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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 2

New Delhi, 10 January 2006

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 approves the proposal of the Tuticorin Port Trust (TPT) for amendment in its Scale of Rates (SOR) as regards levy of charges on shut out cargo, as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/7/2005 - TPT

ORDER

(Passed on this 27th day of December 2005)

This case relates to a proposal received from the Tuticorin Port Trust (TPT) for amending in its Scale of Rates (SOR) to remove ambiguity as regards levy of charges on shut out cargo.

2.1. The TPT has proposed the following amendments in its SOR as regards levy of charges on shut out cargo:

- (i). To insert the definition of the term 'shut out cargo' as serial no. (xiii) in the Schedule 1.1. – Definitions – General:

"Shut out cargo means, cargo meant for shipment as per the Shipping Documents, not taken by Master of a vessel for want of space or draft restriction in part or in full and taken back without being exported. Damaged cargoes and cargo rejected by Surveyors of Shippers, shall not be treated as "Shut out Cargoes".

- (ii). To insert Note 3(iii) in Schedule 3.2.1. - Free period under 3.2.1. Schedule of Demurrage:

"Free period as applicable to Exports as mentioned under 3.2. Schedule of demurrage charges of 3.2.1. free period shall be allowed to cargoes in transit area meant for shipment which are shut out and brought back. The said free period shall be availed only once for the entire stay of the cargo in transit area irrespective of whether or not the same is sent for shipment and brought back".

- (iii). To substitute the existing Note 3 in 3.1. - Schedule of Wharfage under Chapter III – Cargo Related Charges with the following:

"Wharfage shall be payable on all cargoes admitted to the said Port's transit areas for shipment. Cargo once shut out if admitted to the port again for shipment will also attract wharfage irrespective of the fact the wharfage was levied on an earlier occasion".

2.2. The TPT has furnished a comparative statement showing provisions in case of some of the other major ports like Tuticorin Port Trust (TPT), New Mangalore Port Trust (NMPT), Visakhapatnam Port Trust (VPT), Chennai Port Trust (CHPT), Cochin Port Trust (COPT) and Kandla Port Trust (KPT) as regards levy of wharfage and free period allowed for shut out cargo.

2.3. The proposal of TPT was approved by its Board of Trustees in the meeting held on 18 December 2004.

3. In accordance with the consultative procedure prescribed, a copy of the proposal was forwarded to the concerned user organisations seeking their comments. The comments received from the user organisations were forwarded to TPT as feedback information. The TPT has furnished its response to the comments of the various user organisations.

4.1. Based on a preliminary scrutiny of the proposal, the TPT was requested to explain the reasons for the proposed amendment in free period equivalent to export cargo (i.e. 15 days for wheat and 10 days for general cargo other than wheat) in the light of the fact that the existing SOR already allows 21 days free period for such shut out cargo beyond which demurrage charge is levied.

4.2. The TPT has clarified that the existing SOR prescribes 21 days free period in case of goods shut out by one vessel and subsequently shipped by another vessel, which is only an exceptional case.

5. A joint hearing in this case was held on 09 December 2005. At the joint hearing, the TPT and concerned user organisations 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 <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 proposal of the Tuticorin Port Trust is reportedly to remove the ambiguity in the existing Scale of Rates as regards levy of charges on shut out cargo and to clearly define the term shut out cargo.
- (ii). The existing Scale of Rates of the TPT does not define the term shut out cargo. In fact, this term is not explicitly defined at the other major ports except Cochin Port Trust and Kolkata Port Trust. The Scale of Rates of Cochin Port Trust defines shut out cargo as cargo brought into port for shipment but not shipped by the designated vessel and is lying in the port premises. Similar definition is prescribed in the Scale of Rates of Kolkata Port Trust.

The dictionary of Shipping Terms by Peter Brodie defines the term 'shut out' as follows:

"To fail to take cargo on a ship. Situations where cargo is left behind at the loading port occur mainly when a shipping line has insufficient space on board its ship for the volume of bookings taken, or when cargo arrives after the ship has completed loading. Also referred to as to short ship."

The definition proposed by the TPT is more or less on these lines. If at all, it is more elaborate in its coverage. The Tuticorin Chamber of Commerce and Industry (TCCI) has proposed certain inclusions which appear to be already covered by the proposed definition. The suggestion made by Indian Chamber of Commerce and Industry (ICCI) and Tuticorin Custom House Agents Association (TCHAA) for inclusion of vessel's cancellation has been accepted by the TPT. That being so, the proposed definition is approved with a modification to this effect.

