

No. 11

New Delhi, the 22nd January 2001

Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Sections 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation submitted by the Tuticorin Steamer Agents' Association regarding collection of capital dredging levy and shifting charges for vessels shifted to anchorage by the Tuticorin Port Trust, as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No.TAMP/83/2000-TPT

The Tuticorin Steamer Agents' Association (TSAA) ... Applicant

Vs

The Tuticorin Port Trust (TPT) ... Respondent

ORDER

(Passed on this 5th day of January 2001)

This case relates to a representation from the Tuticorin Steamer Agents' Association (TSAA) regarding collection of capital dredging levy and shifting charges for vessels shifted to anchorage by the Tuticorin Port Trust (TPT).

2. This Authority had passed an order on 2 June 2000 approving a levy of 50% of the applicable Berth Hire, Pilotage fee and Port dues on all vessels using Berths VOC III, VOC IV, Coal Jetty I, II, Oil Jetty and Container Berth No.7 at the TPT to cover the expenditure on capital dredging incurred by the Port.

3. The TSAA has stated the following in its representation:

(i). The TPT is collecting dredging levy in full on the entire pilotage and port due and berth hire for the number of days of occupation of the deep draft berth. This has made the Tuticorin Marine charges higher than those at other major ports in India. Due consideration may be given for the vessels requiring deep draft for limited operation of lightering or topping up as these vessels will utilise deep draft only for specific purpose either for inward or outward pilotage as the case may be. The dredging levy should be applied on 50% of pilotage and port due for such vessels

(ii). In case of shifting of vessels from berth to berth – either for topping up or lightering, the TPT has agreed to exempt shifting charges for shifting of vessels within the basin. However, if for any reasons, the berths are not available immediately, and if the vessel is required to be shifted to outer anchorage for re-berthing, the port is collecting full pilotage and also dredging levy in full. Additional Pilotage charges shall not be levied as the Port Pilotage tariff includes an element of shifting charges.

4. A joint hearing in this case was held at the TPT on 21 July 2000. Following submissions were made in the joint hearing:-

Tuticorin Steamer Agent's Association (TSAA)

Do not charge us for shifting for topping-up/lightening and for movement to anchorage at Port's convenience.

Tuticorin Port Trust

- (i). Movement within the basin has to be covered by 'shift' and even inter-berth movement has to be seen as shift.
- (ii). The TAMP should define Pilotage to include one shifting within the basin.

Indian National Shipowners' Association

Please go by the model prescribed for MOPT defining 'Shifting'.

5. Further time upto 30 September 2000 was allowed to all users / representative bodies of port users and the TPT to file their written comments. Comments received from them are summarised below:

All India Chamber of Commerce and Industries

- (i). Rates of shifting charges for vessels at the TPT have been fixed taking into account all the probable shiftings of vessels while working in the berth. Due consideration has been given for shifting of working vessels to anchorage and back. Pilotage charges include an element of shifting charges as well.
- (ii). The vessel is mainly shifted from lower draft berth to deep draft berth in case of loading of export cargo, or from deep draft berth to low draft berth in the case of landing of import cargo or from berth to anchorage and back due to non-availability of suitable berth or for any other reasons.
- (iii). Import vessels laden with fertilisers/potash, etc., are berthed straight away at deeper draft berth and later on shifted, if necessary, to other berths for which no shifting charges is levied.
- (iv). But vessels loading export cargo, even though they request for a deeper draft berth, sometimes due to non-availability of berth, may initially be berthed elsewhere and later on shifted to deeper draft berth. Therefore, in such cases there is no valid reason to charge additional shifting charges to anchorage and back, by the port, for no fault of the Steamer Owners.
- (v). The Steamer Owners incur huge expenditure when their vessels are kept idling at anchorage. The port should provide a suitable berth on vessel's arrival, without resorting to such shifting or waiting at anchorage, which will save time and money.
- (vi). No Shifting charges on any vessels berthed earlier and later on shifted to anchorage for want of convenient berth and back shall be levied.

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- (i). A comparative position of vessel related charges levied at different Ports is given to indicate that Tuticorin Port is the most expensive as compared to Cochin, Chennai, JNPT and Colombo ports.

(ii). Although Tuticorin Container Terminal has managed to attract some new services to make direct calls, others have decided against calling at the Tuticorin Port due to significantly high vessel-related charges.

Container Shipping Lines Association of India

(i). There is no substantive justification for levying a separate fee to finance capital dredging and, therefore, whether the quantum of charge is justified cannot be commented upon.

(ii). Capital projects such as capital dredging are an integral part of the country's infrastructure and should be financed from central funds rather than charging the users directly. Continuous subsidisation from central funds is not always practical and desirable; and, hence, in the present scenario of privatisation such investment should be seen as investment which will be paid for in the form of extra business rather than direct recovery.

