

Tariff Authority for Major Ports

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 fixes the charges for inter-transfer of POL products between the Dirty Ballast tank at Old Kandla and Hindustan Petroleum Corporation Limited (HPCL) terminal at Kharirohar through the pipelines of the Kandla Port Trust, as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No.TAMP/1/98 - KPT

The Kandla Port Trust (KPT)

- - -

Applicant

ORDER

(Passed on this 14th day of February 2001)

This case relates to a proposal submitted by the Kandla Port Trust (KPT) about fixation of charges for transfer of POL products from the Dirty Ballast Tank (DBT) in Old Kandla to the Hindustan Petroleum Corporation Limited (HPCL) terminal at Kharirohar and vice versa through 12" dia pipelines owned and operated by the Port.

2.1. In its proposal, the KPT has mentioned the following points:

- (i). The KPT, since November 1995, has been transferring POL products from the DBT situated at the Oil Jetty in Old Kandla to the HPCL Terminal at Kharirohar and vice versa through the Port Trust's 12" dia pipeline on the basis of requisitions given by the Oil Companies.
- (ii). For the above said transfer of POL products, the Port Trust incurs expenditure only on operation of the valves on the pipeline cited. The pumps installed by the Oil Companies are being utilised for inter-transfer of POL products.
- (iii). Based on calculation of hire charges considering Replacement cost of assets, Depreciation, Return on investment and other operating expenditure, the rate comes to Rs.10,915/- per shift of 8 hours or part thereof.
- (iv). The KPT Board has, however, approved a charge of Rs.10,800/- per shift of 8 hours or part thereof in its meeting held on 26 May 1998.

2.2. In this backdrop, the KPT has requested this Authority to approve the charges for transfer of POL products between the said two locations through KPT pipelines at Rs.10,800/- per shift of 8 hours or part thereof.

3. The HPCL was the only user of this facility. The matter was referred to the HPCL. It has opposed imposition of the said charges for the following main reasons:

- (i). The HPCL entered into a Memorandum of Agreement (MOA) on 10 November 1995 with M/s. Jaisu Shipping Co. Pvt. Ltd., to utilise their bunkering facilities in Kandla for bringing in HSD. The KPT has already charged wharfage at the rate of Rs. 35/-per MT for the entire product that has been transferred from the barge to the dirty ballast tank and then to the HPCL terminal through the port's pipeline. The proposed inter-transfer charges will amount to charging the user twice.
- (ii). The proposal for fixation of charges cannot be with retrospective effect. It has to be with prospective effect only.
- (iii). Discharge of product from barges into the Dirty Ballast Tank has improved the turnaround time of the barges, thereby increasing revenue to the KPT.
- (iv). The KPT has not created additional facilities like additional jetties, increase of draught, night navigation, etc., to meet the requirements of increasing POL traffic. In the light of inadequate facilities, the HPCL had to opt for barge discharging method, to maximise HSD throughput.
- (v). The cost calculation presented by KPT is excessive.

4.1. A joint hearing in this case was held in New Delhi. At the Joint hearing, the following submissions were made by the HPCL:

- (i). M/s. Jaisu Shipping Co. Pvt. Ltd., was a lessee of the KPT and had the facility of barges and the Dirty Ballast Tank.
- (ii). This was not a routine operation but limited to the period between October 1995 to August 1996.
- (iii). The HPCL was paying wharfage. There was dispute only about the Inter-transfer Charges (ITC); and, only about the ITC through the Dirty Ballast Tanks at that.
- (iv). The HPCL was not aware of the additional charge. This additional charge has also not been sanctioned by the Government. Had the HPCL known it earlier, they would not have entered into an agreement with M/s. Jaisu Shipping Co. Pvt. Limited.
- (v). In the 1995 notification, there is no mention of the dolphin or the Dirty Ballast Tank.
- (vi). Even the KPT's letter of January 1996 was about the 1995 Gazette Notification. It had nothing to do with this special operation.
- (vii). The HPCL had a package deal with M/s. Jaisu Shipping Co. Pvt. Ltd. The KPT should have told the HPCL clearly about ITC. It was a crisis situation and the HPCL was racing against time in view of shortage in North India. The Government of India also ordered emergency operations. Therefore, in addition to the regular jetty, the HPCL had also to use the dolphin.
- (viii). The dolphin is a barge of about 2500 KL capacity whereas the Dirty Ballast Tank has a capacity of 4000 KL. It was a continuous operation. It was not a case of transfer from a regular storage facility. It was a device to provide for an emergency for a low

