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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 105

New Delhi, 15 July 2005

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 the proposal of the Paradip Port Trust to levy penalty/non-moving cess for inordinate delay in evacuation of imported coke and coking coal from the port as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/29/2005 - PPT

The Paradip Port Trust

Applicant

ORDER

(Passed on this 15th day of June 2005)

This case relates to a proposal received from the Paradip Port Trust (PPT) to levy penalty/ non-moving cess for inordinate delay in evacuation of imported coke and coking coal from the port.

2. The main points made by PPT are as follows:
- (i). The Port has been experiencing congestion in storage yards/ plots on account of inordinate delay in evacuation of imported coal and coke by importers/ exporters.
 - (ii). The Major Port Trusts Act empowers the Port Trust to auction the import cargo if not evacuated from the port within a period of 60 days. Taking such an action may invite severe flaks from exporting/ importing community. Thus, left with no other option, the PPT has come up with this proposal.
 - (iii). The PPT has consulted the importers of coal and coking coal in the meeting held on 7 October 2004 for introduction of penalty for delay in evacuation of cargo and concession for early removal of cargo. According to the port, the users have agreed to the rates of penalty and rate of concession.
 - (iv). The PPT proposes to levy the following penalty/ non-moving cess for inordinate delay in evacuation of imported coke and coking coal from the Port and recovery of charges will commence on adhoc basis.

Period of evacuation	Penalty/ non moving cess
Within 45 days of completion of vessel	-NIL-
46 th day to 90 th day	Rs.5/- per ton
91 st day to 120 th day	Rs.10/- per ton
Beyond 121 st day	Rs.20/- per ton

- (v). (a). The revenue generation, in this regard, for 2005-06 and 2006-07 has been calculated on the basis of the following average evacuation of cargo from the port:
 - (a). Within 45 days - 80%
 - (b). Within 45 – 90 days - 10%
 - (c). Within 91 – 120 days - 8%
 - (d). Within 121 days above - 2%
- (b). The revenue generation on account of the proposed levy of penalty is as follows:

Year 2005-06	-	Rs.62.90 Lakhs
Year 2006-07	-	Rs.68.00 Lakhs
- (vi). The Board of Trustees of PPT have approved the proposal in the meeting held on 25 January 2005. However, the 10% concession on monthly plot rent for faster evacuation of cargo as suggested by the importers is not approved by the Board.

3.1. In accordance with the consultative procedure prescribed, the proposal was forwarded to users / representative bodies of port users for their comments.

3.2. A copy each of the comments received from the users was forwarded to PPT as feed back information.

4. On a preliminary scrutiny of the proposal, it was found that additional information/clarifications were required on some of the points of the proposal. The PPT has responded to our queries in this regard. Our queries and the response of PPT are tabulated below:

