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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 198

New Delhi, 27 September 2002

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 about fixation of wharfage rate for Copper Anode as in the Order appended hereto.

(S. Sathyam)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/8/2002 - TPT

The Tuticorin Port Trust

Applicant

ORDER

(Passed on this 20th day of September 2002)

This case relates to a proposal received from the Tuticorin Port Trust (TPT) about fixation of wharfage rate for Copper Anode.

1.2. The TPT has proposed to fix the wharfage rate for Copper Anode at Rs.55/- PMT based on the wharfage rate applicable at present for Copper Concentrate. In its proposal for a general revision of tariffs, the TPT has proposed a 10% increase in the existing tariffs. Accordingly, the wharfage rate for Copper Anode is proposed at Rs.61/- PMT in line with the wharfage rate proposed for Copper Concentrate.

2.1. The TPT has made the following main points in its proposal:

- (i). Copper Anode was shipped through this port for the first time in 1998. Since the rate for this cargo did not exist at that time, the wharfage was collected @ 0.3% advalorem, classifying the said cargo as 'Items not otherwise specified', applicable to break bulk cargo under schedule 'B'.
- (ii). The wharfage rate worked out to Rs.230/- PMT approximately by applying the advalorem rate. This appeared to be too high as compared to the wharfage rate available in schedule 'A' of the Scale of Rates for any other cargo (charged on tonnage basis).
- (iii). M/s. Sterlitie Industries (India) Limited (SIL) have requested the port to fix the wharfage rate for Copper Anode at Rs.42/- PMT by classifying it as "Items not otherwise specified" applicable for bulk cargo under schedule 'A' of the Scale of Rates.
- (iv). The existing wharfage rate for Copper Concentrate, which is a raw material, is prescribed at Rs.55/- PMT. In the light of the fact that the wharfage rate for a finished product cannot be lower than that for a raw material, the Port has proposed to fix the wharfage rate for Copper Anode at Rs.55/- PMT as applicable to Copper Concentrate.
- (v). The proposed wharfage rate of Rs.55/- PMT was approved by the Board of Trustees of the TPT on an experimental basis subject to approval of the TAMP for the proposed shipment (expected to be handled by M/s. Sterlite Industries during the first week of November 2001; but, not handled till the date of submission of this proposal). The differential amount, if any, arising due to fixation of wharfage rate by the TAMP was proposed to be paid by the shipper within 15 days from the date of notification of the Order by the TAMP in the Gazette of India.

2.2. This proposal was approved by the Board of Trustees of the TPT vide Resolution number 91 dated 3 November 2001.

3. Subsequently, the TPT vide its letter dated 13 February 2002 has sought approval of this Authority for fixation of the wharfage rate for Copper Anode with retrospective effect from 3 November 2001.

4. In accordance with the consultative procedure prescribed, the proposal of the TPT was circulated to various concerned bodies/representative bodies of port users for their comments. The comments received from them are summarised below:

Tuticorin Chamber of Commerce and Industry (TCCI)

The copper ore is imported as a raw material; and, if a raw material is converted into any finished product of greater refinement it has to be levied wharfage charges less than the Ore. The logic is inverted here to state that the rates cannot be less than what is imported.

Sterlite Industries (India) Limited (SIL)

- (i). At the present, road freight of Rs.1350/- PMT (for door to door) is being paid for transporting Copper Anode to its own plant at Silvassa; and, the transit time is merely 5 days.
- (ii). The port had levied an advalorem wharfage rate which worked out to Rs.230/- PMT on the first parcel of Copper Anode dispatched through the TPT in the year 1998. The wharfage rate levied was high; and, hence nothing was dispatched by sea thereafter. It is now exploring to transport Copper Anode by the sea route provided the wharfage charges are minimum.
- (iii). The wharfage charge is the same for ferrous and non-ferrous metals in the other major ports. The wharfage rate for Iron and Steel is prescribed as Rs.35/- PMT. Since no rate is specified for non-ferrous metal, Copper Anode may also be charged the same rate of Rs.35/- PMT, it being a non-ferrous metal. This will encourage movement of the cargo and bring in additional business and revenue to the port.
- (iv). Since the existing Scale of Rates does not prescribe any wharfage rate for non-ferrous metal, it had also requested the port to fix the wharfage rate for Copper Anode at Rs.42/- PMT as applicable to "Goods otherwise not specified".
- (v). A representation has been submitted to the TAMP for classifying Copper Concentrate under 'Ores and Minerals' for the purpose of charging wharfage rate. The wharfage rate for its raw material Copper Concentrate which is presently prescribed at Rs.55/- PMT shall, therefore, not be considered for Copper Anode.
- (vi). The Port may be directed to refund the differential wharfage collected @ Rs. 55/- PMT for the trial shipment of 1000 MT dispatched during January 2002.

