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Tariff Authority for Major Ports

G.No. 449

New Delhi,

29 November, 2017

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 disposes of the proposal received from Chennai Port Trust for re-introduction of half shift gang system for cargo handling operations as a modification to its existing Scale of Rates approved vide Order No.TAMP/22/2016-CHPT dated 17 September 2016, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/65/2017-CHPT

Chennai Port Trust

Applicant

QUORUM:

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- ((ii). Shri. Rajat Sachar, Member (Economic)

ORDER

(Passed on this 14th day of November 2017)

This case relates to a proposal dated 28 July 2017 received from the Chennai Port Trust (CHPT) for re-introduction of half shift gang system for cargo handling operations as a modification to its existing Scale of Rates approved vide Order No.TAMP/22/2016-CHPT dated 17 September 2016.

2.1. In the year 2014, the CHPT had, *interalia*, proposed introduction of a note in the Scale of Rates relating to charges for supply of cargo handling working and supervisory staff to the effect that the Stevedore will be permitted to indent gang for half shift instead of full shift for incoming and finishing vessels on permanent basis, by making payment of 50% of existing wages and 192% levy on 50% wages. The said note was proposed to be introduced by the Port then, on the ground that the Stevedores are reluctant to engage gangs for part shift workings as they have to pay full gang charges and that prescription of half shift charges will induce Stevedores to indent labour for half-shifts, thereby leading to generation of additional income due to handling of more vessels. As recorded in the paragraph no. 12 (xiv) of the order dated 28 November 2014, the CHPT then reported that the introduction of Half Shift Gang system in consultation with the recognised Trade Unions and Stevedores Association has resulted in increase of ship day output, reduction of idle hours and turn around time of vessels. In the long run, it would generate additional income due to handling of more vessels. Accordingly, this Authority vide its Order No. TAMP/19/2014-CHPT dated 28 November 2014 has, *interalia*, approved introduction of the note proposed by CHPT then.

2.2. However, subsequently, in the proposal submitted by CHPT for general revision of Scale of Rates, the CHPT stated that implementation of NIT Award in September 2015 resulted in reduction of labour cost by around 16% and keeping the stevedoring labour charges and the percentage of General Levy intact, the CHPT had proposed to discontinue the half shift gang charges. There was no pointed objection from the users for discontinuance of half shift gang charges. This Authority in its Order No.TAMP/22/2016-CHPT dated 17 September 2016, while disposing of the general revision proposal filed by CHPT, accorded approval to the discontinuance of half shift gang charges.

3.1. In this backdrop, the CHPT vide its letter No. A.O(SoR)/10611/2015/FR dated 28 July 2017 has filed a proposal for re-introduction of half shift gang system, based on the representations received from Stevedores. The main points made by CHPT are summarized below:

- (i). The Scale of Rates of CHPT prescribes time-rate wages and general levy of 192% for deployment of labour for cargo handling operations on 'per shift' basis. Based on the representations from the Stevedores, the system of Half-shift Gang charges was introduced for incoming vessels in April 2013 and subsequently extended for finishing vessels also from June 2013 after obtaining Board's approval. Accordingly, Stevedores were permitted to engage half-shift gangs on payment of 50% of the time rate wages and levy on arrival in respect of incoming vessels and at the time of sailing in respect of finishing vessels. Necessary provision in this regard was included in the Scale of Rates in Chapter-VII – Scale-1 – Stevedoring Operations under Note 2 (b), vide TAMP Order No.TAMP/19/2014-CHPT dated 28.11.2014, notified on 10.12.2014 vide G. No.358.
- (ii). At the time of general revision of Scale of Rates during 2016, the system of half-shift gang charges was dropped, taking into account the implementation of NIT

Award leading to drastic reduction in the manning scale and the revenue loss to the Port due to under utilization of the workers posted for half-shift for the remaining period of the shift. The proposal of CHPT for revision of SoR was hosted in the Trust's website and a joint hearing was also held by TAMP on 21.7.2016. Thereafter, TAMP vide Order No.TAMP/22/2016-CHPT dated 17.9.2016 approved the revised Scale of Rates of CHPT which came into effect from 09.11.2016.

