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Tariff Authority for Major Ports

G. No. 93

New Delhi, 24 May, 2004

NOTIFICATION

In exercise of the powers conferred by Sections 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal from the Tuticorin Port Trust (TPT) for fixation of special rate for capital dredging at berth number VIII as in the Order appended hereto.

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

Tariff Authority for Major Ports
Case No. TAMP/50/2003-TPT

The Tuticorin Port Trust (TPT)

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Applicant

ORDER

(Passed on this 4th day of May 2004)

This case relates to a proposal received from the Tuticorin Port Trust (TPT) for fixation of special rate for capital dredging at berth number VIII.

2.1. This Authority had passed an Order on 20 September 2002 approving downward revision of the special rate for capital dredging to 30% of the applicable berth hire, pilotage fee, and port dues payable by all vessels using the berths VOC III, VOC IV, Coal Jetty I, Coal Jetty II and Oil Jetty.

The special rate for capital dredging on vessels calling at the Container Berth (Berth no.7) was fixed at 15% of the applicable port dues and pilotage and 30% of the berth hire charges.

2.2. While revising the special rate for capital dredging, the TPT had included an expenditure of Rs. 45 crores incurred during the year 2003-04 for dredging berth number VIII. The special rate for capital dredging has been fixed to recover the debt servicing cost of foreign currency loan availed by the port for its capital dredging project. Further, the cost of dredging berth No. VIII is relevant to vessels berthed at the concerned berth and this burden cannot be passed on to all other vessels, which do not use this berth. In view of this position, the dredging cost relating to berth No. VIII was not considered for the purpose of revising the special rate for capital dredging.

2.3. Subsequently, the TPT had requested this Authority that the special rate prescribed for VOC III, VOC IV berths, coal jetty and oil jetty may be extended to berth number VIII also. It had requested that separate costing for berth number VIII may not be insisted upon since fixing different dredging levy for each berth based on capital cost, operation cost, etc., is cumbersome and is not practicable.

2.4. The TPT was requested to forward a separate proposal for recovery of cost incurred for berth number VIII without linking it to the special rate for capital dredging. The TPT was also requested to furnish the details of capital cost, source of funding, traffic projections, and capacity utilisation relevant to this berth along with the proposal.

3.1. In the meanwhile, the Tuticorin Steamer Agents Association had pointed out that the port had started collecting dredging levy from vessels berthed on berth number VIII with effect from 28 March 2003 without the approval of the TAMP.

3.2. This Authority advised the TPT not to collect the dredging levy on the vessels berthed on berth number VIII as the tariff was not approved and the port should expedite submission of its proposal.

4. In this backdrop, the TPT has submitted a proposal for fixation of dredging levy for berth number VIII. It has reiterated its earlier request to extend the special rate applicable for other berths for berth Number VIII also. The main points made by the TPT in the proposal are summarised below:

- (i). The traffic projection after dredging berth number VIII is estimated at 20 lakh tonnes as against the estimated capacity of 15 lakh tonnes.
- (ii). A detailed working of dredging levy for berth number VIII on cost plus basis taking into consideration the expenditure incurred for dredging berth number VIII has been furnished. Direct overheads, management and general overhead and fire fighting expenses have been considered in cost statement in addition to reckoning depreciation and return on capital employed on the relevant capital expenditure.
- (iii). Cost incurred for providing port service, pilotage and towage service for all the other berths has been allocated proportionately to berth number VIII based on number of vessels proposed to be handed at this berth vis-à-vis the total vessels projected to be

handled during the year 2003-04. The total number of vessels anticipated to be handled at berth VIII during the year 2003-04 is 145 as against total of 1466 vessels estimated to be handled during the relevant year.

- (iv). Two set of cost statements have been prepared to estimate the levy applicable for berth number VIII. The first cost statement includes the cost pertaining to common approach channel and the other cost statement excludes this component. The deficit reflected by the cost statements for the year 2003-04 are 73.91% if the share of dredging cost pertaining to common approach channel is excluded and if this item is included the deficit will work out to 118.73%.
- (v). The percentage of levy estimated above will be a huge burden on the vessel operator if the entire deficit is proposed to be recovered.
- (vi). It has, therefore, requested that the dredging levy for berth number VIII may be fixed at 30% of the vessel related charges as applicable for the berths number VOC III, VOC IV, Coal Jetty I, Coal Jetty II and Oil Jetty.
- (vii). It has also requested to approve the proposed levy with retrospective effect from 28 March 2003 i.e. from the date the instant proposal was approved by the Board of Trustees of the TPT.

