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Tariff Authority for Major Ports

G. No. : 117

New Delhi, 9 July, 2004

NOTIFICATION

In exercise of the powers conferred by Section 49 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 levy of Pilotage fees for shifting of vessels not conforming to the productivity norms as in the Order appended hereto.

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

Tariff Authority for Major Ports
Case No. TAMP/ 22 /2003-TPT

The Tuticorin Port Trust (TPT)

...

Applicant

ORDER

(Passed on this 22nd day of June 2004)

This case relates to a proposal received from the Tuticorin Port Trust (TPT) for levy of Pilotage fees for shifting of vessels not conforming to the productivity norms.

2.1. This Authority had passed an Order on 20 September 2002 revising the Scale of Rates of TPT. The general note number 2 relating to the Schedule 2.2.1 and 2.2.2 under Pilotage fee prescribes the following provision:

“Shifting a vessel from any berth to outer anchorage shall mean completion of pilotage act; on reentry by the vessel under the same port entry, pilotage fees afresh shall be payable as prescribed under the Schedule.”

2.2. Note 5 under Schedule of berth hire charge prescribes output norms for levy of penal berth hire.

2.3. With reference to these provisions, the TPT has made the following main points:

- (i). At the time of the general revision proposal, it had proposed that a vessel not conforming to the productivity norms should be shifted to outer anchorage and in respect of such cases the pilotage fee would be levied at the rate equivalent to one pilotage act on reentry of the vessel under the same port entry.

In case of shifting other than shifting to outer anchorage (a) 25% of the pilotage fees as per schedule shall be leviable if vessel is shifted between berths I to VI or between Coal jetty I and II and Oil jetty; and, (b). 50% of pilotage fee as per schedule if shifting is made from Coal jetties and Oil jetty to berth nos. I to VI and vice versa.

- (ii). Reference to the productivity norms furnished by it for levy of pilotage fee has been prescribed for the purpose of levy of penal berth hire in the Order. This is contrary to the intention of the port to levy pilotage charge/ shifting charge for vessels not conforming to the productivity norms.

- (iii). Moreover, productivity of equipment depends on various factors like number of equipment made available, efficiency of equipment, cargo condition, etc., and hence developing a monitoring system of penal berth hire is not practicable.

- (iv). These issues were discussed with the representatives of the Steamer Agents Association and they have agreed to pay shifting charges for such shifting of vessels to anchorage, but, have requested that the charges should be reasonable.

2.4. In this back drop, the TPT has proposed the following:

- (i). To delete the note 5 under Schedule 2.4. – Schedule of berth hire charge relating to levy of penal berth hire based on the output norms.

- (ii). To approve the proposal for levy of prescribed pilotage fee for shifting a vessel not confirming to the productivity norms to outer anchorage / other than to outer anchorage as stated in paragraph 2.3. (i) above.

3. While processing the general revision proposal, the TPT was advised to prescribe shifting charges based on the cost of providing the services without linking it to the pilotage fees. The TPT had clarified that the charge proposed was proportionate to the distance covered in the total pilotage activity between the berths and since the number of such shiftings would be less it had requested not to insist on separate charges based on cost of providing the services. The proposed clause about levy of pilotage fee for vessels not conforming to the productivity norms was not, however, incorporated in the revised Scale of Rates.

4.1. Subsequently, while passing the Order about changing the unit of levy of berth hire from 8 hour to one hour at TPT, the provision about levy of penal berth hire based on the output norms for various commodities prescribed under note 5 in Schedule 2.4. – Schedule of Berth hire was deleted as proposed by the TPT.

4.2. In the said Order it was also stated that the case about levy of charges for shifting of vessels to anchorage for poor performance would be examined separately, when the TPT files its proposal.

5. In accordance with the consultative procedure adopted, the proposal was forwarded to the concerned user organisations for their comments.

6. The comments received from the above users were forwarded to the TPT as feed back information. In response to the comments of the users, the TPT has also furnished its observations.

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 port users have made their submission.

7.2. At the joint hearing, the TPT reiterated that it would not be practically possible to prescribe productivity norms which were to be complied with due to involvement of different variables to be encountered at different berths.

7.3. It was decided at the joint hearing that the TPT would suggest the guidelines / broad principles to be adhered to before taking any decision to shift a vessel from a working berth to anchorage on account of its non-performance in order to have transparency in the procedure.

7.4. In response, the TPT has forwarded a copy of the productivity norms prescribed by this Authority earlier for levy of penal berth hire which were subsequently deleted at the request of the port. Even though the port had earlier agreed to examine the possibilities of prescribing broad-guidelines for deciding on non-performance of the vessels, it has subsequently reiterated its earlier views of impracticability of prescribing productivity norms for various cargoes

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. This details will also be available in 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). The proposal basically stems from the need to require vessels at berth to perform. If they do not perform, they have to give way for waiting ships instead of idling at a scarce resource of the port. The proposed charges are to compensate the cost and efforts incurred by the port in pulling out such non-performing vessels from working berths. This Authority has maintained a stand in many cases that the scarce resources of a port should be utilized optimally. Seen in this light, the proposal of TPT merits consideration.

