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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. 121

New Delhi, 25 July, 2003

NOTIFICATION

In exercise of the powers conferred under Sections 48 and 49 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the Kandla Port Trust for amendment of certain conditionalities in its existing Scale of Rates as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/21/2003-KPT

The Kandla Port Trust

Applicant

ORDER

(Passed on this 8th day of July 2003)

This case relates to a proposal received from the Kandla Port Trust (KPT) for amendment of certain conditionalities in its existing Scale of Rates (SOR).

- 2.1. The KPT has proposed amendments to the following conditionalities:
- (i). Free period of 15 days to shut out cargoes
- (a). The Shipper or his Agent brings cargo inside the Port area for export only. If due to some unforeseen reasons the cargo is not exported and taken back from the Port, the pre-revised SOR of the KPT provided different treatment for different reasons and thus had different implications in treatment of this cargo.
- (b). As per the provision approved by the Authority in the revised Scale of Rates, 15 days free period will be allowed only in a situation when the cargo is shut out and not exported. The Authority did not consider any other reason when the cargo brought for export is taken back on any account. Thus in case of all the other cargo, which is not shut out cargo, 15 days free period is not granted and accordingly no fee is to be collected. The above clause has created the following operational difficulties:
- If any reason other than shut out is occurred for removing the cargo then the existing provision totally fails in compliance.
 - If cargo is allowed on rental terms then also, the clause does not provide any scope for charging any rate though the cargo is removed on shut out.
- (c). The Port Users have requested a number of times to simplify the procedure; and hence, after due deliberations, it is proposed to revise the clause by way of covering all the reasons which are attributable for taking the cargo out of the 'Port Area' without restricting only to the reason of shut out; and also, provide scope for allowing such cargo to store on the rental terms. The proposed amended clause is given below:
- “Cargo brought into the Port for Export, if removed for any reason, with the prior written permission of Customs Department, a fee equivalent to Wharfage charges applicable for such cargo is payable irrespective of the cargo stored on transit or rental terms.”*
- Fifteen days free period will be allowed to the export cargoes stored on transit terms and removed from the Port area for any reasons.”*
- (d). Accordingly, in place of “Shut Out Cargo” at serial number 4 under 2.1 (Free Period) of Chapter III of the SOR, “Export Cargo taken back for any reason” is also proposed.
- (ii). Time frame for filing of pilotage requisition
- (a). As per the SOR, Chapter Number-II, Note13, “a Notice of not less than 12 hours before the time a pilot is required to board the vessel shall be given. If the services of the pilots are requisitioned within less than 12 hours, then the Agents have to pay late submission charges of pilot requisition equivalent to cancellation charges”. Being a tidal port, it may many times happen that a

vessel is ready to move within 6 hour period and in such cases it is imperative to have short notice period. In the present situation, it is not possible to allow notice period of less than 12 hours.

- (b). To obviate this operational problem faced by the vessel having shorter stay at the Port, it is proposed to allow a notice of not less than 6 hours for outward Pilot requisition. After discussions with the Port Users, the existing clause is proposed to be amended as below:

“When the services of the pilot are requisitioned for Inward pilotage or for shifting of a mechanically propelled vessel, a notice of not less than 12 hours and in case of outward pilotage a notice of not less than 6 hours before the time the pilot is required to board the vessel shall be given. If the services of the pilot are requisitioned within less than 12 hours in case of inward pilotage or for shifting of a mechanically propelled vessel and 6 hours in case of outward pilotage, then the Agents have to pay late submission charges of pilotage requisition equivalent to cancellation charges.”

- (iii). Regularisation of demurrage charges in case of stream loading.

- (a). Note 3, under 2.1 of Chapter-III of the existing SOR stipulates as follows:

“Free period for Exports shall commence from the date on which the cargo is brought in the transit/Port area. The demurrage will cease from the day following the date of berthing of vessel. In case of stream loading, the demurrage will cease from the day of loading to the extent of quantity loaded”.