Indian Chamber of Commerce and Industry (ICCI)

It endorses the proposal of the TPT to fix wharfage for 'Copper Anode' at Rs.55/- PMT.

All India Chamber of Commerce and Industry (AICCI)

- (i). The wharfage charge for both ferrous and non-ferrous materials are the same; and, hence, the same rate of Rs. 35 /- PMT for Iron and Steel may be considered for Copper Anode also.
- (ii). Copper Anode is a non-ferrous metal. Since the wharfage rate for non-ferrous is not prescribed in the SOR, Copper Anode may be classified as "Goods otherwise not specified" for which the tariff prescribed is Rs. 42 /- PMT.
- (iii). The wharfage for Copper Concentrate cannot be the basis for fixing wharfage for Copper Anode since the classification of Copper Concentrate is under dispute. The representation in this regard is under active consideration of the TAMP.
- (iv). Coastal transportation of Copper Anode through the TPT can be a reality only if the cost is economical.
- (v). The request of M/s. SIL to fix wharfage charge for Copper Anode at Rs.35/- PMT is justifiable. It meets the category classification; and, hence, may be conceded.

Federation of Indian Mineral Industries (FIMI)

Its members have no comments to offer on the TPT proposal.

5.1. The comments received from the various port users were forwarded to the TPT as feed back information.

- 5.2. In response, the TPT has offered the following main points:
- (i). The rates are based on cost of rendering services and the principle of what the trade can bear. The contention that a reduced wharfage rate will be an ideal proposition for a free port is not relevant.
 - (ii). The import duty and duty drawback are issues connected with policies of the Government. The Port's wharfage charges are not related to it at all.
 - (iii). The fact that the wharfage rates for ferrous and non-ferrous metals in other ports are one and the same is not relevant in its case as the cost of rendering the service and the composition and volume of cargo are different amongst various major ports. The comparison of the wharfage rates of Iron and Steel with that of the Copper Anode is, therefore, not acceptable.
 - (iv). The proposal for fixation of the wharfage rate for Copper Concentrate at Rs. 55 /- PMT was based on the rate prevalent in the Chennai Port Trust in 1997. Hence, the contention that the above rate is not acceptable does not merit any consideration.
 - (v). The proposal to reduce the wharfage rate of Copper Anode from Rs.230/- PMT (based on 0.3% advalorem) to Rs.55/- PMT by treating it as a bulk cargo reflects the desire of the port to improve the coastal trade. The request for a further reduction is not justified as the same will dilute the port's earnings to recover the costs.
 - (vi). The decision of the Authority with respect of the provisions of Section 48 and 49 of the Major Port Trusts Act, 1963 for refund of excess charges collected by the port will be complied with. This shall be done based on the rate approved by the Authority.

6. A joint hearing in this case was held on 6 June 2002 at the TPT. At the joint hearing, the following submissions were made:

Tuticorin Port Trust

- (i). Copper Anode was earlier charged @ 0.3% advalorem. This worked out to Rs. 230/- PMT which was considered high. This was proposed to be reduced to Rs. 55/-PMT so that it can go from Sterlite Industries (Tuticorin) to Silvasa by coastal vessels instead of by road.
- (ii). We will discuss about volume discount. May be something can be worked out for the next general revision.

