

No. 64

New Delhi, the 13th March, 2001

Tariff Authority for Major Ports

No.TAMP/36/2000 - MBPT

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 of the representation submitted by the Mumbai Ship to Shore Launch Owner's Association relating to payment of licence fee for water conveyance payable at the Mumbai Port Trust, as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No.TAMP/36/2000 - MBPT

The Mumbai Ship to Shore Launch Owner's Association - - - Applicant

Vs

The Mumbai Port Trust (MBPT) - - - Respondent

ORDER

(Passed on this 14th day of February 2001)

This case relates to a representation received from the Mumbai Ship to Shore Launch Owner's Association (MSSLOA) relating to payment of licence fees for water conveyance payable as per the MBPT Scale of Rates.

2.1. The licence fee for water conveyance levied by the MBPT was revised by this Authority's Order dated 27 October 1998. As advised, in the said Order, the MBPT had sent a comprehensive listing which was notified by this Authority on 13 January 1999.

2.2. This Authority had revised the Scale of Rates charged at Bunders vide its order dated 19 July 2000, based on a proposal to this effect received from the MBPT.

3.1. The MSSLOA has stated in its representation that the Licence fee for the Water conveyance has been increased five-fold by the Mumbai Port Trust (MBPT) which is most unjustified and uneconomical for Launch Owners. The MSSLOA has given the following main points in its representation:

(i). It is giving ship to shore service, which normally is to be given by the MBPT. As the MBPT cannot cater to the demand of ship to shore service, it has appointed private launch owners to give services.

(ii). The MSSLOA has been paying Rs.10/- per GRT to the MBPT as Licence fee for Water conveyance, which is revised upwards by five times.

(iii). No such charge is levied on Mumbai Port's Launches, JNPT Launches and around 3000 Fishing Trawlers, which also ply in MBPT waters. Hence, the charges levied from them are discriminatory.

(iv). In the launch Industry, most of the owners are self employed and actually work on the launches as crew alongwith their relatives and such exorbitant levies are unaffordable. If the new revised charges are not waived, they will be left with no other alternative but to stop plying the launches.

3.2. Subsequently, the MSSLOA has forwarded a copy of its letter dated 16 September 99 wherein it has been stated that the demand for ship-shore service has dropped considerably due to recession in shipping and reduction in ships call at the Mumbai Port.

4. A copy of the representation was sent to MANSA, INSA and SCI for their comments. The MBPT was requested to examine the representation and offer its comments. The Port was also requested to elaborate the logic followed by it while proposing re-categorisation of floating craft for the purpose of levying licence fee for water conveyance. The comments received from them are summarised below:

Mumbai Port Trust (MBPT)

- (i). Prior to the revision by the Authority in 1998, the MBPT Scale of Rates in Clause 12 (ii) of schedule of Port dues prescribed that the licence fee for water conveyance would be recovered as prescribed in Section I of the Scale of Rates charged at the Bunders. Thus, the rates prescribed were the same as in Bunder Scale of Rates (BSR). However, charges prescribed for licence fee skipped recovery under the impression that if the charges prescribed in Section I of BSR were paid for the use of Bunders, no further recovery at the same rates was required to be made by way of licence fee for water conveyance. In view of this, the MBPT proposed inclusion of a table (table No. XIII) in the MBPT Pilotage, towage etc., Order clearly indicating payment of licence fee for water conveyance.
 - (ii). Launches, which ply from Bunders as well as from Ballard Pier are required to pay the charges under both the scales of rates. As the craft plying from bunders are paying monthly licence fee provided in the BSR, a comparatively lower rate has been prescribed for them under Table XIII of the relevant Scale of Rates.
- (iii). In respect of craft operating from bunders, both the charges are recoverable. However, in such cases the rates prescribed in the Table XIII of the towage and pilotage fees order are much less compared to the rates prescribed for the crafts operating from the Ballard Pier which is in the Dock.
- (iv). The amount payable by the launches cannot be considered to be high considering the services provided by the MBPT to these launches. They ply to and from Ballard Pier Jetty several times a day although the licence fees are charged only once in a month.
- (v). Ship to Shore launches are basically catering to the needs of the vessels engaged in foreign trade.
- (vi). Ship to Shore launches cannot be compared with the launches used by Customs, Coast Guard, Navy, etc. These agencies render services to safe guard the coastal region and the harbour, in particular. Section 2 of Indian Ports Act 1908 exempts vessel belonging to Central and State Governments from application of provisions of the Act.
- (vii). As per the First Schedule to the Indian Ports Act (1908) fishing trawlers are exempted by the Government from payment of Port Dues. The issue of continuance of

exemption from the payment of licence fee for water conveyance to the fishing trawlers will be examined separately and a separate proposal will be submitted in due course.