(iii). In the case of dredging it is quite clear that the port as a whole will benefit. Dredging will encourage main line vessels which in turn will encourage feeders. Therefore, such a charge, if it has to be levied, should be applied to all users.

(iv). Port should adopt a composite pilotage fee which covers all movements that is required to accommodate its operational requirements. Levy of shifting charge in addition to normal pilotage fee is not warranted.

The Customs Licensed Agents' Association

(i). The Capital Dredging Expenditure was incurred by the TPT to invite more trade by attracting bigger ships and thereby earn more revenue. Hence, the expenditure should be borne by the TPT. And if levied, it should be levied on vessels beyond 8.24 metre draft since they are the beneficiaries.

(ii). Separate shifting charges should not be charged as this has already been merged in the consolidated pilotage charges as per the recommendations of the Empowered Committee and approved in the Board of Trustees meeting. _

Tuticorin Stevedores' Association

(i). They have reiterated the comments of The Customs Licensed Agents Association.

(ii). The TPT has revised the port charges very recently which will definitely have an impact on the vessel traffic at the TPT.

(iii). The levy on vessels requiring lightering or topping up operations should be charged for the actual berth hire days. Capital dredging levy on the Port dues and Pilotage may be charged following the same principles of vessels converting to Foreign trade from Coastal trade, as decided by the TAMP.

(iv). The cargo interests are double taxed on account of increased freight rate as well as increased wharfage.

The Shipping Corporation of India Ltd.

(i). They have fully endorsed the views of the TSAA.

(ii). In the Chennai Port, the pilotage fee includes pilotage in, pilotage out and shiftings. If there is no extra shifting, then the port should not charge for shifting the vessel to anchorage and back to the berth.

Tuticorin Port Trust

(i). The subject of concessional dredging levy for the vessels utilising the deep draft berth for specific purposes viz. lightering or topping up was discussed in the joint hearing and the Authority after detailed examination had ordered that the dredging levy shall be paid in full irrespective of the nature of usage. Accordingly, the port is collecting the levy, hence there is no merit in the request of the TSAA for concessional levy for specific operations. _

(ii). At the time of rationalisation of the Port Tariff in 1989, the elements of shifting and towage charges were included in the consolidated pilotage fee. Though there is no definition of shifting in the TPT Scale of Rates, movement of vessels within harbour is considered as shifting and the port does not levy shifting charges for shifting of vessels from one berth to another. However, the shifting of vessels to the outer anchorage and again bringing it to the berth is not shifting, as it is a complete pilotage operation. This involves additional pilotage operation and, therefore, the port levies full pilotage charge for taking the vessel to outer anchorage and bringing it back to the berth. The main activity of the pilotage operation is to bring the vessel from the outer anchorage to the berth and taking back to outer anchorage and therefore, such shifting cannot be free of charge.

(iii). Since there is no provision in the Scale of Rates about the definition of shifting and the number of shiftings, appropriate order may be issued.

6. The TSAA vide their letter dated 30 September 2000 submitted further points for reconsideration as summarised below:

(i). The capital expenditure as incurred by the TPT is a part of the development programme, and is must for a developing Port. This cannot have bearing on the users and such a levy of 50% is not acceptable.

(ii). Port should not collect Capital dredging levy for vessels with draft lesser than 8.23 metres calling the port. A nominal levy can be charged to the vessel drawing more than 8.23 metres draft.

(iii). Based on the recommendations of the Directing Group, formed for grouping and simplification of the port tariff, the TPT had approved in its Board Meeting held on 30 October 1985, that no separate charge would be levied for shifting of vessels. This was followed by the TPT till now. However, of late the TPT is demanding shifting charges on the plea that in the Scale of Rates, there is no specific mention of absorbing the shifting charges. Users cannot be taxed for the lapse of not incorporating the correct minutes of the Board in the Tariff.

7. With reference to the totality of information collected during the processing of this case, and based on a collective application of mind, the following position emerges:

(i). The Applicant as well as the other user organisations have raised the issue of justification for levying a separate fee to meet the expenditure relating to capital dredging. Some of the users have also made a request to restrict the levy to vessels drawing draft of more than 8.24 metres.

The case regarding imposition of a capital dredging levy at the TPT has already been disposed of by this Authority through its Order dated 2 June 2000. The propriety of the levy, its quantum and the section of users to be charged are discussed elaborately in that Order. The issues raised now are repetitions of the objections raised earlier by the users, which had been taken into consideration by this Authority while ordering a separate levy to recover the cost of capital dredging carried out by the TPT. No new facts or omissions in the Order have been brought out by the users now. That being so, there is no merit in the request for reconsideration of the earlier Order of this Authority passed on 2 June 2000.