- (ii). The All India Chamber of Commerce and Tuticorin Steamer Agents Association have fully endorsed the proposal. The objections of INSA, and to some extent those of SCI, mainly relate to the quantum of charge leviable in such cases.
- (iii). The composite pilotage fee prescribed in the Scale of Rates includes pilot services, provision of required number of tugs/launches for one inward and one outward movement and one shifting operation within the basin at the request of the user. The Scale of Rates prescribes levy of 20% of the pilotage fees for shifting and re-mooring or for turning a vessel. The instant proposal is, however, for levy of shifting charges for vessels which are shifted to outer anchorage/ other berths due to its poor performance. The charges proposed are 25% of the applicable pilotage fee for shifting of vessel between berths I to VI or between Coal jetty I and II and Oil jetty and 50% of the applicable pilotage fee is proposed for shifting made from Coal and Oil jetty to berth I to VI and vice versa.

This Authority generally recommends levy of shifting charges on GRT basis taking into consideration the cost of service provided instead of linking it to pilotage fee. In some of major ports like Kandla Port Trust, Cochin Port Trust and New Mangalore Port Trust, such charges are prescribed at 25% of pilotage fee recognising the difficulty expressed by the ports to compute separate rate for shifting between one berth to another. The instant proposal is, however, for levy of charge only on account of shifting of vessel due to non-performance of vessel. Since the proposed charge is to be seen as a penal provision for poor performance of vessel and also recognising the fact that number of such occasions of shifting due to poor performance of vessel were only four in the past one and half year as reported by the TPT, this Authority has no reservation to approve the proposed rates.

- (iv). The Indian National Shipowner's Association (INSA) has pointed out that there should be no levy if such shifting falls within the free shifting included in the total pilotage fee. The pilotage fee includes one shifting operation at the request of the user within the dock basin. As rightly stated by the TPT, if shifting within the dock basin is on account of poor performance of vessel, then shifting charges as percentage of pilotage fee is leviable depending on the movement between the berths.
- (v). The port has proposed to levy full pilotage fee in case a vessel from berth is shifted to outer anchorage due to non-performance and then re-enters on the same port entry. Indian National Shipowner's Association (INSA) has contended that the charge should not exceed 75% of pilotage fee as the charge for shifting within the dock basin included in the composite pilotage fee should be discounted. It has to be recognised that composite pilotage fee is for a bundled service and no rebate is envisaged for the components of service not availed of. This position has to continue till a final view on unbundling of different vessel related charges is taken. Be that as it may, in its Order no.83/2000-TPT, this Authority for stated reasons accepted the argument of TPT that shifting of vessels to outer anchorage was a complete pilotage operation and, therefore, held that the port was entitled to receive full pilotage fee for such an operation. The existing Scale of Rates of the TPT explicitly provides for levy of second set of pilotage for such movement since the port engages complete pilotage operation. That being so, there is no reason for reviewing the earlier decisions.
- (vi). At the time of the general revision proposal the information about output norms furnished by the TPT was prescribed for the purpose of levy of penal berth hire. Subsequently, this Authority vide its Order Number TAMP/6/2003-TPT dated 17 March 2003 had already deleted the output norms at the request of

the TPT recognising the difficulty expressed by the port to apply the norms uniformly across all the berths.

- (vii). One of the main issues in this case is about prescription of norms/ guidelines for determining the vessels not conforming to the productivity norms before the port decides to shift the vessel to any berth or outer anchorage on account of its poor performance. Such a prescription is required to have a transparency in the system.

The TPT has reiterated that it would not be practically possible to prescribe productivity norms which are to be complied with due to involvement of different variables encountered at different berths. Generally, this Authority prefers to prescribe conditionalities in the Scale of Rates in a definite manner without providing discretionary powers to the regulated entities. In the absence of the relevant information from the TPT and any suggestion from users' side, it may not be appropriate to prescribe suo motu the broad guidelines/ principles to be adhered to. It has to be recognised that the broad guidelines to be framed in this regard need not go into the specifics of productivity norms for different cargo at different berths. They should serve as an advance alert to vessels that they would be pulled out in the prescribed situations in addition to ensuring that such action of the port would also be consistent in similarly placed cases. Based on the experience gained, the TPT may come up with a suitable proposal in this regard. Till such time, it is found appropriate that the decision to shift a vessel for non performance is taken only at the highest level of the port i.e. by Chairman (TPT).

10.1. In the result, and for the reasons given above, and based on the collective application of mind, this Authority decides to approve inclusion of the following conditionalities in the Scale of Rates of the TPT as Note number (8) under General notes relating to Schedule 2.2.1. and 2.2.2 in Chapter II- Vessel Related Charges:

“(8). The decision to shift a vessel to outer anchorage or any other berth on account of its non-performance shall be taken by the Chairman (TPT). The following charges shall be levied for shifting of a vessel to outer anchorage/ any other berth on account of its non performance:

- (i). In case a vessel is shifted to outer anchorage, pilotage fee as prescribed in Schedule 2.2.1 shall be levied on re-entry of the vessel under the same port entry.*
- (ii). In case a vessel is shifted to berths I to VI or between Coal jetty I and II and Oil jetty, 25% of the pilotage fees prescribed in Schedule 2.2.1 shall be levied.*
- (iii). If a vessel shifted from Coal jetties and Oil jetty to berth nos. I to VI and vice versa, 50% of the pilotage fee prescribed in Schedule 2.2.1 shall be levied.”*

10.2. The rates will be the ceiling levels in line with the general policy decision already taken.

10.3. The amendment to the Scale of Rates will become effective after expiry of 30 days from the date of notification of this Order in the Gazette of India.

