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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. 152

New Delhi, 27 September, 2003

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Chennai Port Trust for ratification of concession in wharfage granted to the Chennai Petroleum Corporation Limited for handling of their import crude oil as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/38/2003-CHPT

The Chennai Port Trust

Applicant

ORDER

(Passed on this 10th day of September 2003)

This case relates to a proposal received from the Chennai Port Trust (CHPT) for ratification of concession in wharfage granted to the Chennai Petroleum Corporation Limited (CPCL) for handling of their Import Crude Oil.

2. The CHPT has stated that it has handled 33.68 MT of cargo after commissioning of Ennore Port Limited (EPL). After the proposed shifting of Iron Ore to the EPL, the CHPT will have a total throughput (excluding containers) of 18 million tonnes. The share of crude and petroleum products is around 42%.

3. The CHPT has made the following points in favour of its decision to offer concessional wharfage to the CPCL:

- (i). POL traffic was to be retained at CHPT as per the decision taken during the formation of the EPL. Now, the CPCL is considering options for utilizing Ennore Port or SBM for the handling of crude imports.
- (ii). The Secretary (Shipping) has observed in the meeting taken by him on 30 October 2002 that the review of tariff by all the ports relating to POL needs urgent attention before the diversion of oil cargo becomes a threat to the ports.
- (iii). The notified wharfage rate for handling crude oil is Rs.33/- PMT. The CHPT has estimated the cost per MT at Rs.9/- for the year 2004-05 and the CPCL has offered Rs.10/- PMT. The CHPT has offered Rs.27/- PMT initially and Rs.10/- after commissioning of CPCL's expansion project.
- (iv). As there is no other alternative and since the cost of handling crude oil is less than the offered rate of the CPCL, the port should retain the cargo.

4. In consideration of the strategic reasons and financial requirement, the CHPT has entered into a formal Memorandum of Understanding (MoU) with the CPCL. The details of minimum guaranteed throughput and the charges as per the MOU are as under:

- (i). The CPCL shall pay CHPT a firm wharfage of Rs.27/- per MT of crude handled at CHPT from 1.4.2003.
- (ii). The CPCL shall pay CHPT a wharfage of Rs.10/- per MT of crude handled at CHPT from 1.4.2005. The wharfage is subject to annual revision as per the change in All India Consumer Price Index Number for urban non-manual employees with base year 1984-85. From 2005-06, in any block of three years commencing from 1 April 2005, if the CPCL fails to import a total of 25.5 MMTPA of crude oil, the CPCL shall compensate the CHPT for the shortfall, at a wharfage rate prevailing in the terminal year of the three year block.
- (iii). In the interim period i.e., on the commissioning of the CPCL's expansion project and upto 31 March 2005, the firm wharfage on the incremental crude imported beyond 6.5 MMTPA is to be Rs.10/- per MT.