tide when the barge might have to go back at once. In the case of Fixed Storage Tanks, whole tanker is unloaded and then the pumping starts.

4.2. The KPT has made the following submissions:

- (i). Wharfage is for use of the jetty / dolphin.
- (ii). There is an additional charge for the inter-transfer activity.
- (iii). Government sanctioned in 1995 inter-transfer charge and applied it retrospectively.
- (iv). The HPCL takes from jetty / dolphin to their storage place through the intermediary Dirty Ballast Tank (others take it directly). Even if the HPCL took it directly, they will have to pay wharfage. Only, there will be no inter-transfer charge.
- (v). The dispute is about inter-transfer charge (ITC) and not about wharfage.
- (vi). The 1995, Government sanction was for ITC. It did not cover Dolphin. The proposal now is about the Dolphin.
- (vii). The HPCL knew that it had to pay ITC. In January 1996, the KPT had called a meeting and advised the HPCL accordingly.
- (viii). The HPCL took permission from the OCC. The OCC permitted it but the HPCL was still not paying. The HPCL was required to deposit in advance. The Port has had to recover dues from the shipping accounts of the HPCL.
 - (ix). Special permission was given for this operation.
 - (x). The time limit on account of tide applies only to Dolphin and not to regular oil jetty.
- (xi). If there was a doubt, the HPCL should have asked the KPT. The KPT should not be blamed for not clarifying the position about ITC.
- (xii). The agreement says that the HPCL shall pay whatever charges are in vogue and whatever are levied in future.
- (xiii). For barge operation at Dolphin, dirty ballast back up is inevitable. It is a definite storage point. It is not a continuous process.
- (xiv). Special pipeline was laid for which permission was given to the HPCL. M/s. Jaisu Shipping Co. Pvt. Ltd., may have laid it as the Contractors of the HPCL.

5.1. After the joint hearing, the KPT was requested to supply the following information / clarifications:

- (i). Whether the proposal sent to the MOST in 1995 did make a request for giving retrospective effect to it.
- (ii). Whether the Order passed by the Government did specifically say that it would have retrospective effect.
- (iii). Whether the ballast tank was being used after August 1996.

(iv). The KPT to work out revised costing, a copy of which will be sent to the Authority as well as to the HPCL.

(v). Whether the cost of the pipeline has been fully depreciated.

(vi). Whether it will be justified to take the capital value of the pipeline at the current price.

5.2. In its reply, the KPT has submitted the following information / clarifications:

(i). Even though Board did not specifically approve the charges to be recovered with retrospective effect, since the work was carried out prior to Notification, the charges were recovered. Even prior to year 1988 inter-transfer charges were recovered at Rs. 7.00 per ton as per the approved scale of rates. The Board Resolution was approved by the Ministry and published in the Extraordinary Gazette of Government on 29.09.1995.

(ii). The Order passed by the Government did not specifically say to recover the inter-transfer charges from retrospective effect.

(iii). No inter transfer of POL products from Dirty Ballast tank to HPCL's tank at Kharirohar took place after 22 August 96.

(iv). Revised costing incorporating the booster charges will be forwarded after approval by the KPT Board.

(v). Though the pipeline has outlived its life and fully depreciated, depreciation is to be considered and that too at the current prices based on the following factors:

(a). As per the costing principle, even though the life of the asset is expired, the asset is still in use. Depreciation shall be considered for calculation of cost/rate of hire charges.

