerned)
(i).	All gangs consisting of 8 or more Hatch workers and its corresponding shore gangs for discharge /loading of cargo.	200%	210%
(ii).	All other gangs consisting of less than 8 Hatch workers and its corresponding shore gangs.	250%	263%
(iii).	All other cargo handling operation in the Port like unloading from transit shed, stack yard, open stack yard, etc.	250%	263%

- (viii). The proposal was approved by the Board of Trustees of the NMPT in its meeting held on 1 September 2003 and levy is being collected provisionally from 1 October 2003. It has, therefore, requested to approve the proposal retrospectively from 1 October 2003.
- (ix). This revision is only a temporary arrangement and will be discontinued once the arrears for the relevant period are fully recovered from the stevedores.

3.1. A copy of the proposal was forwarded to the concerned users / representative bodies of port users for their comments.

3.2. The comments received from the above users were forwarded to the NMPT as feedback information.

4.1. Based on a preliminary scrutiny of the proposal, the NMPT was requested to furnish additional information / clarification on various. The NMPT was advised to forward a copy of the observation made by the Statutory Auditors and a copy of the letter received from the (then) Ministry of Shipping (MOS) in this regard. The NMPT was also requested to examine whether this liability can be met from the accumulated reserves/ surplus and to propose a special rate separately without merging it with the basic tariff apart from seeking the other information.

4.2. The NMPT has responded to our queries. Some of the relevant information furnished by the NMPT are summarised below:

- (i). A copy of the observation made by the Statutory Auditors about non-recovery of wages arrears from the stevedores with reference to RCHW wing for the period January 1998 to August 2000 and copies of letter issued by the (then) MOS advising the port to initiate action in this matter have been furnished.
- (ii). Accumulated reserves/ surplus and interest income of the RCHW are not available to meet the wage arrears paid to RCHW workers for the period January 1998 to August 2000. The position furnished shows that this activity depends on large cross-subsidy.
- (iii). The time frame required to recover the entire outstanding amount cannot be indicated since it will depend on the traffic volume. It has, however, assured that there will be a regularly monitoring mechanism of the increased levy collected from the stevedores so that the same can be discontinued once the entire outstanding amount is collected from the stevedores.
- (iv). In pursuance of a further suggestion made by the Principle Director of Audit (Economic and Service Ministry) to explore other avenues to speed up the process of recovery of wage arrears from stevedores within a reasonable time level, discussions were held with Stevedores and C&F Agents when they agreed for an increase in the existing levy from earlier proposed level of 5% to 7.5%. Accordingly, the revised levy proposed on all gangs booked through RCHW wing is as follows:

Sl. No.	Particulars	Revised proposed Percentage of levy on the basic wages of the worker concerned
(i).	All gangs consisting of 8 or more Hatch workers and its corresponding shore gangs for discharge /loading of cargo.	215%
(ii).	All other gangs consisting of less than 8 Hatch workers and its corresponding shore gangs.	270%
(iii).	All other cargo handling operation in the Port like unloading from transit shed, stack yard, open stack yard, etc.	270%

The Board of Trustees in its meeting held on 28 May 2004 has accorded approval to the revised levy provisionally w.e.f. 1 June 2004 until recovery of Rs. 1.97 crores.

- (v). In this backdrop, it has requested that the earlier proposed levy may be made effective retrospectively from 1.10.2003 and the revised proposed levy may be approved w.e.f. 1.6.2004 in line with provisional implementation of rates by the port.

5. A joint hearing in this case was held on 8 September 2004 at the NMPT premises. At the joint hearing, the NMPT and the users have made their submissions.

6. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details are also available at our website [www.tariffauthority.org](http://www.tariffauthority.org).