(ii). The issue before this Authority to settle is whether shifting of vessels in the circumstances narrated in the application is for port convenience or not; and, if it is not for port convenience, whether a separate charge is payable.

Incidentally, the TPT has also requested the Authority to clarify the definition of shifting in its Scale of Rates.

(iii). With the capital dredging, the vessels drawing draft of more than 8.24 metres have to be shifted between the lower and higher draft berths for the purpose of lightering or topping up, as the case may be. This shifting operation is due to the fact that all the berths at the TPT do not have a uniform draft. On completion of cargo operation at one category of berths, the vessel has to wait if the other set of berths is not immediately available for her occupation. Such a waiting can be at the original berth itself or at the anchorage. If the vessel continues to occupy the berth even after completion of operations, she obstructs another vessel which may be waiting for the berth to commence operations. As far as the port is concerned, it continues to get berth hire as its berth is occupied by either of the vessels.

A scarce resource, however, is to be optimally used in the best interest of the economy. That being so, the Port may not like to allow a vessel idling at a berth after completion of operations, when there is an immediate demand for that berth from another vessel. If it is allowed, the result in the long run will be higher pre-berthing detention; and, hence higher cost to ship owners. Further, the vessel also may not like to idle at berth paying berth hire since anchorage fee is cheaper.

In the circumstances explained above, shifting of vessels to the anchorage for re-berthing subsequently can not be classified as shifting for Port's convenience.

(iv). The TSAA claims that shifting charges are included in Pilotage fee and, therefore, the movement of vessel to the anchorage and back to the berth should be free of charge. The TPT, however, levies full pilotage fee in such cases.

The TSAA has submitted records showing that the TPT Board had in October 1985 accepted the recommendations of the Government of India appointed Directing Group on simplification of Port Procedure to consolidate various acts connected with pilotage of vessels and to levy a composite pilotage fees. Accordingly, the shifting charges are merged with pilotage fees and hence pilotage includes shifting.

The TPT has not denied this position. It has also mentioned that the elements of shifting and towage were included in the consolidated pilotage fee at the time of rationalisation of Port Tariff in 1989. The Port has argued that shifting means movement of vessels from one berth to another. But, movement of vessel to the anchorage and back is not shifting as it is a complete pilotage operation. In any case, the port does not levy shifting charges for movement of vessels from one berth to another.

The relevant recommendation of the Directing Group is reproduced below:

“ Shifting Charges : Occasions arise when vessels have to be shifted from one berth to the other. Shifting of vessels is mostly dictated by the operational needs of the port and, occasionally, to suit the convenience of ship owners. The incidence of shifting was particularly high in Calcutta, followed by Cochin. Analysis of the replies and the data received from the ports reveals that shifting is dictated largely to meet operational requirements of the port. This being so, there is little justification for recovering shifting charges separately. The Directing Group accordingly recommends that shifting charges may be integrated with pilotage.”

The language of the recommendation clearly suggests that shifting charges to be merged with pilotage fee is relevant to vessel's shift from berth to berth. At best, it can be interpreted to mean movement of vessels within the dock basin. That being so, the Pilotage charges levied by the TPT covers inward and outward Pilotage and shifting within the basin. A logical consequence of this is that movement of vessels to the anchorage and back can not be a 'shifting' covered by Pilotage fee; and, therefore, is a separately chargeable activity, if it is not for Port's convenience.

In the light of the above discussion, the port's argument that shifting of vessels to the anchorage is a complete pilotage operation is to be admitted. The Port is entitled to receive full pilotage for such an operation.

(v). The TPT has requested to define shifting and to specify the number of free shiftings.

In view of the position explained in paragraph 7(iv) above, shifting included in Pilotage fee is to be held to refer to movement of vessels within the dock basin.

The Port's idea of calling such shiftings as free is wrong. The cost of these shiftings is included in the Pilotage fee. By way of abundant caution, it is to be mentioned that a vessel can not claim any rebate in Pilotage fee, if no shifting is required during her stay in the Port. This is an ancillary service which will be provided if a situation so requires.

The number of shiftings included in the composite pilotage fee can not be limitless. There is no uniform practice obtaining in the major ports in this regard. There is a need to define shifting and the number of shiftings covered by pilotage fee. It is also necessary to define shifting on account of Port's convenience.

Since prescription of a uniform definition of Pilotage and shifting has to be done alongwith adjustment of existing tariffs for such activities, this Authority has already initiated action to consult the Ports in this regard. This process may take a few months to culminate in a common-adoption-order. Till such time, the TPT is advised to continue the existing practice of not levying a separate shifting charges for movement of vessels from one berth to another irrespective of the number of such movements.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the application of the TSAA against collection of capital dredging levy and additional pilotage fee for movement of vessels to the anchorage and back for re-berthing at the TPT.

(**S. Sathyam**)

Chairman

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