(b). The life of the asset is extended by incurring huge O&M expenditure and keeping the pipeline in working condition. The Port has incurred huge expenditure on keeping the pipeline in working condition during the years 1993-94 to 1997-98. It is, therefore, necessary to take the life of the pipeline at the current prices even after depreciation.

6.1. In its revised proposal, the KPT has suggested a charge of Rs.11,400/- per shift of 8 hours or part thereof as against the original proposal of Rs.10,800/- per shift of 8 hours or part thereof by increasing the staff and stores charges. In addition, separate charges for diesel / electric pumps of different horsepower have also been included. The KPT has explained that the revision of proposed charges have been made in the light of an audit objection regarding non-inclusion of charges for utilisation of Booster pumps in its earlier proposal. In working out the charges, interest @ 10.5% on original capital cost, return at 6% on original capital cost, depreciation at present day cost, cost of repairs and renewals (@ 3¹/₃%, of the present day cost), incidental charges (@ 15%, of repair and renewal cost), and supervision charges (@ 20% on repairs and incidental charges) have been taken into consideration.

6.2. The revised proposal of the KPT is given below:

| Sl. No. | Name of Plant | Unit | Rate (Rs.) |
|---------|--|----------------------------|---------------|
| 1. | Transfer of POL products from DBT at Old Kandla to HPCL Terminal at Kharirohar and | Per shift of 8 hrs.or part | 11,400/- |

| | | | |
|----|---|---------------------------|-------|
| | vice versa through 12" dia pipeline. | thereof. | |
| 2. | Hire charges for diesel operated pump 600 HP connected with 12" dia pipeline. | Per hour or part thereof. | 650/- |
| 3. | Hire charges for electric pump 519 HP connected with 12" dia pipeline. | Per hour or part thereof. | 400/- |
| 4. | Hire charges for electric pump 519 HP connected with 16" dia pipeline. | Per hour or part thereof. | 400/- |

7. The revised proposal was sent to HPCL for their comments. In the meanwhile, another joint hearing was held on 20 September 99 at the KPT premises. At the joint hearing the following submissions were made:

The Hindustan Petroleum Corporation Limited (HPCL)

- (i). Wharfage in this operation includes charge for use of pipeline. The charge of Rs.35/- PMT from Jetty to HPCL terminal includes 10 kms. of pipeline.
- (ii). Due to insufficiency of the KPT installations to carry their product from Dolphin to HPCL terminal, the HPCL were compelled to enter into a contract with M/s. Jaisu Shipping Co. Pvt. Ltd.
- (iii). Since no additional service was provided by the Port, there is no case for additional charge. On the contrary, the HPCL was forced to incur additional expenditure. Therefore, HPCL should be given some refund.
- (iv). The KPT might own the DBT. But, it was leased by them to M/s. Jaisu Shipping Co. Pvt. Ltd. M/s. Jaisu Shipping Co. Pvt. Ltd., paid the KPT for use of the DBT. The HPCL have entered into a separate agreement with M/s. Jaisu Shipping Co. Pvt. Ltd., for use of the DBT. There is, therefore, no 'transfer' to justify Inter-transfer Charges (ITC).
- (v). Since this operation speeded up the turnaround time of vessels, the KPT was benefited.
- (vi). The HPCL had not received any 'notice' about the additional charge at the start of the operations.
- (vii). The KPT had not taken the Central Government sanction. As such, the rate claimed by the Port was null and void.
- (viii). The principle adopted for accounting / costing is erroneous.
- (ix). The KPT has claimed 'depreciation' even after the investment is fully paid up.
- (x). The KPT has calculated depreciation at present day cost – 40% escalation – which is too steep. Basis for this has not been explained by the Port.
- (xi). Even the (objectionable) costing has been unilaterally revised by the Port.
- (xii). The KPT has retained HPCL money. The KPT may be ordered to refund it. Payments, if necessary, will be made after TAMP takes a decision.
- (xiii). The KPT relies on clauses 15 and 26 of the letter of allotment. Clause 15 covers only wharfage. It does not cover ITC.