- (iii). The existing Scale of Rates of the TPT prescribes levy of wharfage on cargo admitted in transit area for shipment. It exempts levy of wharfage in case of shut out cargo provided such cargo is cleared from the transit area / container stuffing yard to the rental area or outside the port security wall within a day of completion of shipment and in case of shut out cargo from container within two days of completion of stuffing of containers. This provision has reportedly created confusion in its application in some cases. The TPT has reported instances where loading of cargo onto the vessel loaded was stopped due to some dispute between the Master of the Ship and the Vessel Agent. Since the dispute could not be resolved between them, the entire cargo was taken back and when the cargo was subsequently brought in for export, the agent claimed it was the same cargo and hence the port should not levy wharfage again.

In order to avoid the ambiguity arising due to prevailing provision in its Scale of Rates, the TPT has proposed to amend the provision to clarify that cargo once shut out if admitted to the port again for shipment will also attract wharfage irrespective of the fact the wharfage was levied on an earlier occasion.

The Indian Chamber of Commerce and Industry (ICCI) has suggested not to levy any wharfage if the cargo brought inside the transit area for shipment is not loaded and taken outside the port premises within 24 hours. This period was extended to 48 hours in the subsequent submissions made by the Association.

Some of the users like the Tuticorin Custom House Agents Association have pointed out that the port does not offer any service for shut out cargo and hence no wharfage should be levied. As rightly pointed out by the TPT, the port provides the service in terms of providing infrastructure and space for landing and loading the cargo. Just because the cargo entered in the port premises was not shipped for whatsoever reasons, it cannot claim exemption from port charges unless such happening is for any reasons attributable to the port.

In this context, it is relevant to note that charge on shut out cargo is being levied at the other major ports like the Kandla Port Trust, New Mangalore Port Trust, Visakhapatnam Port Trust, Jawaharlal Nehru Port Trust, Kolkata Port Trust, Chennai Port Trust and Cochin Port Trust as per the provisions in their respective Scale of Rates. At Cochin Port, wharfage for shut out cargo is prescribed at 75% of normal wharfage and at Kolkata Port Trust such levy is made at 50% of wharfage. At other ports it is levied at the normal rate. Even though some of the users have demanded a total exemption for shut out cargo from payment of charges, they have not shown any extraordinary circumstances prevailing at the TPT to make an exception.

That being so, the amendment proposed by the TPT to provide for levy of wharfage on shut out cargo is accepted.

- (iv). As per the provisions prescribed in the existing Scale of Rates, 21 days free period is allowed in case goods shut out by one vessel are subsequently shipped by another vessel. In other cases of shut out cargo, the free period as applicable to export cargo is available as admitted by the port. Demurrage is levied after allowing the said free period.

The TPT has proposed to introduce a provision that free period for cargo shut out and brought back can be availed only once for the entire stay of the cargo in transit area irrespective of whether or not the same is sent for shipment and brought back. The proposed provision goes contradictory to its own submission that once the shut out cargo is taken out of the port transit area, it does not have a mechanism to check that the cargo brought in for export is the same. The Tuticorin Stevedores Association and the Indian Chamber of Commerce and Industry have also raised the same objection on the proposed amendment. Since wharfage charges are paid by the shut outs for the second time also at the time of shipment, they should get the benefit of free time as applicable to export cargo.

That being so, this Authority is not inclined to approve the proposed amendment relating to free period for shut out cargo.

- (v). Some of the users have demanded for allowing a free time of 24 hours to 48 hours of shut out for clearance of the cargo. There is no extra ordinary circumstances found to emerge in the instant case for making a general prescription for allowing additional free time for this purpose over and above the normal free time allowed.

All the Port Trusts, including the TPT, are given a flexibility to relax the conditionalities, if found necessary at their discretion, to provide relief to users. If TPT finds allowing such additional free time is justified and extending such concession will not cause cluttering of its operational area, it can provide any additional relief at its discretion.

8.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following amendments in the Scale of Rates of the TPT:

- (i). **Insertion of the following clause as serial no. (xiii) in the Schedule 1.1. – Definitions – General:**

“Shut out cargo means, cargo meant for shipment as per the Shipping Documents, not taken by Master of a vessel for want of space or draft restriction in part or in full or due to cancellation of the nominated vessel and taken back without being exported. Damaged cargoes and cargo rejected by Surveyors of Shippers, shall not be treated as “Shut out Cargo”.