- (iv). On commissioning of the CPCL's expansion project, the wharfage charges for the products exported by the CPCL through the CHPT through pipelines, with reference to the incremental quantity over the base quantity of 904,895 MT will be at Rs.10/- per MT. This will be subject to annual revision as applicable for crude oil.
5. The CHPT has also prescribed a methodology for calculation of annual revision of wharfage considering the percentage of increase in the Price Indices at the beginning and at the end of the year.
6. The CHPT has further stated that since the agreement is entered into for a period of 30 years, tariff revisions which will be effected by TAMP or any other Authority who may have the jurisdiction shall not change the rates and method of escalation of the same during the pendency of the agreement.
7. In this backdrop, the CHPT has requested the Authority to ratify the charging of special rate with effect from 1 April 2003 and the methodology mentioned in paragraph 4 and 5 respectively.
8. In accordance with the consultative procedure prescribed, a copy of the proposal was forwarded to concerned users / representative bodies of port users for comments. We have not received their written comments till finalisation of this case.
9. POL handling, warehousing and port conservancy subsidise all other activities which are in deficit in CHPT. The CHPT was requested to furnish an analysis showing the financial implication on other activities which are in deficit due to the concessional wharfage to be granted on crude oil import by the CPCL. No response has been received from the CHPT.
10. A joint hearing in this case was held on 7 August 2003 at the CHPT premises in Chennai. At the joint hearing, the CHPT agreed to delete paragraph 8 of its proposal (Stipulating that TAMP shall not alter the proposed rates for 30 years). The CPCL conveyed its agreement with the proposal of the CHPT.
11. It is pertinent to mention here that since the proposed rate has been derived from the existing notified tariff for crude oil and that the rate has been mutually agreed upon by the port and the CPCL, adhoc approval was accorded, as requested by the CHPT, to levy the concessional wharfage rate of Rs.27/- per MT retrospectively with effect from 1 April 2003 on crude oil handled at the CHPT subject to the final decision of this Authority on the proposal in reference.
12. With reference to the totality of information collected during the processing of this case, the following position emerges:
- (i). The proposal of the CHPT is the outcome of the Government thinking that all ports need to review the POL tariff before its diversion becomes a threat to the ports. The CHPT is under compulsion to retain the oil traffic. It has explained that the CPCL was considering other port / SBM to handle its crude imports and the CHPT cannot afford to lose the oil traffic of the CPCL. It has retained the CPCL cargo by offering concession in wharfage rate. The rate has been mutually agreed upon by the port and the CPCL.
- (ii). The port was asked to furnish an analysis showing the financial implication on other activities which are in deficit due to the concessional wharfage proposal on crude oil import. The POL handling activity is subsidising other activities which are in deficit. The port has not furnished any such analysis. Nevertheless, it is obvious that cross-subsidy available from POL activity will reduce because of the proposed reduction.

- (iii). As has been mentioned earlier, there is an approved rate available in the Scale of Rates for handling of crude oil. The CHPT has offered concession in the approved rate to retain business. This is a commercial decision of the port.
- (iv). It may be relevant to mention that the Government of India has issued a policy direction to this Authority under Section 111 of the MPT Act to fix the Scale of Rates as ceiling rates so that the major ports have the flexibility to charge at reduced rates, if they so desire. In order to implement the policy of the Government, this Authority has recently passed an Order on 28 August 2003 and notified it in the Gazette of India directing all the major port trusts to include a general conditionality in their Scale of Rates stating that the rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The Port Trust may, if it so desires, charge lower rates and / or allow higher rebates and discounts.

Since this amendment introduced in the Scale of Rates provides necessary flexibility to the port to charge reduced rates based on its commercial judgement, it is not necessary for this Authority to go into the specific reductions in wharfage rates for import crude oil of CPCL and the methodology for annual revision and approve them.

- (v). The CHPT has changed its earlier stand that this Authority shall not alter its proposed rates for 30 years and requested to delete the relevant paragraph of its proposal. The MOU between the port and the user cannot supersede the statutory powers vested in the Authority. As flexibility is being given to the port in operation of the rates, normally, there may not be a need for this Authority to interfere with the operation of the MOU. Still, in the event of extraordinary position, if any, emerging in this case warranting a deviation from the present stand, this Authority will take corrective actions even during the currency of the MOU.
- (vi). As has been brought out earlier, adhoc approval to levy the concessional wharfage rate of Rs 27/- PMT retrospectively with effect from 1 April 2003 on the crude oil of CPCL handled at the CHPT has been granted subject to the final decision of this Authority. The adhoc approval accorded earlier is ratified. It is noteworthy that the general prescription made by this Authority about 'ceiling rates' has come into effect from 2 Sept 2003. The CHPT in this case wanted to reduce the existing rate of Rs 33/- PMT to Rs 27/- PMT w.e.f. 1 April 2003. To enable the CHPT to implement the provisions of the MOU, the reduction in wharfage rate made by the adhoc approval accorded will remain valid for the period from 1 April 2003 to 1 Sept 2003 whereafter the status quo ante will revert. The CHPT has the flexibility to decide the extent of reduction in the notified rate to be allowed w.e.f. 2 Sept 2003 in view of the amendment introduced as explained in paragraph (iv) above.

13. In the result, and for the reasons given above, and based on a collective application of mind, this Authority disposes of the proposal of the CHPT as superfluous.

(A. L. Bongirwar)
Chairman