- (xiv). The HPCL was unaware of the additional charge. Apparently, the KPT itself was unaware. Otherwise, the allotment letter would have mentioned it.
- (xv). Clause 26 talks of 'rules and regulations'. ITC can not be covered by that.
- (xvi). Rs.35/- PMT covers wharf to terminal situated 10 kms. away. If HPCL go to an intermediate tank at a distance of 200 mtrs., how can the KPT still collect Rs.35/- PMT and an additional ITC?
- (xvii). KPT's costing must cover only the pipeline upto DBT and not the 10 km. pipeline.

The Kandla Port Trust (KPT)

- (i). The HPCL has saved demurrage due to the present operation. The HPCL got more material for keeping their refinery running.
- (ii). For ITC, transfer of title is not relevant. 'Operation of valves' is necessary. Indian Oil Corporation pays ITC for Jetty to FST to Kharirohar although all tanks are owned by it.
- (iii). M/s. Jaisu Shipping Co. Pvt. Ltd., took DBT for bunkering for this operation. HPCL used the KPT pipelines and the KPT have to operate valves. ITC is for the operation of valves and utilisation of booster pumps.
- (iv). It is not a continuous operation. The barge discharges into the DBT. Thereafter, pumping from DBT to HPCL starts and therefore, the ITC.
- (v). Resident Audit Officer has objected for not charging the ITC.

8.1. After the joint hearing, the HPCL was given three weeks time to file written submissions especially covering the points about objectionable costing done by the KPT. In its written submissions, the HPCL has made the following points:

- (i). The claim of the KPT should be rejected as the rate was not sanctioned by the Central Government and published by the Board in Official Gazette under Section 52 of the MPT Act.
- (ii). There is no element of *quid pro quo* for the fee being charged by the KPT for services rendered by asking for charges for use of 12" dia pipeline. The HPCL is being made to pay ITC only for additional usage of pipeline from Dolphin Jetty to DBT for which only a pipeline of 200 mts. length and associated boosters, valves are used additionally. The extra service, if any, are only in respect of the 200 mts. length pipeline and associated valves and not the entire 10 km. length 12" dia pipeline (which usage would any way have been included in the Wharfage being charged at Rs.35/- PMT).
- (iii). The KPT cannot charge interest on original capital cost alongwith return on original capital cost plus repairs, maintenance and other overheads of the 12" dia pipeline and at the same time, charge HPCL proportionate depreciation on replacement cost at the present day prices. This is against all accounting norms and principles. Assuming, though not admitting that HPCL is to be charged for use of the 12" dia pipeline, the depreciation on replacement cost cannot be charged.
- (iv). The original capital cost has not been provided by the KPT. Similarly, the present day cost of the pipeline has also not been provided and no proof has been submitted for the same. The original capital cost and the present day cost mentioned are merely some figures without any substantive documents.

- (v). The present day cost has been worked out by adding an element of 40% escalation per year, which is very high. It is well known that the entire steel industry is in a state of recession for the last 10 years or so and escalation in rates, if any, can at best be 2% to 3% per annum and certainly not 40% per annum.
- (vi). The supervision charges are duplicated under fixed cost at 20% of repairs, renewals and incidental charges and also appears in staff and stores charges. This cannot be permitted and should be disallowed. Moreover, the supervision charges at 20% is more than the general accepted norms or overheads being only 10% component of the cost as per recognised costing principles.
- (vii). The incidental charges mentioned are to be disallowed as it has not been clarified as to what these incidental charges are.
- (viii). The management and general administration overheads of 20% is too high as normally 10% of the cost is taken as the management and general administration overheads.
- (ix). The life of the pipeline has been shown as 20 years for the purpose of depreciation which is incorrect as can be seen from the fact that the present pipeline itself has already survived 23 years. To that extent, the depreciation cost is also incorrect.
- (x). The costing principles of charging on the basis of usage in time i.e., for particular shifts or hours for use of the 12" dia pipeline is different from the wharfage charges which is being charged on per ton basis and hence there is no uniformity. For this reason also, this method of calculation should not be permitted for fixing tariff.

