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New Delhi, the 26 November , 2001

Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the Chennai Port Trust for inclusion of the rate of hire charges for Tugs 'Nethaji' and 'Singaravelar' in its Scale of Rates as in the Order appended hereto.

(**S. Sathyam**)

Chairman

Tariff Authority for Major Ports

Case No.TAMP/72/2001-CHPT

The Chennai Port Trust (CHPT)

- - -

Applicant

O R D E R

(Passed on this 5th day of November 2001)

This case relates to a proposal received from the Chennai Port Trust (CHPT) about inclusion of the rates of hire charge for Tugs 'Nethaji' and 'Singaravelar' in its Scale of Rates.

2.1. The CHPT has made the following points in its proposal:

- (i). Two tugs namely 'Nethaji' and 'Singaravelar' were acquired on 28 July 1995 and 17 June 1996 respectively.
- (ii). The hourly rate of the tugs was initially fixed at Rs.25,500/- in the year 1998 provisionally, subject to revision. The rate was later revised based on the actual cost and utilisation of tugs to Rs.15,000/- (US \$ 714) per hour or part thereof with effect from 5 November 1999. This rate was fixed on mutual agreement between the CHPT and Port users and in terms of the (then) existing provision under Book-I, Chapter IX, Scale D relating to charges for floating crafts, appliances, etc., category II, Note- (2) of the Scale of Rates (SOR), which reads as below:

“(2). The charges for services and for the use of the crafts and appliances not mentioned in the above Scale are arranged

between the Chairman and the person requiring such services of such crafts or appliances.”

- (iii). The proposal for insertion of this rate in the Scale of Rates has been approved by the Board of Trustees of the CHPT in its meeting held on 11 June 2001.

2.2. In this backdrop, the CHPT has requested the Authority the rate of Rs.15000/- (US \$ 714) per hour or part thereof for both the tugs, 'Nethaji' and 'Singaravelar' in its SOR under Book-I, Chapter IX, Scale D relating to charges for floating crafts, appliances etc., category as a new serial number 11(d).

2.3. The CHPT has also requested to maintain confidentiality of the information furnished in the cost sheet relating to the working of hire charges.

3.1. A copy of the proposal (excluding the cost statement) was forwarded to all concerned users/representative bodies of port users for comments. The comments received are summarised below:

The Tamil Chamber of Commerce (TCC)

- (i). Since the rate of Rs.15000/- (US \$ 714) per hour or part thereof has been arrived at mutually by the port users and the port; and, it has also been approved by the Board of Trustees of the port, the proposal of the CHPT may be approved.
- (ii). It is to be clarified that the rate of Rs.15,000/- applies to coastal vessels and US \$ 714 applies to foreign-going vessels.

The Shipping Corporation of India Ltd. (SCI)

Comments cannot be offered in the absence of cost sheet.

The Chennai Steamer Agents' Association (CSAA)

- (i). Till date tug hire charges are included in the Pilotage charges. Separate charges are levied for the services of additional tugs requisitioned over and above two tugs.
- (ii). The CHPT has six tugs viz. SINGARAVELAR, NETHAJI, MATCHLESS, MIGHTY (28/30 BHP), PALANI and MANI (20/25 BHP). It is not clear why the CHPT is approaching only for 'NETHAJI' and 'SINGARAVELAR' to be considered on an hourly based charges.
- (iii). If fixation of hire charges for these two tugs on an hourly basis is over and above the two mandatory tugs available for

vessels' movement, and that too, whenever they are used, then the proposal of the CHPT may be accepted.

- (iv). It needs to be ascertained whether the CHPT proposes to bifurcate the Pilotage and Tug hire charges in the near future.

Container Shipping Lines Association (India) [CSLA]

- (i). This is a case for mere insertion of an agreed rate in the SOR.
- (ii). The rates had been arrived at based on actual costs and utilisation of the tugs. The rates had also been arrived at by the port in consultation with the users of the tugs which are used for towing barges and lighters, and for services other than berthing and unberthing of vessels.
- (iii). We support the necessary incorporation.

3.2. A copy each of the comments received from the user-organisations mentioned above was sent to the CHPT as feed back information.

4. On a preliminary scrutiny of the proposal, the CHPT was requested to furnish additional information/clarification on certain points. Some of the important points raised are summarised below:

- (i). Justification of the estimated operation and maintenance cost as well as other overheads with reference to actual expenditure under these heads for the last 3 years.
- (ii). Availability and utilisation norms for these two tugs along with similar details for the last 3 years.
- (iii). Written-down capital value of the two tugs as on 31 March 2001.

5. A joint hearing in this case was held on 5 October 2001 in Chennai. At the joint hearing the following submission were made:

Chennai Port Trust (CHPT)

- (i). There is no move to separate 'Towage' and 'Pilotage'. This proposal is only about additional tugs for towing.
- (ii). All are agreed about the rate. They are paying at the rate since November 99.