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

- (i). This proposal has been made in the backdrop of an objection raised by the Statutory Auditors about non recovery of the arrears of wages of the Registered Cargo Handling Workers (RCHW) for the period 1 January 1998 to 31 August 2000 from the stevedores. It is noteworthy that wage settlement for Port & Dock Workers w.e.f. 1 January 1998 was implemented at the major port trusts in the year 2000. The arrears on this account paid to the concerned workers at the NMPT amount to Rs.1.97 crores. The (then) Ministry of Shipping has also advised the port to initiate action with reference to the objection raised by the Statutory Auditor.
- (ii). The existing levy structure at NMPT was approved by this Authority for prospective implementation from 1 November 2000. In fact, the then prevailing rates of levy were reduced w.e.f. November 2000 in view of the revised wage structure which increased the base on which levy was charged. The port did not propose to revise billing for the period from 1 January 1998 to 31 October 2000. But now it proposes to recover arrears of wages in view of the Audit observations.
- (iii). This Authority has already taken a decision that one time expenses like arrears of wages/ pension, VRS compensation and contribution to pension fund for past liability, etc., will not be allowed as admissible cost while determining the tariff. If it is found that the accumulated surpluses/ reserves made cannot adequately cover them or for any justifiable reasons, a special rate for a limited period may be prescribed to meet such liabilities. This approach has been adopted at Kolkata Port Trust for recovery of arrears of salary and pension and at Mumbai Port Trust to meet the liability of wage arrears relating to supervisory staff, etc. Even at the Tuticorin Port Trust a special rate was prescribed for servicing the foreign currency loan availed for capital dredging.

To a specific query posed, the NMPT has reported that accumulated reserves/ surplus, interest on RCHW are not adequate to meet this liability. It is noteworthy that RCHW is a separate activity at NMPT and it depends on large scale cross-subsidisation from other activities. The question of past accumulated retained earning does not, therefore, arise. That being so, in line with the principle already applied at the other major ports, this Authority is inclined to prescribe a special rate of levy to meet the wage arrears liability which will be a separate item of tariff without getting subsumed in the basic levy.

- (iv). The NMPT has proposed an increase of 5% in the existing levy w.e.f. 1 October 2003 and 7.5% w.e.f. 1 June 2004. The increase in the levy is proposed only for general and bulk cargo. The port has not proposed any increase in respect of containers since container traffic is still in the infant stage of growth. The Association of New Mangalore Port Stevedores and the Kanara Chamber of Commerce and Industry have no objection

on the NMPT proposal. Since it is a mutually agreed proposal, this Authority is inclined to approve the NMPT proposal. As mentioned earlier, the increase should not be given in the existing levy structure to avoid the possibility of perpetuating the one time liability in the tariff. The special rate should be levied on the basic wages of the RCHW deployed for handling general and bulk cargo. The quantum of increase proposed by NMPT in the general levy is maintained for prescribing the special rate.

- (v). The NMPT has reported that it has provisionally implemented the proposed increase of 5% in the existing levy w.e.f. 1 October 2003. Subsequently, in view of the advice of Principal Director of Audit to speed up the recovery process, the levy has been increased to 7.5% from the earlier proposed level of 5%. The revised levy has also been implemented by the port from 1 June 2004.

It is relevant to mention here that the port has no statutory powers to prescribe a provisional rate without obtaining approval of this Authority. The port has not explained any extraordinary circumstances warranting implementation of the proposed increase of 5% w.e.f. 1 October 2003 without the approval of this Authority. The action of the NMPT to levy provisional rate on its own is a serious lapse which is sought to be rectified now by seeking retrospective ratification from this Authority. The action of NMPT in this case is not acceptable.

There was an inordinate delay of almost seven months for the port to respond to our queries and furnish some easily available information from its record. This may be possibly due to the operation of the provisional charge which might have dampened the sense of urgency to settle this case at an early date. Since the provisional charges are being recovered by the NMPT, and the users have also agreed to this arrangement this Authority accepts the proposal of the NMPT for a retrospective approval.