Sr.No	Our queries	Response of PPT																																																																		
(i).	<p>The PPT has stated that the proposed arrangement was discussed with the users and the users agreed to the proposed rates of penalty and concession of 10% of monthly plot rent for faster evacuation of imported cargo. Further, the PPT has proposed to implement the proposed rates of penalty on ad-hoc basis. In this context, the PPT is requested to clarify/ furnish the following:</p> <p>(a). The reason for not proposing the agreed concession of 10% on monthly plot rent for faster evacuation of imported cargo.</p> <p>(b). The basis and working for the proposed rates of penalty for delay in evacuation of imported cargo.</p>	<p>The Board of Trustees did not agree to the 10% concession and hence it was dropped. The basis for imposing penalty/ non-moving cess is to compel the importer to evacuate cargo from the port prohibited area early. It is understood that such a penalty clause is in vogue in Haldia Dock Complex at Kolkata Port Trust where penalty ranges from Rs.50/- per ton per day for the first week and Rs.100/- per ton per day from second week onwards.</p>																																																																		
(ii).	<p>The PPT is requested to furnish the actual quantum of imported cargo of coke and coking coal handled during the past 3 years and the year wise average dwell time in the proposed slabs of time period.</p>	<table border="1"> <thead> <tr> <th data-bbox="786 958 954 1043"></th> <th data-bbox="954 958 1082 1043">Total Quantity handled</th> <th colspan="4" data-bbox="1082 958 1474 1043">Despatch within</th> </tr> <tr> <th data-bbox="786 1043 954 1128">Coking Coal</th> <th data-bbox="954 1043 1082 1128">In lakh tonnes</th> <th data-bbox="1082 1043 1161 1128">45 days</th> <th data-bbox="1161 1043 1257 1128">46-90 days</th> <th data-bbox="1257 1043 1353 1128">91-120 days</th> <th data-bbox="1353 1043 1474 1128">Beyond 120 days</th> </tr> </thead> <tbody> <tr> <td data-bbox="786 1128 954 1155">2002-03</td> <td data-bbox="954 1128 1082 1155">18.68</td> <td data-bbox="1082 1128 1161 1155">58%</td> <td data-bbox="1161 1128 1257 1155">35%</td> <td data-bbox="1257 1128 1353 1155">6%</td> <td data-bbox="1353 1128 1474 1155">1%</td> </tr> <tr> <td data-bbox="786 1155 954 1182">2003-04</td> <td data-bbox="954 1155 1082 1182">22.23</td> <td data-bbox="1082 1155 1161 1182">68%</td> <td data-bbox="1161 1155 1257 1182">28%</td> <td data-bbox="1257 1155 1353 1182">3%</td> <td data-bbox="1353 1155 1474 1182">1%</td> </tr> <tr> <td data-bbox="786 1182 954 1209">2004-05</td> <td data-bbox="954 1182 1082 1209">32.00</td> <td data-bbox="1082 1182 1161 1209">75%</td> <td data-bbox="1161 1182 1257 1209">19%</td> <td data-bbox="1257 1182 1353 1209">5%</td> <td data-bbox="1353 1182 1474 1209">1%</td> </tr> <tr> <td data-bbox="786 1209 954 1272">2005-06 (anticipated)</td> <td data-bbox="954 1209 1082 1272">35.00</td> <td data-bbox="1082 1209 1161 1272">75%</td> <td data-bbox="1161 1209 1257 1272">20%</td> <td data-bbox="1257 1209 1353 1272">4%</td> <td data-bbox="1353 1209 1474 1272">1%</td> </tr> <tr> <th data-bbox="786 1272 954 1299">Hard coke</th> <th data-bbox="954 1272 1082 1299"></th> <th data-bbox="1082 1272 1161 1299"></th> <th data-bbox="1161 1272 1257 1299"></th> <th data-bbox="1257 1272 1353 1299"></th> <th data-bbox="1353 1272 1474 1299"></th> </tr> <tr> <td data-bbox="786 1299 954 1326">2002-03</td> <td data-bbox="954 1299 1082 1326">5.31</td> <td data-bbox="1082 1299 1161 1326">68%</td> <td data-bbox="1161 1299 1257 1326">25%</td> <td data-bbox="1257 1299 1353 1326">5%</td> <td data-bbox="1353 1299 1474 1326">2%</td> </tr> <tr> <td data-bbox="786 1326 954 1352">2003-04</td> <td data-bbox="954 1326 1082 1352">6.00</td> <td data-bbox="1082 1326 1161 1352">59%</td> <td data-bbox="1161 1326 1257 1352">28%</td> <td data-bbox="1257 1326 1353 1352">10%</td> <td data-bbox="1353 1326 1474 1352">3%</td> </tr> <tr> <td data-bbox="786 1352 954 1379">2004-05</td> <td data-bbox="954 1352 1082 1379">4.34</td> <td data-bbox="1082 1352 1161 1379">59%</td> <td data-bbox="1161 1352 1257 1379">14%</td> <td data-bbox="1257 1352 1353 1379">19%</td> <td data-bbox="1353 1352 1474 1379">8%</td> </tr> <tr> <td data-bbox="786 1379 954 1438">2005-06 (anticipated)</td> <td data-bbox="954 1379 1082 1438">5.00</td> <td data-bbox="1082 1379 1161 1438">60%</td> <td data-bbox="1161 1379 1257 1438">20%</td> <td data-bbox="1257 1379 1353 1438">15%</td> <td data-bbox="1353 1379 1474 1438">5%</td> </tr> </tbody> </table>		Total Quantity handled	Despatch within				Coking Coal	In lakh tonnes	45 days	46-90 days	91-120 days	Beyond 120 days	2002-03	18.68	58%	35%	6%	1%	2003-04	22.23	68%	28%	3%	1%	2004-05	32.00	75%	19%	5%	1%	2005-06 (anticipated)	35.00	75%	20%	4%	1%	Hard coke						2002-03	5.31	68%	25%	5%	2%	2003-04	6.00	59%	28%	10%	3%	2004-05	4.34	59%	14%	19%	8%	2005-06 (anticipated)	5.00	60%	20%	15%	5%
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5. A joint hearing in this case was held on 24 May 2005 at the PPT premises. At the joint hearing, the PPT and the concerned users have made their submissions.

6. 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 at the joint hearing will be sent separately to the relevant parties. These details are also available at our website <http://tariffauthority.gov.in>

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

- (i). The PPT allows storage of cargo on two different set of terms and conditions, viz., (i) transit terms; and, (ii) rental terms. Under transit terms, demurrage is levied on unit of cargo on a weekly slab basis beyond the specified free period.

Under rental terms, the port issues licenses to users for storage of cargo in the open / covered space and the license is valid for one year. License fee is levied for the area allotted on a monthly basis. For the licenses of less than one year, the PPT levies a

surcharge of 10% on the prescribed licence fee. The rental terms also include licensing of transit sheds at a maximum rate of Rs.2000 per month or part thereof. If the rental terms are for a shorter period of less than one year, there is no provision to levy demurrage other than the 10% surcharge.