5.1. In accordance with the consultative procedure adopted, a copy of the proposal was forwarded to the concerned user organisations for their comments.

5.2. The comments received from the above users were forwarded to the TPT as feedback information.

6. Based on a preliminary scrutiny of the proposal, the TPT was requested to furnish additional information on various points. In response, the TPT had furnished the information. Since the reply furnished by the TPT was not explicit with reference to various queries raised by us, the TPT was again requested to clarify some of the points. The TPT has subsequently furnished the requisite information. Some of the main points made by the TPT are as follows:

- (i). The TAMP in its Order dated 20 September 2002 has approved dredging levy of 30% for the deep draft berths as against 50% levy proposed by the port. This has resulted in a deficit of Rs. 39.33 lakhs during the year 2002-03.
- (ii). The cost statement for recovery of dredging levy for berth number VIII has been furnished for the year 2004-05 as requested by the TAMP. The cost statements for the year 2004-05 reflect deficit of 474.89% without considering the share of dredging cost pertaining to common approach channel and if this element is included the deficit is reported at the level of 539.05%.
- (iii). The subject proposal is to meet the cost of capital dredging project from the vessels occupying deep draft berths (including VIII berth) and to recover the investment made for deepening the VIII berth to 10.7 mtrs. In addition to this, depreciation cost of dredging in the front of VIII berth is also included in the computation of the proposed levy since it is a common infrastructure facility and separate treatment for each berth is not possible due to the topography of the port.
- (iv). The dredging levy collected in respect of port dues and pilotage fees on vessels at berth number VIII will be credited to the memorandum Capital Dredging Reserve Account since the same is towards defraying the expenditure incurred in respect of capital dredging. The dredging levy collected in respect of berth hire will be credited to the General Revenue Account since the dredging expenditure is met from the internal resources of the port.
- (v). The exact tenure of the proposed levy will be decided on the periodic review of the levy after considering the debt servicing liabilities of capital project with the cost of

deepening VIII berth. The tenure of the proposed levy will coincide with the debt servicing period of the Japanese yen loan taken for the capital dredging project.

- (vi). The intention of furnishing the cost statements alongwith the proposal is only to appreciate the unduly high rate that would be applicable on vessels occupying berth number VIII if the concept of dredging levy is applied exclusively for berth number VIII. The issues of incremental expenses with respect to berth number VIII and the basis of apportionment are, therefore, not relevant.
- (vii). The capacity utilisation of deep draft berth Nos. III and IV has been 72% and 83% respectively and the utilisation of VIII berth has been 51% for the year 2002-03. Since the present occupancy of the deep draft berths is well below the maximum utilisation, the review of the special rate of capital dredging in view of the wider revenue base available may not be required at this juncture though admitted that it may have implications in future.
- (viii). It has agreed to maintain separate account to ascertain the cumulative inflow of revenue on account of the levy collected from berth hire charge on vessels occupying berth No. VIII.

7.1. A joint hearing in this case was held on 19 February 2004 at the TPT premises. At the joint hearing, the TPT and the concerned users have made their submissions.

7.2. As decided in the joint hearing, the TPT was requested to furnish details of number of vessels berthed at berth number VIII since February 2003 and the number of vessels that require deep draft. The TPT was also requested to indicate the total amount of surcharge collected from the vessels berthed at berth number VIII.

7.3. The TPT has furnished the following information:

- (i). The deep draft facility was practically available in March 2003 and only 3 vessels were handled prior to 28 March 2003.
- (ii). Since the vessels handled from 10 April 2003 were only subject to dredging levy, the information from this period is only relevant. Considering the vessel arrival pattern in berth number VIII, from April 2003 to February 2004, the details of total number of vessels handled at this berth and availing deep draft/non-deep draft facilities and corresponding dredging levy for the relevant period is tabulated below:

Sl. No.	Details of vessels handled	2003-04 (April'03 to February 2004)	Percentage	Dredging levy collected (Rs. in lakhs)
1.	Non deep draft vessels	30	50.85	20.28
2.	Deep draft vessels	29	49.15	62.30
	Total	59		82.58

- (iii). It has also clarified that the above pattern is only illustrative since berth occupancy depends on the availability of other deep draft berths.