The above clause has left scope for different interpretations, which has developed ambiguity. The port users have raised the issue regarding demurrage in respect of stream loading. After great deliberations it is found that the cargo loaded through stream has to be treated at par with the cargo loaded through berth as loading through stream is taking place mainly due to non-availability of berth.

To the extent of cargo loaded through stream, demurrage should cease to exist treating the stream at par with the berth for computation of demurrage.

- (b). The following amendment in the clause is, therefore, proposed:

“Free period for Exports shall commence from the date on which the cargo is brought in the transit/Port area. The demurrage will cease from the day following the date of berthing of vessel. In case of stream loading, the demurrage will cease from the day of loading of first barge. Demurrage will cease for the total cargo actually loaded through barges to the vessel.”

2.2. The proposal was approved by the Board of Trustees of the KPT vide resolution no. 92 dated 4 February 2003.

2.3. In this backdrop, the KPT has requested the Authority to accord approval to the proposed amendments to the conditionalities.

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

4. A joint hearing in this case was held on 10 June 2003 at the KPT premises. At the joint hearing, the KPT and the concerned users have made their submissions.

5. 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 will also be available at our website www.tariffauthority.org.

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

- (i). The proposal of the KPT is not for introducing any new rates or conditionalities which will have additional financial implication on the users. The proposal is mainly to remove the operational difficulties faced by the users and to liberalise the existing conditionalities governing the application of the rates. It is noteworthy that the proposal of the KPT is generally endorsed by all the users.
- (ii). The existing conditionality relating to allowing free period specifically mentions about shut out cargo. As has been mentioned by the KPT and also brought out by the Federation of Port Users and Customs House Agents' (FPUCHA) and Kandla Custom House Agents' Association (KCHAA), there can be various other reasons for which cargo brought into the port area may have to be removed without shipment. The KPT has also pointed out that an arrangement of allowing free period of such back to town cargo was available in its pre-revised Scale of Rates. Insofar as extending free period of 15 days to all back to town cargo, this Authority does not have any reservations in approving the proposed liberalised conditionality. Nevertheless, the operational arrangement of allowing of cargo in the port area even without completion of all necessary shipment formalities is to be viewed with concern on two grounds. Firstly, the precious operational area is cluttered. Secondly, extra caution is to be exercised relating to cancellation of export documentation in order to avoid possible wrong declaration before the Customs and other export related agencies. With reference to the first point, the KPT has sought to explain that it has sufficient space in the operational area to allow storage of such cargo; and, for historic reasons, such facility is allowed to facilitate export. The second point really relates to the Customs. The proposed conditionality specifies that export cargo can be removed from the port premises with prior written permission of the Customs Department. That being so, this Authority is inclined to approve the proposed conditionality with an advice to the KPT that it should be extra vigilant in requiring and scrutinising the written permission of the Customs Department before allowing export cargo to be taken back from its premises.

The existing conditionality stipulates that wharfage charges shall be leviable on the goods actually exported. This sentence is not included in the proposed conditionality by the KPT. Since export cargo taken back do not reach the wharves of the KPT, the question of payment of wharfage by them does not arise. In order to avoid any confusion regarding requirement of such export cargo taken back paying wharfage, the existing provision specifying levy of wharfage charges only on the goods actually exported should be retained.