(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/22 /2003-TPT - Proposal from the Tuticorin Port Trust for levy of Pilotage fees for shifting of vessels not conforming to the productivity norms of the port.

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

All India Chamber of Commerce and Industry (AICCI)

- (i). The proposal of the TPT is justified taking into consideration the various factors concerning the productivity in handling the vessel and stay of vessel in the port.
- (ii). The Steamer Agents furnish details like GRT, NRT, LOA, Draft, etc., while requesting for berth. Apart from these details, the Agents may also mention the year the vessel was built, the country where she was built to enable the port authorities to have an idea about capacity and efficiency of the ship.

Indian National Shipowners' Association (INSA)

- (i). The port has reportedly stated that the issue about levy of pilotage fee for shifting vessels not conforming to the productivity norms was discussed with the Steamer Agent's Association and that they have agreed to pay charges at a reasonable level. The charges proposed by the port, however, do not conform to this understanding.
- (ii). Pilotage fee prescribed in the Scale of Rates includes one shifting within the harbour which means 25% of the total pilotage fee. In view of this, if the vessel is shifted to outer anchorage and brought back, pilotage fee for such movement should not be more than 75% of one pilotage fee.
- (iii). In case a vessel is shifted other than to outer anchorage, no charges should be levied if such shifting falls within the one free shifting included in the total pilotage fee.
- (iv). In case a vessel has already been shifted once for owner's convenience, the charges should be equivalent to 25% of the pilotage fee as envisaged in the Scale of Rates.

The Shipping Corporation of India Limited (SCI)

- (i). The proposal of the port is not to levy penal berth hire charges on any vessel that does not meet the productivity norms prescribed by the port.
- (ii). One of the grounds mentioned by the port for deleting the relevant provision about levy of penal berth hire is that the productivity depends on various factors and it may not be practicable for developing a monitoring system for the purpose of levy of penal berth hire. Instead, the port has proposed to levy pilotage charge for vessel shifted out or within the harbour if it does not meet the productivity norms. The port has, however, not clarified the system of monitoring the productivity norms in this case.
- (iii). Vessel shifted out of its berth will suffer delays and losses due to stoppage of work on the other hand the port will gain by bringing in another vessel. Such shifting for due reasons is to be treated as shifting for port convenience and hence the cost should be incurred by the port and not the vessel owner.

2. In response to the comments of the users, the TPT has furnished its observations. Some of the main points made by the TPT are summarised below:

On the comments of the All India Chamber of Commerce and Industry (AICCI)

- (i). The Association supports its proposal for deleting the provision about levy of penal berth hire if the vessel does not achieve the berthing norms prescribed in the Scale of Rates.
- (ii). The suggestion of the Association to fix a reasonable rate for shifting after taking into consideration the GRT, NRT, draft, etc., of a vessel is not practical as it is very cumbersome calculation and not based on sound principles.

On the comments of the Shipping Corporation of India (SCI)

- (iii). The contention that if a vessel is shifted out of its berth, the port benefits by bringing another vessel for cargo work and hence all cost should be borne by the port is not tenable.
- (iv). The proposal is to improve per shift-berth- day output which has been missed by the SCI. If a vessel conforming to the productivity norms is shifted at port's convenience, the question of collecting shifting charges does not arise at all.

On the comments of the Indian National Shipowners' Association, (INSA)

- (v). The Scale of Rates does not contain any statement to the effect that one shifting is equivalent to 25% of pilotage fees. In fact, if a vessel is shifted to outer anchorage and brought back, the port engages full pilotage operation and hence cannot be equated to 75% of the pilotage fees.
- (vi). It is confirmed that if the shifting of a vessel within the dock basin at the request of users falls within the one shifting included in the Pilotage Fees, no shifting charges shall be leviable. However, if such shifting within the dock basin is on account of not adhering to the productivity norms, the facility of free shifting shall not be available.

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

Tuticorin Port Trust (TPT)

- (i). Our proposal originally was to levy additional pilotage fee when vessel is shifted to anchorage for non-performance. But, TAMP introduced penal berth hire.
- (ii). TAMP subsequently deleted the penal berth hire provision.
- (iii). In the past one and half years, only 4 vessels were to be shifted from berth for non-performance.
- (iv). This is not to be seen as a revenue option. We want to improve productivity. So this is a penal provision.
- (v). There are some minor factual errors in our proposal. We will issue corrigendum immediately.

Tuticorin Steamer Agents' Association (TSAA)

We agree to the proposal.
