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No. 194	**New Delhi, the 19 July, 2001**

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 approves the proposal of the Jawaharlal Nehru Port Trust to ratify the levy of management services on liquid cargo handled at its Multipurpose berths as in the Order appended hereto.

(**S. Sathyam**)

Chairman

Tariff Authority for Major Ports

Case No. TAMP/32/2001-JNPT

The Jawaharlal Nehru Port Trust (JNPT) … Applicant

O R D E R

(Passed on this 28th day of June 2001)

The Jawaharlal Nehru Port Trust (JNPT) has sent a proposal to ratify the levy of management service charge on all liquid cargo. It has requested for *ex post facto* approval of levying a service charge of Rs.1.50/- PMT with effect from 1 December 1998 and Rs.2/- PMT with effect from 1 February 2000. This proposal has been received with reference to some observations made by this Authority in another case.

2. This Authority had passed an Order on 14 February 2001 approving a special service charge of Rs.15/- PMT on the consignees / importers of Class A petroleum products with retrospective effect from 1 August 2000. In the said Order, this Authority, *inter alia*, made the following observations:

"(i). The JNPT has been collecting a management service charge of Rs.1.50 PMT for providing services relating to loading / unloading of all the liquid cargo of all importers / exporters and tank farm operators since 1 December 1998 which is not a notified tariff item.

(ii). This unauthorised levy of the charge cannot be ratified for want of adequate information and a formal proposal from the JNPT.

(iii). The JNPT is advised to be more particular in future about obtaining prior approval of this Authority for levy of tariff on any item."

3. The JNPT has made the following points in its proposal:

(i). The port has two multipurpose berths BB-3 and BB-4, which are utilised for handling liquid cargoes since 1993-94. The handling operation of the liquid cargoes was managed by individual tank farm operators themselves till 1998, as the said berths did not have adequate fire fighting facilities suitable for handling large volume of traffic.

(ii). In 1996, DNV Technica, Consultants, after studying the ground conditions at the port, recommended that the port should upgrade its fire fighting facilities and safety measures; and also, the task of operation and management of handling liquid cargo at the said berths should be entrusted to a professional agency.

(iii). The port discussed the matter with the Liquid Chemical Berth Users' Association and advised the Association to manage the wharf operations through a single agency instead of through individual tank farm operators for ensuring safer operations. Although the advice was accepted by the Association, no further progress was made in this respect.

(iv). In 1998, the port implemented a scheme for installation of mobile loading / unloading arms and upgradation of its fire fighting facilities at the said berths through M/s. Indian Oil Tanking Limited (IOTL); and, the task of operating and managing the said berths on account of all the importers / exporters and tank farm operators was also entrusted to the IOTL.

(v). The port has invested an amount of Rs.10 crores approximately on the project and, in addition is paying Rs.35 lakhs per annum (with annual escalation at 6%) to the IOTL for operating and managing the said berths with effect from 1 December 1998.

(vi). The port, in discussion with the Tank Farm Owners' Association, levied a charge of Rs.1.50 per tonne on the manifested quantity of the liquid cargo vide its Trade Notice No. JNP/CM (o)/98/2528 dated 30 November 1998; however, the port could recover only Rs.32.08 lakhs from the levy of the above charge as against a payment of Rs.35 lakhs to the ITOL; and hence, incurred a loss of Rs.2.92 lakhs. In view of this, the Board of Trustees, subsequently, approved the rate of Rs.2.00 per tonne to be charged with effect from 1 February 2000 to cover the deficit which has been implemented vide its Trade Notice No. JNP/CM (o)/ BT/TN/159 dated 31 January 2000.

(vii). The IOTL has also constructed new fire fighting facilities for handling Class 'A' products for which the port is to pay Rs.10 lakhs per annum for operation and maintenance of new facilities and Rs.3 lakhs per annum for routine maintenance, both items having 6% annual escalation. The total annual payment comes to (Rs.35 lakhs + 6% escalation for two years i.e., Rs.39.32 lakhs for wharf management facilities and Rs.13 lakhs for operation and maintenance of new facilities) Rs.52.32 lakhs. Considering a traffic of 2.95 million tonnes of liquid cargo, average realisation comes to Rs.1.77 PMT which has been rounded off to Rs.2/- PMT.