- (iii). The justification given by the KPT for reducing the notice period for requisitioning pilotage from 12 hours to 6 hours in case of outward pilotage is found to be reasonable and approved. The objection of the FPUCHA that vessel movements are decided even 24 hours in advance at berthing meetings does not appear to be relevant. As has been pointed out by the KPT, cancellation charge is a deterrent and to enforce discipline. If berthing arrangements are decided 24 hours in advance then vessels are also expected not to disrupt such planning by subsequently altering their schedule. While it is admitted that there can be various genuine reasons to change the pre-determined schedule, it is to be recognised that such changes will upset a port's vessel movement plan. Based on the experience gained in operating the proposed provision, the KPT is advised to consider reducing the notice period further at the time of the next general revision of its Scale of Rates.
- (iv). Amendment to the conditionality proposed in respect of demurrage on the cargo loaded through barge is mainly to treat the cargo loaded through berths at par with the cargo loaded through barges for subsequent mid stream operation. The KPT has sought to

explain that mid stream operation mainly takes place due to non-availability of appropriate berth. Viewed from this perspective, the proposal of the KPT is found to be reasonable and is approved. In order to avoid any confusion and varying interpretations, as agreed by the KPT and the users at the joint hearing, it is to be specifically mentioned in the amended provision that cargo loaded through barges to the vessel will have linkage to the same vessel in the same voyage.

- (v). The FPUCHA has raised certain issues relating to wharfage on liquid bulk cargo and bunkers. Since this proceeding is confined to the proposal of the KPT, the issues raised by the FPUCHA are not relevant here. The FPUCHA may however take up these issues with the KPT for suggesting suitable amendments, if necessary.

7.1. In the result, and for the reasons given above, and based on collective application mind, this Authority approves the following:

- (i). The existing Note (7) to Schedule of Wharfage charges prescribed under Chapter III of Cargo-related charges is substituted by the following provision:

“Wharfage charges shall be leviable on the goods actually exported. Cargo brought into the Port for Export, if removed for any reason, with the prior written permission of Customs Department, a fee equivalent to Wharfage charges applicable for such cargo is payable irrespective of the cargo stored on transit or rental terms.

Fifteen days free period will be allowed to the export cargoes stored on transit terms and removed from the Port area for any reasons.”

- (ii). The words ‘Shutout cargo’ prescribed at Serial no. 4 of Section 2.1 relating to Free period under the Schedule of Demurrage charges in Chapter-III are deleted and substituted with ‘Export cargo taken back for any reason’.
- (iii). The words ‘Shutout cargo’ prescribed in Note no. 5 of Section 2.1 relating to Free period under the Schedule of Demurrage charges in Chapter-III are deleted and substituted with ‘Export cargo taken back for any reason’.
- (iv). Replace the existing Note 13 of Schedule of Pilotage Fee under Chapter II relating to vessel-related charges by the following Note:

“When the services of the pilot are requisitioned for Inward pilotage or for shifting of a mechanically propelled vessel, a notice of not less than 12 hours and in case of outward pilotage a notice of not less than 6 hours before the time the pilot is required to board the vessel shall be given. If the services of the pilot are requisitioned within less than 12 hours in case of inward pilotage or for shifting of a mechanically propelled vessel and 6 hours in case of outward pilotage, then the Agents have to pay late submission charges of pilotage requisition equivalent to cancellation charges.”

- (v). Replace the existing Note no. 3 of Notes to Section 2.1 relating to Free period under the Schedule of Demurrage charges in Chapter-III as follows:

“Free period for Exports shall commence from the date on which the cargo is brought in the transit/Port area. The demurrage will cease from the day following the date of berthing of vessel. In case of stream loading, the demurrage will cease from the day of loading of first barge. Demurrage will cease for the total cargo actually loaded through barges to the vessel in the same voyage.”

(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/21/2003-KPT . Proposal from the Kandla
Port Trust regarding amendments of
certain conditionalities in the existing
Scale of Rates.**

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

Kandla Custom House Agents' Association (KCHAA)

They are in total agreement with the proposal forwarded by the KPT.

The Gandhidham Chamber of Commerce & Industry (GCCCI)

They are in full agreement with the proposal of the KPT to amend some conditionalities in the existing SOR. The amendments would alleviate some of the hardships being currently faced by the Trade.

