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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 227

New Delhi 9 October, 2002

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 decides not to review its earlier Order dated 15 March 2000 about concession in the vessel-related charges payable by oil tankers with segregated ballast tank as in the Order appended hereto.

(S. Sathyam)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/15/2000- PPT.

ORDER

(Passed on this 5th day of October 2002)

This Authority had passed an Order on 15 March 2000 (notified on 6 April 2000) about charging 'Port Dues' with reference to the Reduced Gross Tonnage (RGT) of the tankers with segregated ballast tank, for common adoption by all the Major Port Trusts.

2. This Order was passed based on a circular issued by the DG (Shipping) commonly to all the Major Port Trusts, in pursuance of a Resolution passed by the International Maritime Organisation (IMO) to this effect to promote the use of oil tankers with segregated ballast tanks to reduce the threat of oil pollution by them. The Scales of Rates of all the Major Port Trusts were amended to incorporate the following clause appropriately under the heading 'Port Dues':

"For oil tankers with segregated ballast, the reduced gross tonnage that is indicated in the 'Remarks' column of its International Tonnage Certificate will be taken to be its gross tonnage."

3. The VPT has informed that as per the circular of the DG (Shipping) dated 5 August 1999 the reduced GRT is to be taken for calculation of charges for tonnage based fee, provided the reduced tonnage is indicated in the 'Remarks' column of the International Tonnage Certificate of such vessels. The Order of this Authority, however, indicates that the reduced GRT will be reckoned with for levy of 'Port Dues' only. The VPT has, therefore, requested to clarify whether the reduced tonnage is to be applied for pilotage and berth hire charges also besides Port Dues, since these are also GRT based charges.

4.1. The clarification sought by the VPT was examined with reference to the letter of the DG (Shipping). Para 1 of the letter refers to an IMO resolution, which advises the Ports to use the RGT of the tankers with segregated ballast capacity for assessing fees. The last para of the letter, however, gives an indication of charging port dues on the RGT. In this backdrop, the DG (Shipping) was requested to clarify the position.

4.2. The DG (Shipping) has, after several reminders, clarified that their circular in respect of RGT of the tankers with segregated ballast tank will apply to all the fees levied on the basis of tonnage.

5.1. In light of the clarifications furnished by the DG (Shipping), it was decided to consult all the Port Trusts and the user organisations, viz., the India National Shipowners' Association and the Shipping Corporation of India. The comments received from them are summarised below:

Mormugao Port Trust (MOPT)

- (i). We have no objection to charging all the vessel-related charges on the basis of the RGT of the tanker with segregated ballast tanks; however, the implementation of the same will result in a decline of the port revenue.

Kolkata Port Trust (KOPT)

- (i). The IMO's recommendation for reduction in tonnage based port charges, is mainly to promote ships with segregated ballast tank; and, encourage the ship-owners to adhere to the MARPOL Regulations for prevention of pollution at sea through concession in the Port charges.
- (ii). Though we fully support the cause, we are unable to accept the recommendation of the DG (Shipping) regarding calculation of all the vessel-related charges on the basis of reduced tonnage.
- (iii). Prevention of pollution at sea is primarily the responsibility of a ship owner. The recommendation of the DG (Shipping), however, puts almost all responsibility of pollution by tankers on the Ports.

- (iv). To share the responsibility of prevention of pollution at sea, with the trade, however, we feel that only Port dues should be calculated on the basis of the reduced tonnage; and, Pilotage & towage, Berth hire and Anchorage charges should continue to be levied on the original GRT of the vessel.
- (v). We have a facility at Haldia for slope discharge through a Ballast Water Treatment Plant built at a considerable cost.

Kandla Port Trust (KPT)

- (i). The DG (Shipping) circular has been implemented with effect from 6 August 1999 onwards in respect of all the GRT based charges and not for Port dues only.
- (ii). The circular was implemented without waiting for the formal approval of the TAMP as has been done in respect of various circulars issued by the DG (Shipping) from time to time.
- (iii). All the tankers arrived between 6 August 1999 and 5 May 2000 have already been billed according to the reduced GRT and if the effective date of the Order remains as 5 May 2000, then the short recoveries made from these parties have to be made good. Since the Authority is considering an amendment in its Order dated 15 March 2000, it is requested to issue a clarification regarding the date of applicability of the Order also at the time of amending the Order.

New Mangalore Port Trust (NMPT)

- (i). The Authority Order dated 15 March 2000 has already been implemented in respect of Port dues, Pilotage, Berth hire charges and all other tariff rates where GRT based charges are levied.

Mumbai Port Trust (MBPT)

- (i). The benefit of reduction in the charges on the basis of segregated ballast tanks is allowed for all the tonnage based fees, i.e. Port dues, Composite pilotage, Berth hire, Pier dues, Anchorage fees, Lighterage dues, etc., with effect from 30 August 1999 on the basis of the circular dated 5 June 1999 issued by the DG (Shipping), since the principle was adopted uniformly internationally.