(viii). During the period of 27 months (December 1998 to February 2000) the port has incurred an expenditure of Rs.81.93 lakhs on account of service fees and has recovered an amount of Rs.100.57 lakhs from the users.

4.1. A copy of the proposal of the JNPT was sent to concerned port users/representative bodies of port users. The comments received from them are summarised as below:

<u>The Shipping Corporation of India (SCI)</u>

(i). The proposal to hike the management service from Rs.1.50 per tonne to Rs.2/- per tonne appears unjustified as the existing rates levied by the JNPT are relatively high as compared to the MBPT and the foreign rates charged by JNPT are in fact higher than the rates charged by the Reliance Jetty Marine Terminal (RJMT).

(ii). The SCI must be given incentives for contributing to the majority of traffic by way of carrying the dedicated cargo of Public Sector Refineries, instead of being penalised by increasing the charges.

(iii). The increase, howsoever minor, shall not be approved. The port must concentrate on high volume of traffic and/or cargo rather than increasing the charges to recover the capital cost invested.

4.2. No comments have been received from the Bombay Chamber of Commerce and Industry, the Mumbai and Nhava-Sheva Ship-Intermodal Agents' Association, the Indian Merchants' Chamber, the Indian National Ship Owners' Association, the Western India Shippers' Association, and the JNPT Liquid Chemical Berth Users' Association.

5. Since the issue relating to levy of a management service charge had also been discussed in the joint hearing held on 21 November 2000 in the case No.TAMP/94/2000-JNPT, a separate joint hearing in this case has not been considered necessary.

6. With reference to the totality of information collected in this case, the following position emerges:

(i). The proposal of the JNPT relates to its Multipurpose Berths BB-3 and BB-4 both of which handle liquid cargoes.

(ii). The volume of liquid cargo traffic was not very high till 1998. The handling operation was, therefore, left to be managed by individual tank farm operators themselves.

(iii). With increase of traffic, and based on an advice given by expert-Consultants, operation and management of handling liquid cargo at BB-3 and BB-4 was entrusted to a professional agency viz., M/s.Indian Oil Tanking Limited (IOTL).

(iv). This introduction of a professional agency for O&M purposes and the related investments in installation of mobile loading/unloading arms as well as upgradation of the fire-fighting facilities necessitated levy of a service charge with effect from 1 December 98.

(v). The charge was fixed at Rs.1.50 PMT initially and raised to Rs.2/- PMT with effect from 1 February 2000.

(vi). This is not an item of any significant burden. Also, the revenue earnings have not been substantial.

(vii). The charge has already been in place for over 2½ years. And, users have making the payments without any demur.

Significantly, even when reference was made to this item in the context of the joint hearing in the other case relating to levy of a 'special service charge' on consignees/importers of Class-A Petroleum Products, there were no protests from the users participating. In fact, it is in this backdrop that a separate joint hearing in this case has not been considered necessary.

(viii). It has to be recognised that the charge in reference is definitely a tariff item. The JNPT should not have commenced its levy without the approval of this Authority. When this was pointed out at the joint hearing in the 'other' case, the JNPT's response was casual to propose that this Authority might regularise as part of the proceedings in the 'other' case. This proposal has been received only when the earlier casual proposal was turned down. In this sense, therefore, these proceedings may well be seen to be more of an exercise to assert the jurisdiction of this Authority and to enforce procedural proprieties.

It is necessary here to stress the fact that there has been a marked propensity on the part of the JNPT to take tariff decisions on its own and, if the necessity arises thereafter, to seek ratification thereof.

(ix). There has, however, been a change in this position lately. Notwithstanding the fact that the JNPT is likely to be corporatised soon when it will go out of the regulatory purview of this Authority, they have been sending many proposals for approval by this Authority.

In this backdrop, and recognising the justification available even otherwise, the proposal about levy of the 'service charge' is approved and with retrospective effect as proposed at that.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the proposal of the JNPT to ratify the levy of management service charge of Rs.1.50 PMT with effect from 1 December 1998 and Rs.2/- PMT with effect from 1 February 2000, on liquid cargo handled at its Multipurpose berth viz., BB-3 and BB-4.

(**S. Sathyam**)

Chairman

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