8.2. The KPT has furnished on 14 March 2000 its observations on the comments made by the HPCL. The comments of KPT are summarised below:

- (i). The KPT is well aware of the requisites of prior sanction of tariff under Section 52 of Major Port Trust Act. In this case, the services were required to be rendered immediately to the HPCL due to oil crisis and sanction of Scale of Rates would have taken a lot of time. Therefore, "provisional inter-transfer charges" of Rs.10,820.00 per shift of 8 hours or part thereof based on already approved Scale of Rates for inter-transfer charges published in the Gujarat-Government Gazette of October 1996 has been recovered. The rate for the inter-transfer charges for transfer of POL products from Dirty Ballast Tank at old Kandla to HPCL terminal at Kharirohar and vice versa through KPT's 12" dia pipeline after getting it approved from the Board had been sent to TAMP for approval. Once the services has been rendered, the HPCL is bound to make the payment to the KPT.
- (ii). The vessel has to pay Rs.35/- per tonne as the wharfage charges for berthing the ship alongside oil jetty along Dolphin irrespective of the distance. M/s. N.P. Patel, storage tank, M/s. Kesar Enterprises Storage Tank are also paying the same wharfage of Rs.35/- per tonne. The operation of unloading the daughter ship from Dolphin to Dirty Ballast Tank comes under wharfage charges and subsequently shifting of product from Dirty Ballast Tank to HPCL Terminal at Kharirohar falls under Inter Transfer Charges.
- (iii). Interest on original capital cost alongwith return on original Capital cost plus repairs, maintenance and over heads etc., has been recovered according to the Government guidelines issued for the fixation of hire charges.
- (iv). Depreciation on the replacement cost has been made upon the guidelines of MPRC's Report and also upon the TAMP's guideline. Cost of the pipelines which were considered in costing the charges, were collected from the present market rates

which comes out to Rs. 4,13,90,000.00. [The details of original cost on the basis of current market value has been annexed with the comments of the KPT.]

- (v). Even if a 40% escalation per annum is considered on the original capital cost with life span of 20 years and also the substantial amount of repair and maintenance cost for number of years is taken into account, the present day cost is more than justified.
- (vi). The supervision charges at two places and hire charges for the equipments have been fixed as per the policies made by Government. Hence KPT can not charge less on its own. The KPT charge supervision charges @ 20.75% for the works and 20% for the fixation of hire charges of the equipments, whereas the CPWD ceiling limit for supervision charges is 23 ¾%.
- (vii). Incidental charges and the Management and General Administration overheads are recovered as per the Government guidelines and formats.
- (viii). Due to proper maintenance and care, the life span of the pipeline has increased even though the life span of the pipeline has been shown as 20 years. Depreciation of the present cost has been taken as per Government approved format.
- (ix). The hire charges are worked out on shift basis for inter-transfer charges from FST to oil companies at Kharirohar and between various companies terminal at Kharirohar approved by Government vide extraordinary Gazette of Gujarat Government. On the same analogy inter-transfer charges have been levied on the HPCL.
- (x). Wharfage charges are based upon the volume factor and charges for transfer of POL products is based on time usage factor and therefore can not be compared. Beside this, wharfage charges are based upon per tonne unit whereas transfer of POL products charges are value based, which implies that the prices are set relative to value of services rendered and perceived ability and willingness of user to pay.

9. Based on the records available, and with reference to the totality of information collected during the processing of this case, the following position emerges:

- (i). It was a one time operation that had taken place from 10 Nov. 1995 to August 1996. This operation had to be done to meet the shortage of Diesel supply in North India and in view of the Govt. of India directive to speed up such supplies.
- (ii). The HPCL had already paid wharfage on cargo landed. The proposal is about fixing tariffs for inter-transfer of HSD from the dirty ballast tank to Kharirohar through the KPT pipelines. The HPCL has disputed this proposed charge arguing that such transfer should be seen to be covered by the wharfage paid.