- (ii). **The existing Note 3 in 3.1. - Schedule of Wharfage under Chapter III – Cargo Related Charges is substituted by the following:**

“Wharfage shall be payable on all cargoes admitted to the said Port’s transit areas for shipment. Cargo once shut out if admitted to the port again for shipment will also attract wharfage irrespective of the fact the wharfage was levied on an earlier occasion”

8.2. These amendments will come into effect 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/7/2005 – - Proposal from the Tuticorin Port Trust TPT) for amendment
TPT **in its Scale of Rates (SOR) to remove the ambiguity as regards levy of charges on shut out cargo.**

1. THE COMMENTS RECEIVED FROM THE PORT USERS / REPRESENTATIVE BODIES OF PORT USERS ARE SUMMARISED BELOW:

Tuticorin Custom House Agents' Association (TCHAA)

- (i). No specific service is rendered by the port for collection of the wharfage dues. Cargo is totally handled by the shippers by engaging pool labour, private labour and equipment. The wharfage collected does not include any portage for cargo as done in other ports.
- (ii). In case cargo is not loaded on a vessel and taken outside the port premises within 24 hours, its wharfage charges should not be collected. Mostly the cargo will be awaiting in truck for direct loading and will be taken out of the port area as soon as the vessel is full or the cargo is rejected by the surveyor.
- (iii). The port is not extending any service for the shut out cargo by way of providing the wharf space. The shipper will be already saddled with loss due to non-shipment of his cargo and adding loss from collecting wharfage from the port side should be avoided.
- (iv). The case of shut out cargo happens once in a while and the port should magnimously disallow such paltry sums and should look at increasing the revenue from new cargo, increased volume, etc.
- (iv). No wharfage should be claimed by the port for shut out cargo.

Indian Chamber of Commerce & Industry (ICCI)

- (I). **NO WHARFAGE IS APPLICABLE FOR SHUT OUT CARGO IF THE CARGO IS NOT LANDED IN TRANSIT AREA AND TAKEN OUT OF PORT PREMISES WITHIN 24 HOURS AFTER SAILING OF THE VESSEL.**
- (II). **IF THE SHUT OUT BULK CARGO IS LANDED IN TRANSIT AREA AFTER SAILING OF THE VESSEL AND ALSO IN CASE BULK CARGO IS LANDED IN TRANSIT AREA AND UNSHIPED DUE TO CANCELLATION OF THE VESSEL, WHARFAGE CHARGE SHOULD NOT BE LEVIED ON THE SAID CARGO WHEN SAME ARE LOADED ON ANOTHER VESSEL AT A LATER STAGE.**

Tuticorin Stevedores' Association (TSA)

- (I). **THE TERM 'SHUT OUT CARGO' HAS NOT BEEN PROPERLY DEFINED.**

- (II). **WHILE THE SHUT OUT CARGO IS AGAIN BROUGHT INSIDE THE PORT BY THE USER FOR SHIPMENT, THE PORT HAS NO WAY OF VERIFYING WHETHER SAME CARGO HAS BEEN BROUGHT IN. SO WHARFAGE IS ENFORCED AT EVERY ENTRY OF THE CARGO INSIDE THE PORT.**
- (III). **THE PORT AUTHORITIES HAVE VALID PROOF THAT THE SAME CARGO HAS BEEN BROUGHT AGAIN INSIDE THE PORT WHILST THEY IMPOSE RESTRICTION ON AVAILING FREE PERIODS ONLY ONCE FOR SUCH CARGO THOUGH DUAL WHARFAGE IS COLLECTED. THIS EXPUNGES THE VERDICT OF ITS INABILITY TO VERIFY THE SAME CARGO I.E. SHUT OUT CARGO WHICH HAS BEEN BROUGHT INSIDE THE PORT SECOND TIME. THIS CLEARLY ILLUSTRATE THAT THE PORT DOESN'T HAVE TRANSPARENT GUIDANCE ABOUT SHUT OUT CARGO.**
- (IV). **DUE TO UNAVOIDABLE CIRCUMSTANCES, ONLY THE SHUT OUT CARGO ARE TAKEN OUT OF THE PORT AND BROUGHT INSIDE AGAIN FOR THE SHIPMENT. THERE IS NO INTENTION OF THE USER FOR MAKING THE CONGESTION INSIDE THE PORT.**
- (V). **A DUAL WHARFAGE SHOULD NOT BE INSISTED UNTIL NEW REFORM IS DERIVED BY TAMP.**

Tuticorin Chamber of Commerce & Industry (TCCI)

- (i). Presently the definition of shut out cargo is huddled together. It has to be realigned as:
 - (a). The want of space is due to master's violation.
 - (b). Draft restriction may arise due to ports operational directions for shifting the vessel, exigencies of ports, safety needs of the berth or due to ships operational requirement.