Federation of Port Users & Customs House Agents'(FPUCHA)

- (i). The proposal of free period of 15 days to shut out cargoes is in the interest of clarity and is supported.
- (ii). The proposal regarding time frame for filing of Pilot requisition is said to remove operational difficulties only and have no financial implications. The following is suggested:
 - (a). The posting of Pilot is always subject to availability of Pilots and tide as well, hence imposing a condition to submit requisition for inward movement before 12 hours does not carry any justification. The movement planning can definitely be attended to if only three hours notice time is fixed. The incoming and outgoing movement for vessels are finalised by the Traffic Division in consultation with the Shipping Agents in daily berthing meeting 24 hours in advance. Submission of Pilot requisition is merely a final consent for shifting of vessel from Master/Agents, which can be completed before three hours of Pilot commencement of job.
 - (b). It is not always possible for the Shipping Agents to ascertain exactly when vessel can complete discharge and get ready for sailing. Hence sometimes because of the cancellation charges, Shipping Agents do not involve themselves to get vessels'

readiness before the scheduled time of 6 hours, which ultimately affects the turn-around time of the next coming vessel.

If for the administrative reasons, prior notice is considered necessary, it should be three hours notice, instead of 6 hours.

- (iii). As for regularisation of demurrage charges in case of stream loading, it is true that the amendment will remove operational difficulties.
- (iv). Cargo jetty berths the Liquid cargo storage tanks are permitted by the Port Trust on payment of normal rental charges/lease. The Tank Terminals have to make their own arrangement to receive the cargo. The Port Authorities do not provide any services to such liquid cargoes handled at the Cargo jetty berths such as Forklifts, shore-cranes, labourers etc. The wharf space and Transit Sheds are usually used to accommodate incoming/outgoing next vessels, cargo, hence handling of liquid cargo is at no stage disadvantageous to the Port Trust. There is no justification for levy of 20% additional wharfage charges for liquid vessels handled at the cargo jetty berths. The liquid vessels usually give more output than the general cargo vessels and at the same time without any expenses to the port trust.
- (v). The bunkers are ships' stores only and Customs Authorities certify the same as Ships' stores. The bunker supply is usually attended to without disturbing the normal loading/discharge operations and do not involve any extra services by the Port authorities. The bunkers are not manifested cargoes.

The KPT used to treat the bunkers (ships stores) as general cargo handling operation and recover normal wharfage charges, though the ships stores are FREE of wharfage as per the existing SOR.

Kandla Port Steamship Agents Association (KPSAA)

As per the current SOR, pilotage requisition for inward shifting (mechanically propelled vessels) and outward movement of the vessel has been fixed at minimum 12 hours. Considering the operational difficulties faced by the vessel agents in this regard it needs to be changed; and hence, the following is suggested:

- Inward Movement 12 hours
- Shifting 6 hours
- Outward Movement 6 hours

2. A joint hearing in this case was held on 10 June 2003 at the KPT premises in Gandhidham. At the joint hearing the following submissions were made:

Kandla Port Trust (KPT)

- (i). (a). Existing SOR provides for 15 days free period for shut out. If export cargo is taken out for any other reason, then there is no provision to allow free period.
- (b). We want to extend the benefit to back to town cargo.
- (ii). Recognising the tidal condition, we have proposed to reduce pilot requisition time for outward voyage to 6 hours.
- (iii). Penalty is a deterrent. We have to maintain a discipline in vessel movement otherwise our plans will go away.
- (iv). If planning is done 24 hrs ago, then there should not be any subsequent cancellation from user side.
- (v). Our proposal is to allow cessation of demurrage on cargo loaded through stream when the loading starts.
- (vi). We agree that mid-stream operation cannot be continuous. But, the benefit can be allowed to same vessels in same voyage.