Madras Chambers of Commerce and Industry (MCCI) and Hindustan Chamber of Commerce (HCC)

- (i). We agree with the proposal.

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

- (i). The CHPT has been levying a hire charge @ Rs. 15,000/- per hour since November 1999 for hiring of tugs 'Nethaji' and 'Singaravelar'. This rate was fixed by the CHPT based on a provision in the pre-revised Scale of Rates which gave discretionary powers to its Chairman to fix the tariff of such appliances / crafts for which specific rates were not prescribed in the Scale of Rates. It will not be congruous with the tariff setting arrangement envisaged in the MPT Act if such discretionary powers to fix tariffs are delegated to regulated entities. Realising this position, the provision giving discretionary powers to the Chairman (CHPT) has already been deleted in the revised Scale of Rates notified by this Authority on 30 March 2001.
- (ii). The hire charge in reference has been in vogue since November 1999. The proposal of the CHPT for general revision of tariff was decided by this Authority in March 2000. Based on the decisions taken about the general revision of tariffs, the CHPT forwarded a draft Scale of Rates for approval, which was notified in March 2001. The hire charges for the tugs 'Nethaji' and 'Singaravelar' were not included by the CHPT either in its proposal for general revision of Scale of Rates or in the draft Scale of Rates forwarded by it subsequently. It is also relevant here to mention that none of the users who participated in the proceeding relating to that case had also pointed out the omission.
- (iii). The CSAA has raised certain points about pilotage and towage charges. The comments made by the CSLA and the explanation offered by the CHPT in this regard at the joint hearing adequately clarify the issues raised by the CSAA. The proposed hire charges for these tugs are applicable only when they are hired for those purposes / activities which are not included as a pre-condition for levy of berth hire, pilotage, shifting charges, etc.
- (iv). The instant proposal is not for approval of the hire charges. It only seeks inclusion of the hire charges levied since Nov. 1999 in the Scale of Rates to take care of the legal requirements. None of the user-organisations consulted as a part of the proceeding in this case has objected to the existing hire charges. Significantly, most of the user-organisations have even endorsed the hire charges. Since the hire charges has been in existence since Nov. 1999 and the proposal is for inclusion of them in the Scale of Rates, according approval to the proposal by this Authority cannot be seen as the approval accorded to the rates. This Authority neither approves nor disapproves the existing rates but allows inclusion of them in the Scale of Rates to regularise levy of such hire charges.

- (v). Notwithstanding the position explained in paragraph (iv) above, the hire charges can be taken up for detailed scrutiny at the time of the next general revision / review of the CHPT tariff which is due in April 2002. We have raised certain observations on the costing aspect relating to the hire charges of these tugs, which may serve as a guide to the CHPT while working out the revised hire charges as a part of its proposal for the next general revision of tariffs. It has to be recognised that revision of hire charges of these tugs can be considered more objectively alongwith the general revision of tariffs since it will enable a detailed scrutiny of allocation of various overheads between connected activities / facilities.
- (vi). While proposing revised hire charges for these tugs as a part of its next general revision of tariff proposal, the CHPT is advised to consider the following relevant points:

(a). This Authority had also advised some of the major ports, including the CHPT in a case relating to fixation of hire charges for fork-lift trucks, to work out a pool rate for equipment / floating craft on the basis of ranges of capacity, rather than for individual equipment. The existing Scale of Rates of the CHPT prescribes hire charges for different floating craft on individual floating craft basis. Rationalisation of the Scale of Rates in this regard is necessary apart from revising and pooling the hire charges for the tugs in reference.

(b). The CHPT has not considered the cost of insurance while working out hire charges of these tugs. This issue has been singled out for specific mention in this Authority's Order dated 28 March 2001 relating to notification of the revised Scale of Rates of the CHPT. The relevant observation of this Authority in that case is reproduced below:

“When the Port Trust crane, floating craft, etc., are hired by users, the Port demands damages and compensations from the hirers, in case of any accidents or damages to properties and life. The CHPT is advised to insure such equipment, craft, etc., and either include the insurance cost in the hire charges or levy it separately as actuals. In such cases, the damages and compensations, etc., will be claimed from the insurance company and not from the users. It is relevant to recognise in this context that these equipment and craft are operated by the Port personnel; and, therefore, there is no scope for their misuse by the hirers. The CHPT is required to follow this approach in respect of its equipment and properties while formulating its proposal for the next general revision of tariffs.”

The observation already made is reiterated in this case also.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority allows insertion of the following provision under Book-I, Chapter-IX, Scale-D, Category I of the Scale of Rates of the CHPT:

Serial Number and Description (1)	Rate of hire (2)	Period of hire (3)	Minimum (4)	Remarks (5)
11(d) Tugs 'Nethaji' and 'Singaravelar' (for towing barges and lighters and for services other than berthing and unberthing of vessels)	Rs. 15,000/- (for coastal vessels) / 714 US Dollars (for foreign-going vessels)	Per hour or part thereof per Tug.	-----	-----

(S. Sathyam)

Chairman