

(Published in Part – III Section 4 of the Gazette of India, Extraordinary)

No. 149

New Delhi, the 8 June, 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 disposes off the representation made by the Mumbai and Nhava-Sheva Ship-Intermodal Agents' Association (MANSA) about the components of the composite berth hire charges levied at the Mumbai Port Trust, as in the Order appended hereto.

(S. Sathyam)

Chairman

Tariff Authority for Major Ports

Case No. TAMP/115/2000-MBPT

**Mumbai and Nhava-Sheva Ship-Intermodal Agents Association
(MANSA) ... Applicant**

Vs

**The Mumbai Port Trust (MBPT)
Applicant**

...

Non-

ORDER

(Passed on this 16th day of May 2001)

This case relates to a representation made by the Mumbai and Nhava-Sheva Ship-Intermodal Agents' Association (MANSA) about the components of the composite berth hire charges levied at the Mumbai Port Trust (MBPT).

2.1. In its representation the MANSA has given the following points:

- (i). The MBPT charges a composite berth hire for berthing the vessels at quay and for other charges such as supply of telephones, removal of rubbish, supply of water, allowance payable to labour for loading/discharging of cargo, night allowance for labour, night/holiday overtime allowance for labour, charges for cranes and special equipment, fire watch, etc.

- (ii). The shipping lines execute the contract of carriage of break bulk cargo on the following terms:
 - (a). Liner Terms - In which the freight charges covers the transportation by sea as well as cost of loading / discharging of cargo, from / to the vessels on to the wharf (i.e., stevedoring – cargo handling charges).
 - (b). Free In / Free Out (FIO) Terms - In which the freight charges covers only the sea freight while the cost of loading / discharging of cargo (which would include stevedoring as well as transportation to / from sheds etc.) is on the cargo interest account.
- (iii). As the composite berth hire charge includes the element of charge relating to cargo handling equipment, such as for crane, labour allowances and overtime and provision of special equipment by the port, part of the berth hire is to be debited / charged to the 'cargo interest', in case of carriage on FIO terms.
- (iv). The MBPT had been providing the split in components of the berth hire which is chargeable / attributable to the lines and the cargo interest, respectively. This was discontinued in 1992.
- (v). After the revision of berth hire in 1997, the MBPT has refused to give a split between vessel-related charges and cargo-related charges. This has caused disputes between the shipping lines and cargo interest.
- (vi). The MBPT issued a circular in 1998 stating that the composite berth hire charge does not include the cargo-related charges and the total charges are payable by the Shipping Lines / Agents / Vessel Owners.

2.2. In this backdrop, the MANSA has requested that:

- (i). The MBPT may provide the break-up of the vessel-related and cargo-related charges included in the composite berth hire; and, this shall be prescribed in quantitative terms rather than as percentages.
- (ii). The port must take cognizance of the fact that berth having different facilities shall have different tariff, which is presently uniform at all the berths.

3.1. In accordance with the procedure prescribed, the representation of the MANSA was forwarded to the MBPT and also to the BCHAA, IMC, INSA, SCI, CSLA, BCCI, and WISA for their comments. The Comments received from them are summarised below:

The Mumbai Port Trust (MBPT)

- (i). The Directing Group constituted (in the year 1984) by the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) for simplification and rationalisation for port procedures, recommended that charges for rendering certain elements of services be merged with that of the main service and a composite rate be prescribed. Prior to that ports were recovering charges separately for each service rendered.

- (ii). The cost of the following elements of services was considered for arriving at the composite Berth Hire charge:
 - (a). **Berthing and Mooring at the Docks:** Mooring launches, swing gates and bridges, capstan and sluices, Maintenance of Dock and Harbour walls, Marine Structures, etc. Dredging and Pollution Control at Docks, Dock Master's establishment, other elements viz., expenditure on Night, Sunday and Overtime charges, charges for supply of telephones, charges for removal of rubbish, Double Hook Allowance payable to Labour, Bunkering, Night Allowance for labour, charges for covering culverts, charges for special equipment and fire watch.