Federation of Port Users and Custom House Agents Association (FPUCHAA)

- (i). We endorse the proposal.
- (ii). (a). In KPT, the position is that the port allows cargo to be stored inside before shipment.
- (b). Situation may arise to take back such cargo when survey reject or export reject, etc.
- (iii). We will give written submission on the need and reasons for back to town cargo.
- (iv). In nearby ports (Mundra) there is no such penalty. Depending on availability pilots are allowed even with one hour notice.
- (v). Penalty and cancellation fees are not regular source of income to Port. Such occasions arise in the compelling situations faced by vessels. Please remove this provision.
- (vi). Planning is done 24 hours prior to pilotage in berthing meeting. Why again 6 hour notice from us is required.

Kandla Custom House Agents Association (KCHAA)

- (i). We will give more justification and submit written submission in a week's time.

Kandla Port Steamship Agents Association (KPSAA)

- (i). With ships staying at berth for less than 24 hours, giving requisition prior to 12 hours / 6 hours not feasible.
- (ii). Other major ports allow 3 hours. Let KPT follow such a prescription.
- (iii). We always strive to do continuous operation. But, there can be technical reasons for us to temporarily suspend operation.

3.1. At the joint hearing, the FPUCHAA and the KCHAA agreed to furnish written submissions within a week's time explaining the reasons for cargo brought in for export and taken back and also the customs procedure in such cases.

3.2. The FPUCHAA has responded. The points made by the FPUCHAA with reference to item No.1 (Note No.7 under 1 of chapter III) in respect of free period of 15 days to shut out cargoes are summarised below:

- (i). The Kandla Port Authorities accommodate the shippers for storage of cargo inside the Port area till the berthing of Vessels considering the scheduled fixed turnaround time of the Vessel, i.e. by assured loading of 6000 – 4500 MT per day, for which the cargo should remain in the nearby area of working vessels.
- (ii). The shippers arrange various inspections of cargo inside the port area to save transportation cost by receiving cargo directly inside the Port area through trucks or rails. However, due to shortage of concerned storage space, the surveyors do not approve the stock for fumigation timings or EPCG units do not pass quality of part cargo and hence question of back to town for unshipped cargo arises.
- (iii). Since customs authorities usually arrange examination of cargo for shipment on its physical existence, it become necessary for the suppliers to bring cargo before arrival of the vessels.

At some occasion, if the vessel is not calling the Kandla destination Port within the LC time, the LC is required to be amended/extended and if the extension of LC is not received, cargo is to be moved out of the port area.

- (iv). Also, since the storage rent outside the port area is comparatively less than what is charged by the port authorities, in all probability, the amendment is sought, for the sake of removal of operational difficulties only.

3.3. The KCHAA has responded. The further submissions of the KCHAA on the reasons to take back the cargo brought in for export, as well as the custom procedure followed in such cases is summarised below:

- (i). It is reiterated that at Kandla Port the export cargoes are carted and stored inside the port area after the Shipping Bill is filed with Customs for shipment and subsequently the cargoes are loaded on the nominated export vessels. However in certain instances, the cargoes are not shipped due to various reasons viz. rejection of cargo by surveyors, last minute cancellation of export contracts due to delayed berthing of vessels in the port or due to diversion of the vessels to other ports, cargo shut-out by the master of the vessel etc. Under such circumstances, the shippers are left with no option but to take back the cargo outside the port area. It is understood that this "Back to Town" procedure for export cargoes is being followed at all the other ports as well and is not confined to Kandla Port alone. The Customs procedure for "Back to Town" meant for export cargoes is chronologically detailed as under:
- (a). Short shipment notice is being filed with Customs authorities by the concerned CHA for the export cargoes which have been short shipped.
 - (b). The short shipped cargo is being examined by the Customs authorities.
 - (c). On the basis of the Customs examination report, Customs authorities permit removal of cargo outside the port area subject to preventive checks at the Customs Gate which is precisely known as "Back to Town" procedure.
- (ii). Based on the Customs permission, port wharfage is being paid on the short shipped cargo and subsequently the said cargo is being taken outside the port premises.

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