

No. 282

New Delhi, the 15 October , 2001

## Tariff Authority for Major Ports

### NOTIFICATION

In exercise of the powers conferred by Sections 48 and 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby rejects the representation of M/s. Ispat Industries Limited for reduction in the wharfage charges and enhancement of free days at the Jawaharlal Nehru Port Trust for export of HR coils and pig iron as in the Order appended hereto.

( S. Sathyam )

Chairman

### Tariff Authority for Major Ports

#### Case No.TAMP/54/2001-JNPT

M/s. Ispat Industries Limited

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Applicant

V/s.

The Jawaharlal Nehru Port Trust  
Applicant

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Non-

### ORDER

(Passed on this 20th day of September 2001)

This case relates to a representation received from M/s. Ispat Industries Limited (IIL) for reduction in the wharfage charges and enhancement of free days at Jawaharlal Nehru Port Trust (JNPT) for export of HR coils and Pig iron.

2.1. The IIL has made the following points in its representation:

- (i). Presently, it is manufacturing Sponge iron, Hot Rolled coils and Pig iron at its Dolvi Complex in Maharashtra and the entire exports as stated below are effected through the JNPT:

SI. No.	Description	Quantity exported (in Metric Tonnes)
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(i).	Sponge iron	5,45,254.00
(ii).	Pig iron (4 shipments effected during the period from 21 August 2000 to 31 March 2001)	72,726.00
(iii).	HR coils (8 shipments effected during the period from 30 September 1999 to 31 May 2000)	1,05,288.36 (Constitutes 50% of the total exports)

- (ii). The wharfage charges as per the existing Scale of Rates of the JNPT for export of HR coils and Pig iron are Rs.100/- PMT and Rs.90/- PMT respectively; and, it has paid an amount of Rs.1,70,74,444/- to the JNPT towards wharfage for its abovementioned 12 shipments of HR Coils/Pig iron.
- (iii). It is expected that the exports of HR coils shall gain momentum to reach a level of at least 35,000 - 50,000 Metric Tonnes (MT) per month; and, the export of pig iron is also likely to be around 25000 MT.
- (iv). The payment of such heavy wharfage/dwell time charges, if avoided shall give it an edge to be more competitive in the international market; and hence, in earning precious foreign exchange.
- (v). The wharfage/dwell time charges levied at the JNPT on the export cargo are higher than those levied at the Mumbai Port Trust (MBPT).
- (vi). This high incidence of wharfage, which comes to approximately 7% of the clearance cost, has become a matter of concern to its management.
- (vii). The JNPT has become more costlier on account of following additional problems:
- (a). Delay in the berthing of vessels at the JNPT refrains it to keep its commitment to the buyers.
- (b). The JNPT did not consider its request to grant waiver of the penal berth hire charges of Rs.6.77 lakhs relating to one of its consignments, which was levied due to idling of berth on account of transporter's strike; whereas, the MBPT did waive the demurrage charges in a similar situation to all the exporters /importers.

(c). Dwell time period of 15 days is not sufficient, as due to the voluminous nature of the cargo having high tonnage, the entire export quantity cannot be moved at one go; and, a maximum of 1500-2000 MT can be moved in a day. The cargo attracts the dwell time charges after a free period of 15 days till loaded onto the vessel, which are very high at the JNPT.

It had to pay around Rs.8.96 lakhs towards dwell time charges for (one of its consignment) loading of 4907.26 tonnes of HRC coils on a vessel MV GERTRUDE OLDENDORFF. The demurrage occurred due to unavoidable reasons like the inability of the importers to arrange vessel in time and transporters' strike.

(d). The MBPT levies only 40% of the wharfage tariff as demurrage charges per day after expiry of the free period for all export cargoes; and also, the free period allowed for storage of export cargo has been increased from one week to 30 days.

Had this quantity of 1.80 lakhs MT moved through the MBPT, wharfage charges would have been Rs.19.50 lakhs only.

3. In this backdrop, the IIL has requested the following:
- (i). To reduce the wharfage charges –
    - (a) for export of HR coils from Rs.100/- PMT to Rs.25/- PMT;
    - (b) for export of Pig iron from Rs.90/- PMT at Rs.20/- PMT;
  - (ii). To enhance the free time period from 15 days to 30 days for exports of its consignments; and,
  - (iii). To refund the penal berth hire charges.

4.1. In accordance with the procedure prescribed, a copy of the proposal was forwarded to the JNPT and all the concerned representative bodies of port users for comments. The comments received are summarised below:-

**Jawaharlal Nehru Port Trust (JNPT)**

- (i). The proposal of the IIL to reduce the wharfage charges for export of HR coils from Rs.100/- PMT to Rs.25/- PMT and for export of Pig iron from Rs.90/- PMT to Rs.20/- PMT does not seem to be reasonable and hence not acceptable because of following reasons:
  - (a). The existing wharfage rates are as of March 1997 without any revision. The difference in the rates of HR coils and Pig iron for imports and exports being Rs.115/- PMT & Rs.100/- PMT and Rs.105/- PMT & Rs.90/- PMT respectively indicates that due consideration to export promotion is already given.