M/s. Sterlite Industries Limited

- (i). Wharfage of Rs. 55/- PMT is not attractive now. We will continue with road transportation. But, accept the TPT proposal, it may become relevant to us at some stage.
- (ii). We can discuss with the TPT about increasing volume in the context of our expansion plans for the smelter plant. May be some volume discount arrangement can be worked out.
- (iii). Even today we are interested in volume discount. It is there in our representation. Why wait till the next revision?

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

- (i). The wharfage schedule of the TPT does not contain a specific entry for Copper Anode. In the event, this commodity has been subjected to payment of wharfage under the residuary provision in the wharfage schedule. Since the ad valorem wharfage rate for a residuary item is very high, the TPT has proposed a fixed per tonne wharfage rate for Copper Anode.

- (ii). The background explained in the proposal of the TPT shows that the SIL has been requesting for fixation of the wharfage rate at Rs.42 PMT for Copper Anode by extending the residuary rate available in the Scale of Rates for bulk commodities. It is not clear whether Copper Anode can be classified as a bulk commodity. Notwithstanding such doubt, it does not appear reasonable to go by a residual entry in the wharfage schedule when a specific entry for the commodity is proposed to be introduced.
- (iii). The SIL has quoted the practice obtaining at some other port trusts of giving the same treatment to ferrous and non-ferrous materials for the purpose of levying wharfage charges. There is nothing on record to show that such a practice flows from an authoritative decision of any competent authority. It may merely be a co-incidence at the other ports. Further, on several earlier occasions, this Authority has held that the norms, concepts, principles, and approach of tariff setting can (and, must) be uniform across the major ports; and, individual rates need not (and, cannot) be the same. That being so, treating ferrous and non-ferrous on the same footing for levying the wharfage rates at the TPT does not considered to be necessary.
- (iv). A representation filed by the SIL about classification of Copper Concentrate for the purpose of levying wharfage is being dealt with as a separate case. In that case, for stated reasons, this Authority could have rejected the representation of the SIL and ordered continuance of the existing wharfage rate for Copper Concentrate. But, because of a 'direction' from the Government about not adjudicating in individual cases, this Authority will not be able to finally consider that case. Notwithstanding this position, it has already been proposed, in the case relating to general revision of tariffs of the TPT, to introduce a suitable volume discount scheme for Copper Concentrate. Even under the proposed volume discount scheme, the wharfage rate for the first slab will continue to be the old rate i.e., Rs.55 PMT.
- (v). Even though, in its response, the TPT has argued that the proposed rate is based on cost of rendering services, it has not furnished any detailed costing to justify the proposed rate. Given the accounting system at the major ports, we also realise the difficulties in furnishing the cost details for one commodity which is not handled in any significant quantity. In this situation, this Authority may have to go by the reasonableness of the proposal and its own judgement. The argument of the TPT that the raw material (Copper Concentrate) is charged wharfage at Rs.55 PMT and the wharfage rate for a finished product cannot be lower than the rate for a raw material is found to be reasonable. Further, introduction of a per tonne rate of wharfage is in line with the suggestion of this Authority to have rates for more items based on weight/volume instead of being ad valorem.
- (vi). The facts available on record indicate that the traffic of Copper Anode at the TPT is negligible. When sufficient volume builds up, the issue of introducing a volume discount scheme for this commodity can be taken up for consideration.
- (vii). The TPT has requested for fixation of the wharfage rate with retrospective effect from 3 November 2001. This request has been made since it has already allowed Copper Anode handling at the proposed rates instead of continuing with the classification of the commodity under the residuary entry. This approach adopted by TPT has, in fact, benefited the shipper since the ad valorem rate would have been atleast four times higher than the proposed rate. In view of this position, this Authority is inclined to approve the proposal of the TPT with retrospective effect from 3 November 2001.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the proposal of the TPT for fixation of the wharfage rate for Copper Anode at Rs.55 PMT and amends the Scale of Rates of the TPT accordingly with retrospective effect from 3 November 2001.

(S. Sathyam)
Chairman