The KPT wharfage schedule does not contain any condition that wharfage levied on POL products covers transfer of products through the Port's pipelines to storage tanks of oil companies at Kharirohar. The KPT argument that the HPCL had used KPT pipelines to transfer POL products to its storage tanks, which made them liable to pay additional charges merits consideration. In the absence of a specific condition in the Scale of Rates, wharfage levied can be seen to cover the handling of cargo at berth / jetties. Lateral movement thereafter will be a separate activity and if Port's properties are used for this, a separate charge can justifiably be demanded by the Port. Incidentally, for a similar operation, the Indian Oil company pays inter-transfer charges from foreshore terminal to Kharirohar storage tanks; and, a specific charge for such transfer is prescribed in the Scale of Rates of the KPT. The KPT has only proposed to extend this principles followed in case of one oil company to a similar operation carried out by another oil company. If the KPT had not done so, it would have been faulted for being discreminatory. That being so, there can not be any doubt about the prescription of a separate charge for inter-transfer of POL products.

- (iii). The HPCL's reference to the lease of the DBT to Jaisu Shipping is not relevant. Lease of DBT is for using it as an intermediate storage point. The proposed levy is for using the KPT pipelines and to compensate for the expenditure incurred by the KPT towards operation of pipeline valves.
- (iv). The KPT has nowhere in its proposals, either in the original or in the revised versions, mentioned that the proposed rates need to be approved retrospectively to cover the actual period during which the operation had taken place. In any case, the approval of the proposal will have to be with retrospective effect, as prospective approval will have no meaning since the operation itself is no longer carried out after August 1996.
- (v). The HPCL's pleadings of its ignorance of such levy and shifting the onus on the KPT for informing it about the charge seem to be untenable. It is noteworthy that the KPT has maintained that it had informed the HPCL in January 1996 about payment of inter-transfer charges. The KPT has also mentioned that the HPCL had OCC's permission to pay this charge. This statement of the KPT has not been denied by the HPCL.

As has been mentioned earlier, the KPT Scale of Rates at the material time contained a provision for levy of inter-transfer charges from foreshore terminal to Kharirohar. Any new operation, that too carried out under emergent circumstances, can not be seen to have been allowed by the Port free of cost, in the absence of specific rates in its Scale of Rates. And, a Port can not refuse to undertake an emergent operation only because there is no provision to levy charge on the new operation. The KPT had allowed the HSD handling through the DBT to Kharirohar and levied provisional charges at the rate prescribed in its Scale of Rates for a similar operation. It is noteworthy that rates for similar operations were notified in the Gazette on 29 Sept. 1995 i.e. well before the commencement of the HPCL operation. That being so, the objection of the HPCL about retrospective fixation of rate deserves to be overruled.

- (vi). Notwithstanding the above position for a retrospective fixation of rate, the casualness with which the KPT handles tariff matters requires a special mention. In this case, the operation had commenced in Nov. 1995. As approved rates were not available, the KPT had immediately applied provisionally rates available for similar operation. Thereafter, it took nearly 3 years for the KPT to realise that the interim approach followed by it should be regularised by seeking approval of the competent authority. The reasons why it could not approach the concerned authority with a proposal to approve a regular rate within a reasonable period after commencement of this operation can not possibly be explained by the Port with any acceptable justification.

The practice followed by the KPT in levying provisional charges and subsequently approaching this Authority for retrospective revision / fixation of rates has been commented upon critically by this Authority in some other cases. The KPT should note that this Authority will not entertain henceforth any proposal from the KPT for a retrospective revision of tariffs unless a special consideration emerges to do so; and, if the Port still wants to adopt such an approach in future also, it will be at its own risk and responsibility.