- (ii). Initially, the port and the users have reportedly agreed on the rates of penalty for delay in evacuation of cargo as well as incentive for faster evacuation of cargo. But, the proposal in reference is at variance with the reported agreement with the users. The port has not proposed the agreed rate of concession in the monthly plot rent for faster evacuation of imported cargo. The departure by PPT from the agreed position remains unexplained.
- (iii). The proposal stems from the necessity to ensure that operational area of the port is optimally utilised as congestion therein would affect vessel productivity. This Authority unreservedly endorses this position. In fact, such a congestion pricing has been approved by this Authority in many cases elsewhere. Nevertheless, it is to be borne in mind that the tariff arrangement to be prescribed should be in line with the general principles followed.

In compliance with the direction from the Ministry of Shipping, Road Transport & Highways (MSRTH), this Authority has notified the revised tariff guidelines on 31 March 2005. The tariff arrangement proposed by PPT should therefore be analysed in the light of the revised guidelines. It may be relevant here to note that the proposal is a mix of rental terms and demurrage. Clause 4.6 of the tariff guidelines does not permit levying of demurrage on cargo stored in the operational area leased / licensed on rental to users. The proposal cannot, therefore, be approved as it is not in accordance with the tariff guidelines.

- (iv). The Scale of Rates of PPT in respect of both vessel related and cargo related charges was last revised by this Authority in April 2000; and, the PPT was also to submit the other proposals relating to the asset rentals including rentals for properties in operational area, equipment hire charges and charges for Paradip Phosphate Limited (PPL) captive berth. This Authority in its Order dated 15 March 2005 relating to a proposal received from the PPT for tariff of the Mechanical Coal Handling Plant (MCHP) of PPT, has already advised to formulate a comprehensive proposal for review of its Scale of Rates and file its proposal by 30 September 2005. The PPT can review the proposal in reference and include a suitable arrangement in its comprehensive proposal for general review of tariff, as agreed by it.
- (v). As stated earlier, the PPT has decided to implement the proposed rate of penalty for delay in evacuation of import cargo on ad-hoc basis. Since the proposal in reference is not approved, the PPT is advised to refund the penal charges, if any, collected from the users.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the proposal of PPT and directs the PPT to refund the penal charges, if any, levied by the port based on the proposed tariff arrangement.

(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/29/2005-PPT - Proposal from the Paradip Port Trust to levy penalty/ non-moving cess for inordinate delay in evacuation of imported coke and coking coal from the Port.

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

Steel Authority of India Limited (SAIL)

- (i). Our dispatches are in railway rakes. Availability of rakes is not regular. We seek the help of PPT.
- (ii). Our operations are continuous in nature with no intentional instances of prolonged storage. Prolonged storage would mean blockage of funds.
- (iii). Plot rentals are higher at PPT in comparison to other port in ECI.
- (iv). Imposition of penal plot rental proposed by PPT will be additional burden for actual users like SAIL. We seek relief.

2. A joint hearing in this case was held on 24 May 2005. The PPT and the users made the following submissions in the joint hearing:

Paradip Port Trust (PPT)

- (i). We have less than 30000 sq mt of land available for storage of cargo out of which 15000 sq mt is earmarked for coke/coal.
- (ii). There are many steel plants coming up in the hinterland. So, the available storage space needs to be used judiciously so that volume increase can be managed without causing disruption of cargo movement.
- (iii). Plot is being allotted to users on annual basis.
- (iv). As our plots are in bonded area, importers tend to use these areas for storage on long term basis without paying customs duty.
- (v). We have already implemented the proposed arrangement with the consent of users.
- (vi). SAIL has around 1 lakh sq. mtrs of plots at Vizag and Haldia. They handle around 3 million tonnes at these places. At PPT, we have given SAIL 80000 sq. mtrs but they handle only around 1.2 million tonnes. The same norms and standards should apply at all ports.

Steel Authority of India Limited (SAIL)

- (i). Our import is a regular phenomenon. We import coke/coal for our use and not for keeping inside the port.
- (ii). Bulk movement by rail takes time in isolated cases. This cannot be a provocation to penalize all cargo.
- (iii). We agree that this proposal was discussed in users meeting set up by PPT earlier. The PPT explained that regular users like SAIL and TISCO would not come under the purview of this proposal and further an incentive by way of discount will be given for cargo cleared within 45 days. The proposal now in hand is contrary to the one discussed in the users meeting.

M/s. Jindal Steel (JS)

- (i). Customs formalities take some time.
- (ii). At least give 60 days for evacuation.

M/s. Neelanchal ISPAT (N ISPAT)

- (i). Only 2-3% of vessel wise cargo stays beyond 45 days.
- (ii). PPT need not burden trade by levying a penalty. Trade, in its interest, will evacuate faster.

Metals and Minerals Trading Corporation (MMTC)

We endorse the views of the Neelanchal ISPAT.

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