 - (b). **Electric Wharf Cranes:** Operation and maintenance of Electric Wharf cranes.

 - (c). **Water supply to Shipping:** Operation and maintenance of water supply installations.

- (iii). Composite berth hire charge was prescribed with effect from 5 May 1988 in place of the following recoveries:
 - (a). Berth Hire charges

 - (b). Wharf crane charges

 - (c). Night, Sunday and overtime charges

 - (d). Charges for the supply of local telephones

 - (e). Charges for removal of rubbish

 - (f). Wharfage charges on the same bottom cargo

 - (g). Double hook allowance payable to labour

 - (h). Bunkering

 - (i). Night allowance for labour

 - (j). Charges for covering culverts manholes at berths when discharging bulk cargo.

- (k). Charges for special equipment and fire watch.
- (iv). Details of each of the elements of service as well as cost thereof are not maintained except for an expenditure on major elements like wharf cranes, water supplied to shipping and expenditure on account of berthing and mooring at the Docks. However, all the services mentioned above were continued to be rendered, wherever required.
- (v). Details of components of cargo-related charges merged with the composite berth hire charges are also not maintained. In 1992, on the request of port users, a rough estimate was made for identifying the cargo-related elements included in the composite berth hire charge. The share of cargo-related charges in the composite charge then worked out to 22% in respect of the Indira Dock and 15% for the P&V Docks.
- (vi). Even earlier, the charges for all the elements except where shed and gate opening was done at the request from consignees / consignors for delivery or carting in, were recovered from the ship owners / ship agents. It is not understood how introduction of the composite berth hire now makes a difference for the agents.

Shipping Corporation of India (SCI)

- (i). The Composite Berth Hire charge at the MBPT includes the labour charges for loading / discharging of cargo as well as the crantage.
- (ii). The Contracts of Carriage of Break Bulk cargo on 'Liner Terms' have reduced considerably over the years due to the advent of containerisation and most of the break bulk cargo is shipped on FIO basis.
- (iii). The practice adopted at the MBPT of a composite charge for berth hire, has resulted in the Shipping Lines having to bear costs which are actually to be paid by the merchant when cargo is shipped on FIO terms.
- (iv). Since 1997 MBPT has stopped issuing certificates providing break up of vessel-related charges and cargo-related charges which had in the past assisted Shipping Lines / their agents to claim such cargo-related charges from the merchant.
- (v). The TAMP is requested to –
 - (a). Intervene in the matter and instruct the Ports to provide to the users the break up of cargo related charges, where tariffs provide for composite berth hire charge.
 - (b). Examine the aspect of common berth hire charges applied to all berths of the Port despite the fact that some berths are less

equipped than others. The principle of applying charges for facilities, which commensurate with the services rendered should be adopted.

The Indian Merchants' Chamber (IMC)

- (i). The MBPT may be directed to furnish the break-up of the composite berth hire, and to indicate distinctly the cargo related charges.
- (ii). There shall be no ambivalence and no lack of transparency. Customer interest is equally important for attracting cargo to the port's extensive facilities which are going virtually idle. A lot of cargo can possibly flow into the port if an atmosphere of goodwill is created for customers, who will then feel that they are welcome to the port.

The Bombay Custom House Agents' Association (BCHAA)

- (i). The suggestion to split the composite hire charge, with reference to vessel-related charges and cargo-related charges, does seem to be justifiable.
- (ii). It may also be ensured that once the Rates have been split, the Shipping Lines must ensure that all vessel-related charges are reimbursed to the Port only in US dollars and in hard currency as well, since the same is recovered from the trade in US dollars and repatriated in foreign currency.
- (iii). The MANSA in its representation has confirmed that the Stevedoring – cargo handling cost is a part of sea-freight. This is vital to the issue relating to regulation of Terminal Handling Charges.