8. 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.

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

- (i). A special charge on the basic vessel related charges was approved by this Authority in the year 2000 in order to meet the debt servicing cost of the foreign currency loan

availed by TPT to finance its capital dredging project. The quantum of the special charge was fixed with reference to the annualized debt servicing liability with a direction that the proceeds from the special charge should be maintained in a separate account from which the debt servicing liability should be met. The capital dredging expenditure relating to berth No. VIII was not financed out of the foreign currency loan availed earlier but from the internal resources as disclosed by the port. It has to be recognized that a special charge is generally considered by this Authority to recover any abnormal one time liability which cannot be met from any other source so that such one time liabilities are not perputed in basic tariff. Investment from internal resources of a port will not qualify for such special treatment. The basic rates for the relevant service / facility should be fixed taking into account the investment made and the admissible return thereon. For these reasons, the proposal of TPT for a special rate to recover its investment of about Rs 45 crores on berth VIII was disallowed and the port was advised to propose berth hire charges for the concerned berth accordingly.

- (ii). The TPT has not proposed any different berth hire charges for berth No. VIII. It has extended the same berth hire charge prescribed for other berths to this berth also. At the joint hearing, the port has, however, conceded to review the basic berth hire charges at the time of the next general revision of tariff which is due in September 2004.
- (iii). In view of the position explained above, the issue before this Authority is extending the special charge for capital dredging earlier approved for other deep draft berths to berth No. VIII. Like the berths already subjected to the special charge, berth No. VIII also fits into the definition of deep draft berths at TPT. The depth in the channel is definitely relevant to the vessels at berth VIII – one without the other may not be of any substantive significance to vessels. Further, when vessels calling at other deep draft berths pay for the debt servicing cost of capital dredging expenditure, it will give rise to an anomalous position if a similarly placed facility at berth VIII is excluded from the scope of the special charge. The points made by TPT in this regard deserve to be considered. It is noteworthy that some of the user organizations like Tuticorin Custom House Agents Association, Tuticorin Chamber of Commerce and Industry and Indian Chamber of Commerce and Industries have objected only to the retrospective application of the special charge and its quantum and not on the issue of extending the special charge to berth VIII per se.
- (iv). The TPT has proposed that the special charges on port dues and pilotage payable by vessels calling at berth VIII would be credited to the special account maintained for capital dredging and the special charges on berth hire payable by such vessels would be taken to the credit of the port's General Fund. As mentioned earlier, the special rate is not for recovering port's investment made from its internal resources. The basic rate should take care of this aspect. That being so, it is necessary to credit the proceeds from the special charges on all the applicable vessel related charges, including berth hire charges, levied from vessels at berth VIII to the separate account maintained for Capital Dredging.
- (v). Since the special charge is for meeting the debt servicing obligation of the capital dredging project, any different calculation of the quantum of such charge with reference to the cost position for berth No VIII alone is not found to be relevant. Prescription of a different special charge for berth VIII will also give rise an anomaly of vessels at two sets of deep draft berths paying differently for the same purpose. The existing special rate was fixed without considering revenue from berth No. VIII. Since the special rate is extended to berth No. VIII also, in the normal course, the quantum of the special rate needs to be reviewed in view of the wider revenue base available. The elaborate review exercise can be more objectively done alongwith the next general review of the Scale of Rates of TPT. Till such time, the balance of convenience is in favour of allowing the existing special rate to berth No VIII. This approach will not put either the port or the users in a disadvantageous position, as the accumulation in the earmarked account will be considered while reviewing the quantum of special rates at the time of the next general review of tariff at TPT.