The retrospective approval accorded should not be taken to mean as ratification of the actions of NMPT. The NMPT is strongly advised not to introduce any tariff arrangement suo motu unless specifically approved or empowered by this Authority. The lapse on part of NMPT in this case is condoned this time but such (unauthorised) action could have been viewed seriously. We could have refused to agree to recovery of charges.

The retrospective approval accorded should not be taken to mean as ratification of the actions of NMPT. The NMPT is strongly advised not to induce any tariff arrangement suo motu unless specifically approved or empowered by this Authority. The lapse on part of NMPT in this case is condoned this time but such (unauthorised) action could have been viewed seriously. We could have refused to agree to recovery of charges.

- (vi). The NMPT is required to maintain a separate accounts towards this special rate of levy to monitor the recovery and to discontinue the levy once it is recovered. Since the NMPT has already implemented the increase charges, the amount collected so far as well as the collection to be made in future from the special rate approved now should be transferred to this separate account. The approval to levy the special rate will automatically cease to exist once the liability of Rs.1,97,47,611.60 is fully recovered by the port. The NMPT is advised to keep this Authority informed at the end of every financial year about the quantum of collections made from the special rate.
- (vii). The existing levy structure was approved by this Authority with a validity till 31 January 2002. The NMPT has requested for extension of the existing levy a couple of times but, no proposal has been filed so far for a comprehensive review of the levy structure. The NMPT is advised to file such a proposal latest by 31 March 2005.

8. In the result, and for the reasons given above, and based on collective application of mind, this Authority approves insertion of the following schedule in the Scale of Rates of the NMPT under Chapter VIII – Levy charges of Registered Cargo Handling Wing:

**Ceiling rates of Special levy as a percentage on the basic wages of the concerned worker booked through RCHW**

Sl. No.	Particulars	For the period 1 October 2003 to 31 May 2004	With effect from 1 June 2004
(i).	All gangs consisting of 8 or more Hatch workers and its corresponding shore gangs for discharge /loading of cargo.	10%	15%
(ii).	All other gangs consisting of less than 8 Hatch workers and its corresponding shore gangs.	13%	20%
(iii).	All other cargo handling operation in the Port like unloading from transit shed, stack yard, open stack yard, etc.	13%	20%

- Notes: (i). The special levy prescribed above will be levied in addition to the normal levy for deployment of RCHW workers for general cargo and bulk cargo except for container handling.
- (ii). The special levy will automatically cease to be in operation once the wage arrears liability of Rs. 1,97,47,611.60 is fully recovered by the port through this levy.”

**( 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/78/2003 – NMPT - Proposal from the New Mangalore Port Trust for upward revision on levy to recover wage arrears paid to the RCHW Workers from the Stevedores.**

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

**The Kanara Chamber of Commerce and Industry**

- (i). The NMPT is fully justified in recovering Rs. 1.97 crores being the arrears in wages and allowances paid to the dock workers from January 1998 to August 2000.
- (ii). It was also thoughtful to have excluded the container traffic from this additional levy as this traffic is in its infant stage.
- (iii). The general and bulk cargo has dwindled from this port due to non-competitive wages and levy on RCHW. It has, therefore, requested not to charge extra levy but, to adjust the differential amount by not scaling down the levy when the traffic gains momentum and the employment potential of RCHW improves. This arrangement may be continued till the port recovers the wage arrears of Rs. 1.97 crores.

**The Association of New Mangalore Port Stevedores**

- (i). It agrees with the NMPT proposal.

2. 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). Wage arrears from 1 January 1998 to August 2000 amount to Rs.1.97 crores was not collected. The Audit objected and hence this levy.
- (ii). We had discussed with stevedores and they agreed to bear 5% additional levy. The Government asked NMPT to speed up recovery of arrears. So, NMPT increased it to 7.5% from June 2004. The NMPT will recover this liability in 5 years.

**Association of New Mangalore Port Stevedores & Kanara Chamber of Commerce and Industry**

- (i). It was a mutually agreed proposal. They have no objection.

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