- (iii). After implementation of the Scale of Rates, Chennai Port Stevedores Association (CPSA) requested to reconsider the decision and reinstate the concept of half-shift gang stating that the half-shift gang is one of the few initiatives that was wholeheartedly welcomed and appreciated by the stevedoring community. Also recognizing that re-introduction of half-Shift Gang System would contribute to reduction in TRT of the vessel and improve port efficiency, a proposal was placed before the Board in its meeting held on 23rd May 2017 to re-introduce the Half-Shift Gang system.
- (iv). The Board of CHPT has resolved to approve re-introduction of half-shift gang system for incoming and finishing vessels with effect from 5th June 2017 by issuing a Trade Notice and submit the proposal to TAMP for modification of the Scale of Rates. A copy each of the Board Resolution in this regard vide B.R. No.33 dated 23.5.2017 and Trade notice issued by the Traffic Manager vide P11/070/2017/T(P) dated 3.06.2017 have been furnished.

3.2. In view of the above, the CHPT has proposed to insert the following two notes after existing Note (1) under Schedule 4.1, Section-4 of the existing Scale of Rates of CHPT in connection with the re-introduction of half-shift gang system:

- “(2) The stevedore will be permitted to indent gang for half shift instead of full shift for incoming and finishing vessels, by making payment of 50% of time-rate wages and 192% general levy mentioned in the Total column of the above schedule.
- (3) Whenever the services of half shift gang is converting into full shift gang, the Stevedores shall pay one full gang charges over and above the half shift gang charges as a deterrent measure.”

3.3. The CHPT has also stated that the revenue at the proposed Scale of Rates was estimated at ₹ 550.95 crores as against the Annual Revenue Requirement (ARR) of ₹ 755.93 crores submitted during the general revision of SOR to TAMP. As such, proposed modification in the Scale of Rates to re-introduce half shift gang systems will result in further reduction of revenue to the Port and will, therefore, be well within the ARR as per the General Revision proposal.

3.4. Accordingly, the CHPT has requested this Authority to consider the proposal of the CHPT to re-introduce half shift gang with effect from 5 June 2017 and accord its approval for the above modifications in the Scale of Rates.

4. In accordance with the consultative procedure prescribed, the CHPT proposal dated 28 July 2017 was taken up on consultation with concerned users/ user organisations seeking their comments. In this connection, some of users/ user organisations viz., Chennai Port Stevedores Association, Southern India Chamber of Commerce & Industry, Hindustan Chamber of Commerce and Indo-Pacific Solution Pvt. Ltd. vide their e-mails dated 21 August 2017, 23 August 2017, 29 August 2017 and 07 September 2017 respectively have welcomed the proposal and have given their consent to the proposal of the Port.

5.1. Subsequently, as desired by CHPT, a copy of the CHPT proposal was forwarded to Chennai and Ennore Port Steamer Agent's Association (CHENSAA), for its comments.

5.2. The comments of CHENSAA dated 12 September 2017 was forwarded to CHPT for its comments vide our letter of even number dated 14 September 2017. The CHPT has responded vide its letter dated 23 October 2017. The comments received from the CHENSAA and comments of CHPT thereon are tabulated below:

Sl. No.	Comments of the CHENSAA	Reply furnished by CHPT
	It is requested to consider waiving the penal clause i.e. "in the event half shift	The purpose of introduction of half shift gang system is to improve the port efficiency

	<p>gang is converted into full shift gang the stevedores shall pay one full gang charge over and above the half shift gang charges as deterrent measure”, taking into account any unforeseen circumstances/ operational technical issues, if any that may arise, at last moment which may cause / push the Stevedores to convert half shift gang into full shift gang.</p> <p>Since stevedores will again be incurring additional cost by extending the half shift gang to full shift gang, if required, to complete the cargo operation, further imposing penal charges by the Port will lead to huge losses to us.</p>	<p>parameters viz., reduce the TRT of vessels. As engaging of half shift gang for finishing vessels is optional on the part of the Stevedores employers and when half shift gang is converted as a full shift gang, it will not only affect the TRT of the working vessel, but also increase the Pre Berthing Detention (PBD) of the waiting vessels which may wait for a specific berth. A Stevedore engaging a half shift gang should be well aware of the approximate time required to complete the cargo handling activities. If it requires extension of half shift to full shift, it shows the poor planning and inefficiency on the part of the Stevedore. Holding up of cargo operations due to operational technical issues is only remote and mostly only on account of inappropriate planning by Stevedores.</p> <p>If the provision is removed the stevedore may not plan their activities meticulously thus resulting in delay in vessel operation which will defeat the very purpose of introduction of half shift gang system.</p> <p>The said clause is included as a deterrent to prevent stevedore from acting in a casual manner while planning for a half shift. Further introduction of half shift results in financial loss to the Port also. Therefore, the penal provision is well justified.</p>
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6. With reference to the totality of the information collected during the processing of this case, the following position emerges:

- (i). The levy of half shift gang charges for cargo handling operations at Chennai Port Trust (CHPT) which was introduced in the year 2014 by CHPT with the approval of this Authority and withdrawn in the year 2016 with the approval of this Authority, is now being proposed to be reintroduced by the CHPT, based on the request reported to have been made by the Trade. Thus, the proposal of the port under reference is to reintroduce half shift gang charges instead of full shift charges for cargo handling operations in respect of incoming and finishing vessels at CHPT. The proposal of the CHPT has the approval of its Board of Trustees.
- (ii). Clause 5.4 of the Tariff Policy, 2015, stipulates that in case there are no objections from users for a proposal or a case, this Authority need not organize any joint hearing. Given that in the instant case, the user organisations have generally welcomed the proposal for re-introduction of half shift gang system, no joint hearing was felt necessary in the case in reference.
- (iii). The reintroduction of half shift gang system has been proposed by the CHPT on the ground that half-shift gang is one of the few initiatives that has been wholeheartedly welcomed and appreciated by the stevedoring community. Further, the port is of the view that re-introduction of half-Shift Gang System would contribute to reduction in Turnaround Time (TRT) of Vessel and improve port efficiency. As brought out above, in the consultation process carried out by this Authority, all the user organisations have welcomed the proposal and have given their consent for re-introduction of half shift gang system.

In this regard, it is relevant to mention here that though the Port has confirmed about reduction in the revenue to the Port on account of re-introduction of half shift gang

system, it has consciously taken a decision to accede to the demand of the trade and introduce the half shift gang system.

- (iv). Given that the proposal of the CHPT has the approval of its Board of Trustees and since the users have given consent to the re-introduction of half shift gang system as proposed by the CHPT, this Authority is inclined to accord approval to the proposal of the CHPT.
- (v). Levy of any charges by the Port which are covered by Section 48 of the Major Port Trusts Act, 1963, requires approval of this Authority. From the submissions made by CHPT, it is noticed that the CHPT, with the approval of its Board of Trustees, has already introduced the half shift gang system with effect from 5 June 2017 by way of issue of a Trade Circular much prior to filing its proposal on 28 July 2017. Thus, the CHPT has sought approval to the proposed amendment with effect from 5 June 2017 presenting a fait accompli situation to this Authority. It may not be unreasonable to expect a port to take advance action for modification of tariff or introduction of any new rates instead of presenting fait accompli situation before this Authority. The working guidelines provide for filing of the proposal for notification of rate for use of a new facility or a new service and levy of proposed rates on adhoc manner simultaneously.
- (vi). Orders of this Authority generally come into effect prospectively after expiry of 30 days from the date of Gazette Notification unless otherwise different arrangement is specifically mentioned in the respective tariff Orders. In exceptional cases, retrospective effect is given for reason to be recorded. In the case in reference, there is no objection from the users with regard to retrospective effect from 05 June 2017. In view of this position, this Authority is inclined to grant approval for retrospective levy of half shift gang charges with effect from 05 June 2017. However, the CHPT is advised to refrain from issuing Circulars to Trade intimating about change in the Scale of Rates and conditions, prior to this Authority according approval to the proposed changes.

7.1. In the result, and for the reasons given above, and based on the collective application of mind, this Authority approves to insert the following notes relating to half-shift gang system for incoming and finishing vessels under Schedule 4.1, Section-4 of the existing Scale of Rates of CHPT:

- “(2) The stevedore will be permitted to indent gang for half shift instead of full shift for incoming and finishing vessels, by making payment of 50% of time-rate wages and 192% general levy mentioned in the Total column of the above schedule.
- (3) Whenever the services of half shift gang is converting into full shift gang, the Stevedores shall pay one full gang charges over and above the half shift gang charges as a deterrent measure.”

7.2 The CHPT is directed to suitably incorporate the above provisions in its Scale of Rates.

7.3. The abovesaid provisions are deemed to have come into effect from 5 June 2017 and its validity will remain co-terminus to the validity of the existing Scale of Rates of CHPT upto 31 March 2019.

(T.S. Balasubramanian)
Member (Finance)