- (vi). Users have demanded that the special rate, if at all leviable, should be from October 2003 when the berth was commissioned fully. The TPT has countered this demand by indicating that part of the berth was commissioned in February 2003 itself and vessels of 200 mtrs LOA were berthed since then. As the facility was put into use since February 2003 and the port has proposed to levy the special charge retrospectively since March 2003, the proposal of TPT cannot be negated. Further, the issue of lesser draft vessels berthed at deep draft berths and still they are required to pay special charge for capital dredging has already been adequately dealt by this Authority in its earlier Orders. The special charge is for the facility created. Any vessel availing services at such facility should pay the prescribed charges. If a vessel does not require the improved facility, it has an option to refuse berthing at such places.
- (vii). The TPT has started levying the special charge from 28 March 2003 based on a Resolution passed by its Board of Trustees. The Statute does not empower Board of Trustees of a major port to order implementation of any new tariff arrangement. The Order of this Authority on ad hoc tariff has been totally misinterpreted by the TPT. An adhoc rate can be introduced only with the consent of users and simultaneous submission of a proposal before this Authority. The argument of TPT about implied consent of users is not a tenable one. Above all, this Authority had explicitly disallowed earlier the tariff item in reference. The action of TPT in this case is not acceptable.

Be that as it may, for the reasons explained elsewhere in this analysis, there is a case for introducing special dredging levy at the existing level at berth VIII. Since the TPT has already started levying this charge from 28 March 03, a *fait accompli* situation is presented before this Authority. If the amount of special rate collected so far from berth VIII is retained in the capital dredging account, it will only go to reduce the burden in future. That being so, this Authority is inclined to approve the extension of the special rate to berth No. VIII retrospectively from 28 March 2003 subject to the stipulation that the entire special rates on account of vessels at berth VIII already collected and to be collected should be transferred to the separate account maintained for capital Dredging. The details of this account duly audited should be furnished by TPT at the time of the next review of its Scale of Rates and the quantum of special rate which is due in September 2004.

The retrospective approval accorded should not be taken to mean as ratification of the actions of TPT. The TPT is advised not to introduce any tariff arrangement *suo motu* unless specifically approved or empowered by this Authority. The lapse on part of TPT in this case is to be condoned this time but recurrence of such (unauthorised) actions will be viewed seriously.

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves with retrospective effect from 28 March 2003 extension of the special rate of 30% for capital dredging already approved vide order dated 20 September 2002 on the vessel related charges payable by all vessels using berth No VIII. The proceeds from this special rate should be credited to the separate account maintained for Capital Dredging and should be applied only towards servicing the relevant foreign currency loan. The special rate for capital dredging will be reviewed alongwith the next general review of the Scale of Rates of TPT.

(**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/50/2003-TPT - Proposal from the Tuticorin Port Trust for fixation of special rate for capital dredging at berth number VIII.

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

Tuticorin Custom House Agents' Association (TCHAA)

- (i). The proposed dredging levy for berth number VIII at 30% of the marine charges to bring in uniformity with levy applicable at other berths is acceptable. However, the new tariff must be made applicable after the rates are approved by the TAMP and notified in the Gazette of India.
- (ii). The TPT has overlooked the usual consultative procedure with the users followed by the TAMP. The port is trying to implement the rates with retrospective effect from 28 March 2003. The date of implementation of the rates should be informed at least one week in advance to the trade / users for them to inform their principals.
- (iii). The mere fact that the Board of Trustees of the TPT in its meeting held on 28 March 2003 has approved the proposal cannot be considered as tariff fixation. This is challenging the very existence of the TAMP.
- (iv). The system of over ruling the procedures laid down by the TAMP should not be allowed. It will set a wrong precedence.

The Tuticorin Steamer Agent's Association (TSAA)

- (i). The TPT has already started collecting 30% dredging levy on marine charges for vessels berthed at berth number VIII though the same is not approved by the TAMP. This is violating the procedures laid down by the TAMP for tariff fixation.
- (ii). In the present scenario, unless and until the port provides better infrastructure and the related facilities, the port will not be able to attract more traffic. The Scale of Rates should be fixed in a cost effective manner.
- (iii). The present vessel related charges at the TPT are abnormally high. The vessel owner cannot afford such a high cost inflicted on them, in the form of further levy on vessel related charges. The cost incurred for dredging work must be met by the port from its own resources.

- (iv). The proposed dredging levy is at a higher side which could perhaps lead to dearth in the traffic potential. It is, suggested to fix dredging levy at a very nominal level.
- (v). The proposed dredging levy should be made effective prospectively after giving due intimation to the port users.

Indian Chamber of Commerce & Industry (ICCI)

- (i). Even though the TPT has justification to levy 30% on port dues, pilotage and berth hire for vessel berthed at berth number VIII, it is recommended that the levy must be between 15% - 20% to divert more cargo to the Tuticorin Port.