The Indian National Shipowners' Association (INSA)

- (i). The INSA fully supports the point of view of the MANSA.
- (ii). It is a trading practice that often a charterer has to bear the cargo-related cost. The Port is the best authority to certify the actual divisions of ship-related and cargo-related costs.
- (iii). The shipowners do not object to make the payments but all they want is a fair and correct bifurcation of berth hire charges showing cargo-related and ship-related costs to be provided by the Port so that the Lines can get re-imburement from the charterer/ shipper/consignee on the basis of the bifurcated bill.
- (iv). In 1992 ports had agreed to provide such a break-up by a circular and now again they have decided to withdraw it. The INSA has the same complaints from other ports.

- (v). Ports shall be transparent enough to provide this minor service.

The Container Shipping Lines Association (CSLA)

- (i). The CSLA generally supports the MANSA's position with regard to this issue.
- (ii). It is unhelpful of the MBPT not to provide the split between the vessel and cargo related charges.
- (iii). It does not seem correct to apply uniform berth hire charge, where some berths have cargo-handling equipment and others do not.

3.2. No comments have been received from the BCCI and the WISA.

3.3. The comments received from the above organisations were sent to the MANSA as feedback information.

4.1. A joint hearing in this case was held on 15 January 2001 at the MBPT. During the joint hearing, the following submissions were made:

MANSA

- (i). Why not identify the components of the Composite rate?
- (ii). Earlier the MBPT was certifying vessel-related charges / cargo-related charges separately. It has suddenly stopped now creating complications for us to recover costs from the lines. Further, the statement made by the MBPT in its 1998 circular that only wharfage is the cargo-related charges has created further problems.
- (v). This problem is more in Charter cases (FIO cases) not in Liner Term cases.
- (vi). In FIO cases, the consignee undertakes to collect delivery from under the hook and they are responsible for doing everything. Lines have no responsibility. The Consignee has to pay. Hence, the objection from the Lines.

MBPT

- (i). Composite Berth hire has been fixed by treating 11 different chargeable components treated as an integrated whole. This has never been itemised. Even revision has been made only as a percentage of the Composite rate. It is, therefore, not possible to break-up.
- (ii). The MBPT can say how much is towards vessel-related charges and how much towards cargo-related charges. But, it cannot say who will

pay what. It will then have to go into contracts to see what is FIO, what is Liner Term, etc.

4.2. At the joint hearing, the MBPT submitted copies of the correspondence exchanged between them and the MANSA on the issue.

5. The MBPT, vide its letter dated 29 January 2001, in addition to reiterating its earlier comments, stated that during the last revision with effect from 1 November 1997, the working results had shown a deficit of 43%. The rates, however, were increased marginally to be at par with the other neighbouring ports. Thus, the service could not be made self-supporting. Even now the service is in deficit and though the port users were advised regarding the share of cargo-related charges in the composite berth hire charges, it cannot be said that 22% of the rate prescribed for berth hire is covering the cost of services rendered to the cargo interest and 78% of the existing rate is covering the cost of the services rendered to the vessel interest. The MBPT regretted its inability to furnish details of the cost of the various services covered under the composite berth hire charge.

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

- (i). The MBPT has introduced a system of levying a composite Berth Hire charge in accordance with the recommendation given by the Directing Group in 1984. This recommendation was accepted for implementation by the Government. The objective of this change was for simplification and rationalisation of port procedures; in this case, it is for simplification of billing (and, therefore, of payment) procedures.
- (ii). The components of the composite charge have been specifically identified as described in paragraph 3.1.(ii) above. There is no ambiguity in this regard. And, there can, therefore, be no complaint about lack of transparency in the system.
- (iii). This system has been functioning without any problem. It is only the stoppage of issue of certificates indicating break-up of the vessel-related charges and the cargo-related charges that seems to have created some friction. The MANSA has contended that this stoppage has resulted in the Shipping Lines having to bear costs which are actually to be paid by the merchant when cargo is shipped on FIO terms.