(b). The charges are levied as per the existing Scale of Rates of the Port applicable to all the exporters; and, the port cannot discriminate between the exporters unless a particular level of traffic is guaranteed by the IIL.

A separate proposal for allowing rebate on exports of the IIL can be worked out mutually by the port and the IIL based on the guaranteed traffic assured by the IIL.

(c). Export promotion cannot be the only basis for proposing such a huge reduction in the wharfage charges; there are other factors also.

(d). Since the bulk terminal of the JNPT is already suffering losses, consideration for reduction of existing wharfage rates will be detrimental to the interest of the port.

(ii). The request of the IIL to increase the free period of the cargo from 15 days to 30 days does not seem to be justifiable and hence not acceptable on account of following reasons:

(a). The port is already allowing a free period of 15 days for export cargo and 7 days for import cargo, giving due consideration to the exports.

(b). The total dwell time charges paid by the IIL on export of 1.80 lakhs MT of cargo are Rs.14,77,935/- and the average comes to Rs.8.21 PMT, (as against Rs.12419.32 PMT FOB price mentioned by the IIL) which seems negligible and confirms that the existing free period is sufficient.

(iii). The claim of the IIL for refund of dwell time charges of Rs.8,95,937/- levied on the vessel MV GERTRUDE OLDENDORFF is not justified as the vessel carrying the subject cargo (i.e. steel coils) was berthed at JNPT on 21 December 1999, whereas the transporters' strike had taken place during the period from 20 October 1999 to 27 October 1999.

The delay in arranging the vessel for the subject consignment by the foreign buyer is not a valid reason for grant of waiver of dwell time charges levied by the port and hence not acceptable.

(iv). The claim of IIL for refund of penal berth hire charges of Rs.6,77,000/- for vessel M V Jagrani does not seem justifiable; and hence, not acceptable on the following grounds:

(a). The actual berth hire charges paid for the said vessel were Rs.3,84,845/- and not Rs.6,77,000/- as mentioned by the IIL.

(b). The movement of the cargo was not substantially affected by the said transporter's strike, (from 20 October 1999 to 27 October

1999) as the above stated vessel was berthed on 26 October 1999 and sailed on 30 October 1999. The entire cargo weighing 12081.33 MT of HR coils was brought into the port during the period from 19 October 1999 to 30 October 1999; and, only 8153.94 MT (from out of the total quantity of 12081.33 MT) was brought into the port during the said strike period.

The main reason of delay in loading of steel coils was not strike, but the poor supervision of the IIL at the jetty.

(c). The penal berth hire charges were levied as per the notified tariff for stoppage of loading operations and there is no provision in the existing Scale of Rates for waiver of the berth hire charges for reasons like transporters' strike, but for the reasons attributable to the port.

#### **Indian Merchant Chamber (IMC)**

The IMC has mentioned that it has no comments to offer.

#### **Bombay Custom House Agents' Association (BCHAA)**

(i). It does not agree with the submissions made by the IIL with regard to maintenance of parity amongst various Ports with respect to wharfage and other handling charges. The JNPT has been constructed by incurring huge capital costs, which is not the case with MBPT.

The JNPT was conceived and designed to handle the containerised cargo in an automated mechanised manner; and, has been adapted to handle the bulk cargo through Conveyor Belts System and Silos, developed at a large capital expense.

(ii). The JNPT can consider a flat rate of Rs.50/- per tonne for handling HR coils and Pig iron assuming that approximately 50,000 tonnes of cargo shall be exported by the IIL and the same is expected to increase by leaps and bounds.

(iii). The request of the IIL to increase the free time from 15 days to 30 days is not a bonafide request since exporters/importers must ensure that the shipments are effected within the shortest period possible; and, shall not use Port premises as a warehouse. Hence 15 days time period is sufficient to handle a shipment of 50,000 tonnes parcel size.

4.2. The Bombay Chamber of Commerce & Industry, the Western India Shippers Association, and the Mumbai and Nhava-Sheva Ship Agents Association have not sent any comments.

5. A joint hearing in this case was held on 4 September 2001 at the JNPT Office in Mumbai. At the joint hearing the following submission were made:

**M/s. Ispat Industries Limited (IIL)**

- (i). The IIL exports many products, mostly through the JNPT. The JNPT must recognise this and give some special consideration.
- (ii). The MBPT gives 30 days free period, whereas the JNPT gives only 15 days. The free period must go up.
- (iii). The dwell time charges at the JNPT are higher if compared to other ports.
- (iv). 50% of the HR coils are exported through MBPT. This is because of inadequate free time available at JNPT.
- (v). The penal berth hire charges were suffered due to the delays occurred at the time of transporters strike. Please check our details again.
- (vi). We do not export HR coils through barges. We had only made some parallel arrangements to move them from Dharmatar port; but, never operated.

**Jawaharlal Nehru Port Trust (JNPT)**

- (i). The dwell time given is adequate and all cargoes are moving smoothly. If the 'transit terms' does not suit the IIL, it can opt for 'rental terms'.
- (ii). Penal berth hire is fully justified.
- (iii). The IIL is not entitled to 'Priority berthing', even then we help them out to avoid pre-berthing delays.
- (iv). Wharfage was fixed 4 years ago; last revision was done in 1997. There will be a scope for increase, not for reduction.
- (v). Sufficient space has been kept for HR coils and there can be no legitimate complaint about dwell time.
- (vi). We had to spent Rs.7 crores to maintain our anchorage for IIL vessels to come.