Jawaharlal Nehru Port Trust (JNPT)

- (i). On a reference made to the Ministry of Shipping in this regard, the MOS has vide its Order dated 4 January 2000 instructed all ports to charge port dues based on the RGT which is implemented by the JNPT till date.
- (ii). The advice of the IMO is only a recommendation and not an instruction or order. It is left to each individual Member State to follow this recommendation or not. Since the MOS has issued an order that only port dues be levied on RGT, the JNPT had implemented this order.
- (iii). As a thumb rule, RGT of a tanker is about 20% less than the gross tonnage of the tanker. It will not be in the interest of the Port to charge all the port charges based on the RGT as its revenue will fall substantially especially for this port due to its large throughput of liquid cargo.
- (iv). The TAMP may also ascertain from other countries and their ports as to what methodology for levying vessel-related charges has been adopted by them. Since, this is an IMO Resolution and equally applicable to all the member countries, it would be worthwhile to examine this aspect before the TAMP takes a view.
- (v). The JNPT recommends only port dues to be levied on the RGT.

Shipping Corporation of India (SCI)

- (i). The port dues component comprises of a small fraction in the over-all port charges payable to a port for rendering services. Major components of port charges would include inward & outward pilotage and berth hire (pier dues). Therefore, if the reduced tonnage is applied only for port dues, the ship-owner will be penalised in two-fold form viz., (i) less freight due to reduced cargo carrying capacity; and, (ii) excess port charges in form of pilotage and berth-hire on non-earning tonnage of the vessel.
- (ii). The reduced tonnage must be applied for all the components of the port charges rather than penalising the ship-owners for promoting a positive step towards reduction of marine pollution.

Cochin Port Trust (COPT)

- (i). The proposed amendment to apply RGT of the segregated ballast tankers for all the vessel-related charges will have an adverse impact on the revenue. Amount of loss on this account will be substantial to the tune of Rs.900 lakhs per annum, which the port trust can ill afford with the present financial position. If the proposal of the DG (Shipping) is agreed, the port will have no option but to increase the tariff to compensate this loss.

Chennai Port Trust (CHPT)

- (i). Based on the instructions of the DG (Shipping), the CHPT has been levying the vessel-related charges comprising of the Port Dues, Pilotage, Night Navigation and Berth Hire Charges in the Marine Services Bills on the reduced GRT of the tankers with segregated ballast tank with effect from 11 August 1999.
- (ii). Further, as per the Authority Order dated 15 March 2000, it has been clearly mentioned that for oil tankers with segregated ballast, the RGT will be taken to be its gross tonnage. Accordingly, the RGT for all the vessel-related charges is adopted .
- (iii). The TAMP may only give a clarification to its order dated 15 March 2000 instead of amendment with prospective effect.

5.2. Comments from the remaining Ports and the INSA have not been received.

6. Since the earlier Order of this Authority dated 15 March 2000 is based on the advice rendered by the DG (Shipping), in normal course, there may not be any objection to amend the Order to incorporate the clarification given by the DG (Shipping) now. Nevertheless, it was found more appropriate to amend the Order dated 15 March 2000 after further examination of some of the associated issues raised by the KOPT about ports providing relief for something which is the responsibility of the vessel-owners, the quantum of financial loss to the Port trust due to adoption of the RGT in respect of all the vessel-related charges, etc. and the request of the JNPT about ascertaining information from some of the ports in the neighbouring countries which have implemented the IMO resolution in reference.

7. In this backdrop, the DG (Shipping) was requested to give us the benefit of their views on the following points:

- (i). Status of implementation of the IMO resolution at the ports in the neighbouring countries.
- (ii). The instructions given by the MOS vide its letter dated 4 January 2000 are not in line with the clarifications now sent by the DG (Shipping).

8.1. After several reminders and a discussion held by the Chairman(TAMP) with the DG (Shipping), the office of the DG (Shipping) has responded vide letter dated 15 October 2001. The points made by them are summarised below:

- (i). Any resolution that is adopted by the IMO assembly is expected to be honoured by the Members States particularly when the delegates of the concerned country had attended the Session and had not expressed any reservation at that time. Further, the tankers are

provided with segregated ballast tanks only from the point of view of prevention of pollution and protection of marine environment and not for any commercial gain to them.

- (ii). As regards the specific information from the neighbouring countries like Sri Lanka, Pakistan, Singapore, etc., it is understood that other Member States have already implemented the said IMO Resolution since long.
- (iii). As regards Ministry of Shipping's instruction being issued only in connection with port dues, no comments are offered.