- (vii). The HPCL has argued that the KPT can reasonably seek charges for the additional usage of a pipeline from Dolphin jetty to Dirty Ballast tank. Its contention is that the extra service, if any, is limited to the 200 mtrs of this stretch and not the entire 10 km length of 12" dia pipeline of the KPT.

The 12" dia pipeline of the KPT from DBT to Kharirohar is to be seen as a common user facility. The KPT is demanding compensation for use of this facility and not for any additional services rendered. The entire cost of the DBT – Kharirohar pipeline is not sought to be recovered from the HPCL. The proposal is to fix hire charges on a usage time basis for use of this pipeline. As has been mentioned earlier, wharfage levied on cargo is not for using the pipeline from DBT to Kharirohar for transfer of products. The HPCL can not deny that it had not used this pipeline for transfer of products to its terminal at Kharirohar. That being so, it has to pay hire charges for the entire stretch of pipeline on a proportionate basis depending on the hours the pipeline had carried HPCL's products.

- (viii). The KPT had initially proposed a rate of Rs. 10,800/- per shift for inter- transfer keeping in view the same rate available for similar operations of IOC foreshore terminal. Subsequently, the Port has

revised the rates in view of the Audit objections about non-charging for utilisation of Booster pumps used in the transfer operation. It appears reasonable to levy a charge for port's pumps used for transfer of POL products apart from inter-transfer charge for using Port's pipelines.

- (ix). The HPCL has objected to the cost calculations given by the KPT. One of the main objections is that the pipeline has fully depreciated and hence depreciation cost can not be considered. It is to be recognised that the value of asset pressed into service is relevant for assessing the cost of service. The HPCL had physically used this facility irrespective of the fact that it was fully depreciated (from accounting point of view). It is noteworthy that the HPCL was not a dedicated user of this facility and hence it did not contribute to the depreciation of the asset in the past. It is relevant here to point out that none of the Indian ports follow the principles of the marginal cost pricing. That being so, such approach only in this case can not be reasonably adopted.

The KPT has, however, considered replacement cost of asset for arriving at depreciation. While fixing cost based tariffs, this Authority has been considering depreciation as well as capital cost only on historical value and not on replacement cost basis. Even in a KPT case relating to fixation of hire charges for M.L. Surajbari, this issue has been specifically dealt with and this Authority had decided to continue with costings based on historical value of assets. In line with the general practice followed by the Authority for tariff fixing, in the instant case also the depreciation of assets is to be considered on historical value. Accordingly, the cost calculations given by the KPT have been revised to this extent.

- (x). The KPT has estimated repair & renewal cost also based on Replacement cost of asset. For similar reasons mentioned above in respect of depreciation, this item has also been revised considering original cost of asset.
- (xi). The percentages of various overheads considered in cost calculations are not justified with reference to 'actuals' for the past period in this case by the KPT. It has, however, been noticed that these percentages are the same as those applied by the KPT while working out the hire charges of floating craft and equipment in some other case. That being so, revision of percentage of overheads considered by the KPT is not necessary and the HPCL objections in this regard are dismissed. Likewise, the ROCE considered by the KPT is in line with the approach approved by this Authority in respect of other ports and hence it is approved.
- (xii). The KPT has rounded off the hire charges arrived at based on cost calculation and proposed rates by rounding off these figures to the nearest Rs. 50/-. When the charges are to be prescribed on per shift and per hour basis, such rounding off allows substantial increase in rates. In the revised calculations, the rates have been rounded off to the next Rupee only.
- (xiii). Subject to the observations made in sub-paras (ix) to (xii) above, the hire charges have been revised. A statement showing the revised working of hire charges is Annexed.
- (xiv). The fact of this case represents a one time (emergency) operation in 1995-96. The fixation of tariffs in this case is to regularise the action taken in the past. But, it must be clearly understood that the tariffs fixed here will apply only to the limited case of the HPCL operation of 1995-96. It is necessary to distinguish this and other similar cases and give this clarification so that the tariffs fixed now do not come to be applied to other cases of inter-transfer.