The precise nature of MANSA's problem has not come out clearly in all this. Significantly, as has been contended by the MBPT, even earlier, the charges for all the elements, except where shed and gate opening was done at the request of consignees/ consignors for delivery/carting in, were recovered from ship-owners / ship agents. It is, therefore, not clear how introduction of a composite berth hire has made a difference.

- (iv). Again, significantly, the composite berth hire has been fixed by treating 11 different comparable components as an integrated whole. This has never been itemised. Even the 1998 revision was made only as a percentage of the composite rate. That being so, there is force in the MBPT plea that it is not possible to provide a break-up of the composite charge. In this backdrop, the request of the MANSA that the MBPT must provide a break-up of the vessel-related and cargo-related charges included in the composite berth hire is not tenable.

The MANSA has in fact gone a step ahead to request that the break-up shall be prescribed in quantitative terms rather than as percentages.

It is noteworthy in this context that, according to a clarification given by the MBPT, in 1992, on the request of some port users, a rough estimate was made for identifying in percentage terms the cargo-related elements included in the composite berth hire charge; but, even this percentage terms cannot be said to reflect the correct position. The MBPT has specifically regretted its inability to furnish details of the cost of the various services covered on the ground that details of each of the elements of services as well as costs thereof are not maintained except for expenditure on major elements like wharf cranes, water supplied, and berthing and mooring. In this circumstance, the request in reference of the MANSA cannot receive any meaningful attention.

- (v). Whatever be the components, the tariff in reference is styled as a composite berth hire charge. 'Berth hire' indisputably is a vessel-related charge which is ordinarily paid by the Lines. Why can it not be so in the MBPT case has not been adequately clarified by the MANSA.

The problem has apparently been caused by some 'rough estimate' made in 1992 by the MBPT for a break-up of the composite charge. It was not, perhaps, advisable for the MBPT to have attempted such a break-up which actually militates against the very approach recommended by the Directing Group.

It has also to be recognised in this context that, even if the MBPT is indeed able to work out such a break-up, how can it say who will pay what? As has been contended by the MBPT itself, it will then have to go into details of contracts to see what is FIO, what is Liner Term, which consignment involves what, etc. Obviously, this is not a workable proposition for any Port Trust.

Since 'berth hire' (whether composite or otherwise), as earlier stated, is indisputably a vessel-related charge to be borne by the Lines, how can the MBPT eliminate the (theoretical) possibility of the cost of cargo-related components being recovered twice – once as a part of the composite berth hire and once separately from the consignee under a so-called FIO arrangement?

- (vi). If it is the contention of the MANSA that inclusion of cargo-related components in a composite berth hire is causing them irreconcilable accounting problems because of some contractual rigidities, then, the better course of action for them is to move for a review of the composition of the composite berth hire charge.
- (vii). Almost all the port users consulted in this proceedings, especially the SCI and the CSLA, have objected to a common (composite) berth hire charge applied to all berths of the MBPT despite the fact that some berths are less equipped than others. Their demand is reasonable that charges for facilities should commensurate with the services rendered.

With specific reference to composite berth hire charge, it cannot be said to be just, fair, and reasonable for the MBPT to levy the same charge at all the berths irrespective of whether or not each one of them has all the 11 components of services/facilities. There have been occasions in some earlier cases for this Authority to observe that a composite berth hire charge exists for a group of comparable berths or, if necessary, even individually for separate berths with reference to the services/facilities available therein.

This Authority takes this opportunity to advance this matter further by requiring all the major ports to work towards such a recasting of composite berth hire charges within a time frame of six months failing which we will be compelled to move *suo motu* in the matter.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority finds the request of the MANSA that the MBPT must provide a break-up of the composite berth hire charge to be unsustainable and accordingly rejects it. This Authority, however, finds reasonable the request of the MANSA about the composite berth hire charge being commensurate with services rendered/ facilities provided at each berth; and, therefore decides to pursue it further with the major ports.

(S. Sathyam)

Chairman