- (viii). The MSSLOA statement that no charges are levied on MBPT's own launches needs no clarification because paying the charges to self will have no meaning. No concession is, however, extended to the JNPT's launches.
- (ix). The factors considered for the purpose of levy of licence fees are as under:

(i).	Type of craft in operation.	(a) Luxury (b) Ordinary (c) Cargo operation
(ii).	The category to which service is rendered by the craft.	(a) Cargo transportation (b) Carrying of passengers
(iii).	The frequency at which the services of MBPT are utilised by the craft.	(a) No. of trips per day (b) No. of trips per week (c) No. of trips per month
(iv).	Quantum of charges levied and paid by the craft.	(a) For cargo transportation (b) For carrying of Passengers

Shipping Corporation of India (SCI)

- (i). The MBPT initially used to levy a charge of Rs.10/- per GRT per month as licence fees on launches plying in the harbour of Mumbai. The launches plying from Ferry Wharf, Gateway of India are mainly for passengers. The launches used from Ballard Pier are exclusively for transportation of ship's officers, crew & ships' stores / workshop material between Mumbai and vessels anchored in the inner anchorages, Mumbai.
- (ii). The rate of Rs.10/- per month per GRT was uniform for launches starting from all the above three points. However, from March 1999, the Mumbai Port Trust has kept charges for launches starting from Gateway of India and Ferry Wharf unchanged but have increased the tariff from Rs.10/- per month per GRT to Rs. 50/- per month per GRT on launches starting from Ballard Pier.
- (iii). The vessel traffic at the MBPT is declining. The Launch service companies are, therefore, burdened with loss of revenue with the five-fold increase in Licence fees. The Launch owners are passing on the burden to the users i.e. Shipping Lines.
- (iv). There is no additional facility or service provided by MBPT to the launches at Ballard Pier to justify an increase of 500% in the Licence Fee.

Indian National Shipowners Association (INSA)

- (i). The Launch Owners are providers of service for mariners / tourists visitors and passengers.
- (ii). No value addition is provided by the Port.

- (iii). The proposed rate of increase in licence fee is not justified. At the best it could be a fee not exceeding Rs.50 per launch.

5. A copy of each of the comments received, was forwarded to MSSLOA for their information and further comments.

6. A joint hearing in this case was held on 15 September 2000 in Mumbai. At the joint hearing, the parties present reiterated their views / arguments already furnished in their written submissions. The MSSLOA pointed out that they had to go to Bunders because no other place had been given to them for parking launches. The SCI argued that the levy was charged even for periods when the launches were not operating.

7. After the joint hearing, the MBPT filed its further written submission reiterating its views given earlier. The Port has made the following additional points:

- (i). Recovery of licence fee under the Pilotage Fee Order and BSR is essential in order to enable two different departments of the MBPT to exercise their authority in their respective jurisdictions.
- (ii). The composite towage and pilotage service is in deficit for the last couple of years. The cost statement for this service for 1999-2000 shows a deficit of 88%.
- (iii). Owing to an upward revision of the wages of its employees, the MBPT is burdened with an additional expenditure of Rs.85 crores annually.
- (iv). In the circumstance, any reduction in the existing charges as requested by the MSSLOA will result in further increase of the revenue deficit under this activity.

8. The costing details of the activity and the genesis of this fee have been scrutinised. The scrutiny reveals the following points:

- (i). The Port Dues are levied to cover the cost of conservancy of the Harbour, which is used by the vessels, launches, etc. The cost statement for 1999 – 2000 of the sub-activity 'Port Conservancy' shows surplus. There is no separate cost statement for the specific service as no special service or facility is provided exclusively for these launches. The launches are parked at the Ballard Pier when not plying and thus there is a small link to the sub-activity 'Berthing & Mooring at the Docks'. This service is, however, predominantly availed of by larger foreign-going & coastal vessels and revenue from ship to shore launches being very small will not make any sizeable impact on the deficit of the service.
- (ii). The inclusion of Table XIII in the 1998 Order prescribing 'license fee for water conveyances', classifying boats, craft & launches plying from the Ballard Pier Jetty along with barges and prescribing a common rate of Rs. 50 per GRT per month therefor has given rise to the grievance of these launch owners. The MBPT has clarified that, prior to amendment in 1998, the Order prescribed as follows:

“12. License fees for water conveyance: The fees for grant of license for Passenger Boats/Craft will be recovered as prescribed in Section I of the Scale of Rates charges at Bunders (Approved under TR. No. 81 of 1991)”.

This position was interpreted to mean that separate charges should have been recovered by the Port Department under this order as well and this skipped attention. To make this view more explicit, a specific table XIII was incorporated in the 1998 Order.