8.2. In another letter dated 7 August 2002 received from the DG (Shipping), the following points are made:

- (i). No data from Karachi or Chittagong can be obtained. Whatever received from Colombo makes it appear that port dues are calculated on the basis of gross tonnage without deducting for SBT.
- (ii). Information from the Intertanko Website relating to matters on Segregated Ballast Tanks and the dues calculated in some countries have been furnished.
- (iii). Having sacrificed cargo carrying capacity spaces for cleaning ballast water, and having paid the shipyards more for new SBT tankers, the owners shall not be penalised by higher port costs.
- (iv). A circular on prevention of Marine Environment was issued and followed up with a communication in which the Chairman of the Port Trusts were requested to bring the contents of the said circular in notice to all concerned so that oil tankers with segregated ballast tanks are charged port dues as per the RGT.
- (v). It is requested that the Authority may take a decision in accordance with the Resolution of the IMO bearing No. A-747 (18). It is agreed that the resolution is a request from the IMO, but we would like to implement it.

9. The Ministry of Shipping has vide letter dated 4 January 2000 advised to all the major port trusts to levy port dues on oil tankers with segregated ballast tank as per their reduced gross tonnage.

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

- (i). The Order passed by this Authority on 15 March 2000 is very clear in conveying its extent of application and its effective date of implementation. The Order categorically states that reduced gross tonnage will be taken for levying port dues only. It also specifies that the amendment to this effect in the Scales of Rates will come into effect on expiry of 30 days from the date of publication of the Order in the Gazette of India. That being so, the question of issuing any further clarification regarding the date of applicability of the Order, as requested by the KPT does not arise at all.

Based on a circular issued by the Director General (Shipping), some of the ports had already commenced concessional levy on all the vessel-related charges in respect of oil tankers with segregated ballast tanks even before this Authority amended their Scale of Rates. Revision of Scales of Rates of a port trust by the port trusts on the basis of a circular issued by the Director General (Shipping) is not legally correct. The MPT Act empowers only the Tariff Authority and not any other organisation to settle tariff issues relating to the major ports. A port trust cannot change or alter any tariff notified in the Scales of Rates without a specific Order from this Authority. This being the correct legal position, the action by some of the major port trusts to implement the circular of the DG (Shipping) without waiting for this Authority to insert an appropriate amendment in their Scales of Rates can only be seen to have been taken at their risk and responsibility.

- (ii). It has been clarified by the DG (Shipping) that the IMO resolution is only a recommendation. The DG (Shipping) has, however, sought to explain that such a

resolution is expected to be honoured by the member States when the delegates of the concerned country who attended the Session had not expressed any reservation at the time of the passing of the resolution. We do not have the full details of the proceeding of the IMO Session in which the resolution in reference was adopted. We are also not aware whether all the major ports were consulted by the concerned body before it decided not to express any reservation when the IMO adopted the resolution. Such a consultation assumes significance since the port trusts are directly affected by the resolution.

- (iii). Some of the ports have now expressed their reservations to extend the concession to all the vessel-related charges. The argument of the KOPT about the ports providing relief for something which is primarily the responsibility of the vessel owners have some force. The responsibility of prevention of pollution of sea cannot, perhaps, be shifted to the ports. As regards pollution in the port area, each port trust makes substantial investment in anti-pollution measures any way.

The information provided by the JNPT that the RGT of a tank is about 20% less than the GRT clearly indicates the quantum of financial loss to the port trusts on this account.

- (iv). The information furnished by the DG (Shipping) shows that there is no uniformity across oil countries in implementing the IMO resolution. For example, Colombo Port does not allow any reduction in the GRT for SBT; many leading maritime countries like USA, Singapore, China, etc. do not allow any reduction in GRT; some countries allow reduction for SBT in identifying tariff items only and not on all the vessel-related charges; and, some countries do not consider reduced GRT of the SBT vessels but, allow a straight discount at a fixed percentage of charges payable. In such a global scenario, it is not necessary to consider whether we have to extend concession in all the vessel-related charges payable by the SBT vessels.
- (v). Major Port Trusts are self-financing bodies, which do not get any grant from the Government. The arrangement envisaged by the IMO is with a primary object of preventing pollution on high seas. As contended by some of the port trusts, it cannot be the responsibility of ports to fund or forgo its revenue for such activities. It will be a better arrangement if the Government provides direct reliefs to the vessels with the SBT, if it decides to do so. There is no reason for requiring the ports to lose their revenue by extending concessions.
- (vi). We have not received any communication from the Government indicating that adoption of IMO resolution by the major ports is a policy decision taken by it. The communication issued by the Ministry of Shipping to all the major ports requires them to charge port dues as per the reduced tonnage. We had earlier written to the MOS requesting them to ensure that instructions on tariff-related issues emanated only from the Tariff Authority. Distressingly, the MOS itself has also been violative of the arrangement envisaged. Be that as it may, the Government instruction on the subject to the port trusts is with reference to port dues only. In the absence of any other direction from the Government, this Authority is not inclined to extend the concession to all the vessel-related charges other than the port dues. Strictly speaking, even allowing concessions in port dues itself is a debateable issue.

11. In the result, and for the reasons given above, and based on a collective application of mind, this Authority finds that there is no case for review of its earlier Order dated 15 March 2000; and, therefore, the reduced gross tonnage of the oil tankers with segregated ballast will continue to be recognised only for the purpose of levying port due at all the major port trusts.

(S. Sathyam)
Chairman