2. Comments received from the user organisations were forwarded to the TPT as feed back information / comments. The TPT has responded on the comments of the user organisations. The main points are summarised below:

On comments made by Tuticorin Custom House Agents Association

- (i). Wharfage shall be payable for all cargoes admitted to the port's transit areas for shipment. Cargo once shut out if admitted to the port again for shipment will also attract wharfage irrespective of the fact that the wharfage was levied on an earlier occasion. This is logical as during admittance of the cargo, services are rendered by the port whether or not the cargo is actually shipped. In reality, in the case of shut out cargo, the port has to render additional services at the time of allowing excess of the shut out cargo.
- (ii). The port is also providing the space and other basic infrastructure facilities at wharf where cargo is loaded direct to the vessel.
- (iii). Most of the major ports are collecting wharfage for the goods entering the wharf.

- (iv). It has reiterated that once the cargo is taken out of the premises of the port, there is no mechanism by which the port can know that the same cargo has been brought in again for export. In the case of shut out cargo, service is rendered by the port during admittance as well as when it is taken out.

On comments made by Indian Chamber of Commerce & Industry

- (I). **IF NO WHARFAGE IS LEVIED ON SUCH CARGO, THERE IS POSSIBILITY OF OVERFLOW OF CARGO IN THE OPERATIONAL AREA JEOPARDIZING THE FUNCTIONING OF THE PORT OPERATION.**

On comments made by Tuticorin Chamber of Commerce & Industry

- (I). **THE DEFINITION IS FRAMED TAKING INTO CONSIDERATION THE DEFINITION PRESCRIBED IN THE SCALE OF RATES OF OTHER MAJOR PORTS.**

On comments made by Tuticorin Stevedores' Association

- (I). **IT HAS REITERATED ITS EARLIER COMMENTS AND CLARIFIED THAT THE INSTANT PROPOSAL IS TO AVOID THE AMBIGUITY ARISING FROM THE EXISTING PROVISIONS. THE QUESTION OF DUAL WHARFAGE DOES NOT ARISE.**

3.1. A joint hearing in this case was held on 9 December 2005 at the TPT premises. At the joint hearing, the following submissions were made:

The Tuticorin Port Trust (TPT)

- (i). The existing provisions in SOR about levy of charges on shut out cargo are somewhat ambiguous. We propose to define shut outs clearly.
- (ii). Free period should be allowed only once – irrespective of whether such cargo is taken out or not.
- (iii). We have some audit observations on allowing free period for shut out cargo.
- (iv). No provision in the SOR is deviated. We only expand the SOR to amplify the definition to avoid any ambiguity and exercise of discretion to interpret.
- (v). Suggestion of ICCI and TCHAA on expanding the definition of shut out is acceptable.
- (vi). Allowing free period needs to be examined further.

Indian Chamber of Commerce and Industry (ICCI)

- (i). The definition of shut out cargo should include 'cancellation of vessel'.

- (ii). The port justifies second levy of wharfage by saying there is no mechanism to check the same cargo is brought in. This should extend to free period. So, second entry should also qualify for free period.

TUTICORIN CUSTOM HOUSE AGENT ASSOCIATION (TCHAA)

- (i). Extending the principle behind the definition of 'shut out' cargo, the TPT should include vessel cancellation also. Please do not charge dual wharfage.

3.2. At the joint hearing, Indian Chamber of Commerce and Industry (ICCI) and Tuticorin Custom House Agents' Association (TCHAA), have filed further written submissions generally reiterating the points made by them earlier. Some of the additional points made by the TCHAA are as follows:

- (I). **WHARFAGE SHOULD NOT BE COLLECTED ON THE CARGO NOT LOADED ON A VESSEL AND TAKEN OUTSIDE PORT PREMISES WITHIN 48 HOURS.**
- (II). **CARGO BROUGHT INSIDE PORT PREMISES IN ANTICIPATION OF THE ARRIVAL OF A VESSEL AND THEN REMOVED FROM PORT AND KEPT WITHIN PORT AREA ON ACCOUNT OF NON-ARRIVAL OF THE EXPECTED VESSEL SHOULD ALSO BE CONSIDERED AS 'SHUT OUT CARGO'.**
- (iii). If such cargo is readmitted inside the port for shipment on another vessel, wharfage should not be collected on such cargo if wharfage was levied on the earlier entry of the cargo to avoid dual collected of wharfage on a single cargo.