- (iii). That the above-cited interpretation is not appropriate will be clear if a reference is made to para. 5 of the Agenda note included in the preamble of the MBPT

Res. No. 81 of 1991. Amendments were proposed to the Port of Bombay Passenger Boats (Amendments) Rules, 1978, administered by the Port Department and to the Bunder Scale of Rates, administered by the Docks Department with a view to prescribing a composite charge to be recovered by only one agency instead of two charges by two departments.

- (iv). The rate of Rs. 50 per GRT per mensem prescribed in table No. XIII referred to above was not objected to by barge-owners' representatives who had participated in the joint hearing held in June 1998 in the case No. TAMP/2/97-MBPT. The MBPT officials explained that since it became difficult to recover anchorage charges as the movement of barges could not be precisely monitored, a higher composite license fee was proposed for barges.

9. With reference to the totality of information collected during the processing of this case, and taking into account the arguments advanced at the joint hearing, the following position emerges:

- (i). The launches operating from Ballard Pier are subjected to the following levies of the MBPT:
 - (a). Port Dues @ Rs.1.10 per GRT once in 6 months.
 - (b). Licence fee for water conveyance @ Rs.50/- per GRT per month under the Table XIII of Port of Mumbai Pilotage, Tug Assistance, Towage, Mooring and Other Services Fee Order, 1998 (Revised vide TAMP Order dated 27 Oct.1998).
 - (c). Licence fee for using Bunders @ Rs.35/- per GRT per month under Section I of Bunder Scale of Rates (BSR) (Revised vide TAMP Order dated 19 July 2000).
- (ii). The MBPT is levying Port Dues for general conservancy of the Port and Licence fee for regulating the vessels plying in its waters and for use of its landing, jetties, Bunders etc.

The launches use Ballard Pier jetty as well as Bunders. The Port also charges them two licence fees accordingly since the Scale of Rates applicable for Ballard Pier and Bunders are different.

- (iii). The issue of Licence fee for water conveyance did not come to be examined in depth by this Authority when the MBPT proposal for revision of composite towage and pilotage fees was considered for approval in October 1998. This had happened since this tariff item was seen as an insignificant one from the point of view of revenue generation to the Port; and, more attention was paid to the fixation of rates relating to pilotage fee and port dues on ocean going vessels.

Eventhough the overall increase of only 10% was approved by this Authority in the composite pilotage fee and port dues case of the MBPT, the increase in licence fee for water conveyance had become more than 10% due to re-categorisation of vessels proposed by the MBPT. The proposal of the MBPT did not explicitly speak about the revised categorisation. However, the annexes to the proposal did contain a provision to this effect, which, as has been mentioned earlier, escaped detailed scrutiny. Significantly, when that case was processed, none of the users including the SCI and the INSA had also raised any objection to the re-categorisation proposed by the Port.

- (iv). Levy of licence fee for water conveyance twice – once for using Ballard Pier jetty and again for using Bunders appears to be illogical. The levy is on a monthly basis with no relevance to the number of times the launches use the Port jetties. This clearly

shows that the levy is for general use of Port's properties and more for regulating the launches plying in the MBPT waters. That being so, occupation of Ballard Pier jetty or Bunder by the launches is immaterial. In any case, a launch cannot occupy both Ballard Pier and Bunder at the same time. The Port's argument that the concerned Scale of Rates are administered by two different departments of the Port which necessitates two separate charges is not tenable. Levy of a composite charge by one department will not take away the control of other department. From the users' point of view, they pay to the Port and not to any particular department of the Port.

It is noteworthy that launches plying from the Gateway of India and the Ferry wharf do not pay separate charges when they visit the Bunders as these two places are treated as part of the Bunders. It is reasonable to have a similar prescription in case of launches operating from the Ballard Pier also. It is, therefore, necessary to introduce a conditionality in the Bunder Scale of Rates to the effect that no levy of licence fee in respect of crafts paying such charges under the Port's Pilotage and Towage Order shall be made under the Bunder Scale of Rates when these vessels use the Bunders. The licence fee paid under Pilotage Order shall be taken to cover use of the Bunders also.

Likewise, a similar prescription in the Pilotage, towage, etc. Order is also necessary to make the licence fee payable by the vessels registered under the Bunders (under BSR) cover the use of other jetties / landing place of the Port by such vessels.

- (v). The revenue from licence fee on ship shore launches is negligible when compared to the revenue earning of the port from other vessel related charges.