6. With reference to the totality of information collected during the processing of this case, and based on the arguments advanced at the joint hearing, the following position emerges:

- (i). (a). The Petitioner, M/s. Ispat Industries Limited (IIL), is not an insignificant user of the JNPT. Given the increasing trend of export of HR Coils and Pig Iron, the IIL can be said to be emerging as a major user of the JNPT.

- (b). The Petitioner's claim about preferring the JNPT to the Mumbai Port Trust (MBPT) is not really borne out by facts. The IIL does still use the MBPT during the fair weather period; the JNPT is preferred more during the rough monsoon time. This position may well change in the near future; but, that will be with reference to overall economic factors governing the project and not only attributable to port-level performance.
- (ii). References by the Petitioner to international market conditions governing their exports are not very relevant. A Port Trust cannot be expected to fix tariffs with reference to the economics of businesses of different users. If this is to happen, then, when conditions are favourable for exports, exporters will have to be required to share the benefits with Port Trusts! Tariff, it has to be recognised, is a 'fee' for a 'service'. It has to be ensured that there is a *quid pro quo* between the 'fee' and the 'service'.
- (iii). The Petitioner has requested for a reduction of the wharfage –
- (a) for export of HR Coils from Rs.100/-PMT to Rs.25/- PMT; and,
- (b) for export of Pig Iron from Rs.90/- PMT to Rs.20/- PMT.

This request has been made in the shape of a bland plea. There is no properly formulated proposal for the same. The Petitioner will have to make out a reasonable case with proper justifications and details in support.

As has been stressed by the JNPT, it is relevant here to recognise also the fact that wharfage rates in the JNPT were last fixed in March 1997. Given the prescribed 2-year tariff-cycle, this rate can surely be said to be overdue for review/ revision. In the backdrop of the normal trend of costs, in any review/revision, a reasonable expectation will be for these rates either to go up or (at least) to stay where they are; it will not be reasonable to expect them to go down.

- (iv). The IIL has stressed the point that it exports many products in substantial quantities through the JNPT. This indicates that the IIL expects some reductions in the wharfage out of a special consideration of this position. Seen in this light, if the request is for concessions with reference to the quantum of traffic, then, the Petitioner must formulate a proposal for a volume discount. The concept of volume discounts is not new to Port Trusts; and, significantly, in this case also, the JNPT has indicated a readiness to negotiate such an arrangement.
- (v). The request for enhancement of the free period from 15 days to 30 days as an encouragement to exports cannot be seen as a new issue having any particular force. The JNPT already gives special consideration to exports by granting 15 days' free period as against 7 days for import cargo. Also, in 11 of the 12 shipments cited, cargo

operations were completed well in time by the Petitioner. And, as has been highlighted by the JNPT, the dwell time charge paid by the IIL on its export shipments on an average comes to about Rs.8.20 PMT (as against Rs.1,419.32 PMT FOB price) which is negligible. This shows that the dwell time given is not inadequate.

(vi). As regards the request for revision of penal berth hire charge recovered, it is relevant to note that the penal charge was levied strictly in accordance with the notified tariff i.e., for stoppage of loading operations. In this case, the following issues can be seen to be relevant:

(a). According to the accepted Guideline, users are not to be held responsible for delays caused by a Port Trust.

In this case, the JNPT was not responsible for the transporters' strike; and, it had no hold over the transporter concerned to eliminate the delay. That being so, it will not be reasonable to attribute the delay to the JNPT.

(b). As can be seen from the details furnished by the JNPT, only a part of the shipment in reference was brought into the Port during the strike period; the other part was not affected by the strike at all. Apart from the fact that, as already stated, the accepted Guideline recognised only delays caused by the Port, the main reason of delay in loading of steel coils in this case has been poor supervision at the jetty by the IIL.

(c). There is an ambiguity in the information given in the documents to suggest that the Petitioner was to aggregate the export cargo through barges and not through trucks. If this were to be so, then, the transporters' strike would not have been relevant to this case at all. But, it was clarified at the joint hearing that the Petitioner had only planned some 'parallel' arrangements to move HR Coils through barges; but, as it happened, the cargo was moved only through trucks. Nevertheless, as earlier stated, since the Port is not to be held responsible for delays caused by third parties engaged by the users, the reference to the transporters' strike cannot be said to be of any consequence.

7.1. In the result, and for the reasons given above, and based on a collective application of mind, the petition filed by the IIL cannot be said to hold any force; and, is accordingly rejected.

7.2. As has been indicated in paragraph 6.(iv) above, the IIL is advised to negotiate with the JNPT to formulate a proposal for introduction of volume discounts. If and when that happens and a proposal therefor is received from the JNPT, it will be taken up separately for consideration. There is no need to keep this case pending with reference to such an uncertain contingency.



( **S. Sathyam** )

Chairman

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