The rates approved in this case are computed with reference to cost factors as they are obtaining during the relevant period in the past relating to the HPCL operation in reference. Obviously, this cannot apply to other cases that are to be governed by current day cost. It will be necessary to go by current day cost also for the reason that in the absence of exceptional considerations, there cannot be retrospective application of (revised) tariffs in such cases.

In the circumstances, it will be necessary for the KPT to incorporate revised rates in this regard in its proposal for the next general revision / review of tariffs. It will be relevant here to refer to this Authority's Order dated 5 January 2001 in the case of fixing storage charges for cargo lying inside the

KPT premises for more than 60 days wherein the KPT has been advised to come up with a comprehensive proposal for revision / review of the existing tariffs within the next four months.

- (xv). It is relevant here to mention that the KPT has challenged the Authority's Order in JRK International case where the decision was that the KPT's action to modify its Scale of Rates through its Board's resolution dated 9 Jan. 1997 lacked any legal force and hence it was null and void. This Order is challenged in the Gujarat High Court and the KPT has also written to the Government (Ministry of Shipping) raising various legal issues relating to the Authority's status and functioning in general and its decision in the JRK case in particular. One of the issues raised by the KPT is about the competence of this Authority to question the past actions taken by the Board. The case in reference provides the answer to the KPT's query. The KPT itself has recognised in this case that this Authority has to ratify the decision of the rate provisionally fixed by the Port in 1995. With Section 52 deleted from the MPT Act, this Authority is the only competent authority to approve and notify port tariffs. If it cannot approve tariffs retrospectively, in cases like this there can be no tariff; and, the services provided by the port may have to go 'free of cost'. Recognising the need to have the power to fix tariffs retrospectively, the Ministry of Law has also clarified that this Authority can do so. This Authority is, however, exercising such powers only in exceptional cases like the one presently under consideration. In this case, retrospective fixation of tariffs is based on an application filed by the Port whereas in the JRK case it was based on a representation made by a user.

This point is highlighted here to show the duality in the KPT's approach. It cannot approach this Authority to look into a matter retrospectively when such action is favourable to it and question this Authority's competence to do so, when the decision is not in its favour. The Port should recognise that the approach adopted by this Authority is uniform, transparent and unbiased in all cases; but, its decisions can vary depending upon the merits of cases presented before it.

- 10.1. In the result, and for the reasons given above, and based on a collective application of mind the Authority approves the following rates with retrospective effect from 10 November 1995 and directs the KPT to include these provisions in its Scale of Rates under Chapter III- Miscellaneous Charges; Scale 'H' – Schedule of Charges for the use of Port appliances and plant:

| Sl.No. | Name of Plant | Unit | Rate |
|--------|---|---------------------------------------|------------|
| (i). | Transfer of POL products from dirty ballast tank in Old Kandla to the HPCL terminal Kharirohar and vice versa through KPT's 12" dia pipeline. | Per shift of 8 hours or part thereof. | Rs. 5529/- |
| (ii). | Diesel operated pump (600 HP) connected with 12" dia pipeline. | Per hour or part thereof. | Rs. 584/- |
| (iii). | Electric Pump (519 HP) connected with 12" dia pipeline. | Per hour or part thereof. | Rs. 338/- |
| (iv). | Electric Pump (519 HP) connected with 16" dia pipeline. | Per hour or part thereof. | Rs. 337/- |

- 10.2. The above mentioned rates approved shall apply only to the limited case of the HPCL operation carried out during the period from November 1995 to August 1998.

- 10.3. The KPT is once again advised to come up with its proposals for comprehensive revision / review of its Scale of Rates by May 2001.

- 10.4. The KPT is also directed to revise with reference to these rates, the bills (earlier) raised by it against the HPCL and arrange for refunds of excess recoveries made, if any.

(S. Sathyam)

Chairman

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