As has been pointed out in sub-para (iii) above, the increase allowed in licence fee of ship shore launchers during 1998 revision comes to nearly 500% mainly due to re-categorisation proposed by the Port. This steep increase no doubt needs to be scaled down prospectively since the issue has come in this focussed manner to this Authority's knowledge. Before any such reduction in rate is considered, it becomes necessary to consider the following issues:

- (a). The re-categorisation of floating craft for the purpose of levy of licence fee has already been approved by this Authority and is now in operation for nearly two years now. Any alteration in the categorisation of ship shore launches will have repercussions on the other category of floating crafts.
- (b). A more or less similar categorisation of floating craft is followed by the MBPT in its Bunder Scale of Rates for the purpose of levying Licence fee for use of Bunders. For example, Launches using the new ferry wharf pay a licence fee of Rs.40 per GRT per month under the Bunder Scale of Rates. If the rates for the launches using Ballard Pier jetty are singled out for reduction, possibilities of getting similar representations from launches using bunders cannot be ruled out.
- (c). It will be appropriate to look into the categorisation of floating craft for the purpose of levy of licence fee for water conveyance and bunder charges instead of altering the rate for only one category of launches.
- (d). In the past, this Authority has altered a notified tariff of major ports in exceptional cases based on representations received from users, when it had noticed that such tariff or the conditionality associated with the tariff is found to be totally unreasonable. Otherwise, this Authority has always left alteration of tariffs to be done at the time of general revision of tariffs.

- (e). In this case, the categorisation followed by the Port Trust cannot be termed as unreasonable. It may have, however, resulted in an unintended steep increase in case of some of the categories of floating crafts. This aspect can be more meaningfully dealt with by rationalising the categorisation at the time of the next general revision of tariffs of the MBPT. In its own admission, the Port is facing a huge revenue deficit under the activity of providing services at the waterfront (i.e. Composite Pilotage and Towage and Port Conservancy). It is appropriate for the port to review the position and come up with a comprehensive proposal for adjustment of tariffs under this activity.
- (vi). In view of the position explained above, this Authority decides to review the existing categorisation of floating crafts for the purpose of levy of licence fee and bunder charges at the time of next general revision of MBPT tariffs for Composite Pilotage, Towage, Port Dues etc. It is noteworthy that the Applicant association will get immediate relief in view of this Authority's decision to abolish levy of the licence fee for use of the Bunders in cases of the floating crafts paying licence fee for water conveyance under pilotage order.
- (vii). The allegation of the Applicant Association about discriminatory treatment meted out to them has been adequately disposed of by the MBPT's explanation of actual position with respect to charging the licence fee for water conveyance. The provisions in the Indian Port Act 1908 are clear in this respect and a Port cannot levy charges in total disregard to the statutory provisions.

The MBPT has, however, pointed out that the issue of levy of Port Dues will be examined separately in the light of amendments to the Indian Port Act. The Port has assured that an appropriate proposal after such examination will be formulated and submitted to the TAMP. Nearly, six months have elapsed after this assurance was made by the Port, but no such proposal has been submitted. In this backdrop, the MBPT is advised to examine this issue and forward its proposal early.

- (viii). The pleadings of the MSSLOA about self-employment, survival of the industry, etc., made to justify its demand for a reduction in the licence fee only sensationalise the issue. From the arguments of the SCI, made at the joint hearing, it is clear that the launch owners have passed on the burden due to increased licence fee to the Shipping Lines.
- (ix). The SCI's argument about levying of charges even during the period when launches do not operate deserves consideration. In the Bunder Scale of Rates, there exists a provision to collect licence fee on annual basis at 8 times the monthly rate prescribed. Incorporation of a similar prescription in the Pilotage and Towage order is found to be reasonable. The effect of such a prescription on port revenue and its operations management is not known readily. This Authority, therefore, advises the MBPT to examine this issue separately and come up with its proposal for amendment in the Pilotage and Towage order.

10.1. In the result, and for the reasons given above, and based on a collective application of mind, the representation of the MSSLOA for reduction in the licence fee for water conveyance is hereby rejected.

10.2. This Authority, however, approves inclusion of the following note in the Section I of the Bunder Scale of Rates:

“Licence fee for use of Bunders shall not be levied separately on vessels which pay licence fee for water conveyance under the Port of Mumbai Pilotage, Tug Assistance, Towage, Mooring and Other Services Fees order”.

10.3. Likewise, this Authority also approves the following note under Table XIII of the Port of Mumbai Pilotage, Tug Assistance, Towage, Mooring and Other Services Fee Order:

“Licence fee for water conveyance shall not be levied separately on vessels which are registered under the Bunders and paying licence fee under Section I of the Bunder Scale of Rates”.

10.4. The MBPT is directed to incorporate the above provisions in its Scale of Rates.

11. The amendments to the MBPT Scales of Rates ordered above shall come into force on expiry of thirty days from the date of notification of this Order in the Gazette of India.

(**S. Sathyam**)

Chairman

[[List of Ports](#) | [List of Orders](#)]