Tuticorin Chamber of Commerce and Industry (TCCI)

- (i). It has reiterated the views of the Tuticorin Steamer Agents' Association that the present vessel related charges of Tuticorin port Trust are very high. Any further additional charges in the form of levy may adversely affect the shipping trade.
- (ii). Dredging levy should be the minimum and not more than 10%.
- (iii). Ceiling level of 10% will be reasonable as the other overheads are also nearing 10%. At this rate, the vessel related charges and other incidental expenses would exceed the cost of goods itself.

2. The TPT has responded to the comments furnished by the user organisations, which are summarised below:

On the comments of Tuticorin Steamer Agents' Association

- (i). The berth number VIII has been deepened to 10.7 mtr. at par with the berth number III and IV, coal and oil jetties; and, the Board of Trustees of the TPT in its meeting held on 28 March 2003 had approved to extend the existing levy applicable for these berths to berth number VIII. In accordance with the TAMP Order dated 22 April 2002 allowing the port to the levy the proposed rate for new services not covered in the Scale of Rates on an adhoc basis till the rate is finally notified by the Authority, the proposed rates has been implemented from the date the Board approval was sought. No levy has been charged on vessels berthed on this berth prior to 28 March 2003. In view of the above explanation, the objection of the Association against retrospective implementation of the said levy is not maintainable.
- (ii). The new facility, has been utilised by the vessels requiring deep draft. It will, therefore, be illogical and also travesty of justice if the port is denied the legitimate charge only on the ground that the approval of the TAMP for the proposed levy is awaited.

- (iii). The levy charged could have been objected to, if it was more than the levy already approved by the TAMP for the other deep draught berths. The levy would have been much higher if a cost plus approach was followed for arriving at the levy for this berth. There is no logical reason for raising objection to pay for a service actually utilised by the Association on its own requisition at a rate on par with similar service available in the Port.
- (iv). The argument that the port will not be able to attract more traffic and, therefore, rate should be cost effective is not relevant to the current proposal. The port has initiated several measures in the recent past to curtail the expenditure so as to be cost effective and competitive.
- (v). The existing levy of 30% applicable for other berths with effect from 3 November 2002 have diluted the port's mobilisation of resources towards debt servicing cost by nearly Rs.1 crore per annum. In spite of this, the port has met the deficit in debt-servicing cost from its own resources and has not sought restoration of *status quo ante* in dredging levy as well as other vessel related charges.

On the comments of Indian Chamber of Commerce and Industry

- (vi). It is not be possible for the port to reduce the dredging levy further for reasons explained above.

3. A joint hearing in this case was held on 19 February 2004 at the TPT premises. At the joint hearing, the following submission were made:

Tuticorin Port Trust (TPT)

- (i). Berth No VIII was partially commissioned on February 2003 and it was fully completed in September 2003.
- (ii). We have started levying ad hoc surcharge of 30% in terms of TAMP's Order of October 2002.
- (iii). If we opt for full cost recovery, the surcharge would be 475%. We have restricted it to 30% on par with other deep draught berths.
- (iv). Users are aware that new facility was commissioned and they have been enjoying the benefit. Further, the issue was discussed with users in the berthing meeting. There may not be any formal consent. But, usage of this facility and payment therefor are evidence to show the implied consent of users. We, therefore, took it as compliance of TAMP Order of October 2002 and presumed that we can recover on advance basis.
- (v). This is only an ad hoc arrangement. Dredging levy and basic berth hire charges will be reviewed during the next general revision in October 2004.

- (vi). We had completed 200 mtrs. (out of 350 mtrs.) of berth in Feb 2003. The balance was completed in Oct 2003. Vessels upto 200 mtrs. LOA started using these berths since Feb 2003.
- (vii). Our capital dredging levy account shows a deficit of Rs 3.15 crores for 2003-04. We need funds to repay loans. If not from April 2003, with arrears we would have levied from Oct 2003. The effect on users will, therefore, be the same.

Tuticorin Steamer Agents' Association (TSAA)

- (i). The berth was fully commissioned in Oct 2003. But they introduced the levy from April 2003. That too, without any formal sanction of TAMP and notice to us.
- (ii). Since full facility was available in Oct 2003, dredging levy, if at all leviable, should be imposed only thereafter.

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