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New Delhi, the 25th May, 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 of the representation submitted by the Visakhapatnam Steamship Agents' Association (VSAA) against the fixation of Port tariff for iron ore vessels retrospectively at the Visakhapatnam Port Trust (VPT), as in the Order appended hereto.

(S. Sathyam)

Chairman

Tariff Authority for Major Ports

Case No. TAMP/77/99-VPT

Visakhapatnam Steamship Agents' Association ... Applicant

Vs

The Visakhapatnam Port Trust ... Respondent

ORDER

(Passed on this 16th day of May 2001)

This case relates to a representation received from the Visakhapatnam Steamship Agents' Association (VSAA) against the practice adopted by the Visakhapatnam Port Trust (VPT) for fixing port tariff for iron ore vessels retrospectively from 1 April 1998.

2. In this representation, the VSAA has made the following points:

(i). Port tariff (both cargo and vessel related) for iron ore vessel was last revised by the Visakhapatnam Port Trust (VPT) in 1996 for the period 1 April 1996 to 31 March 1998 and notified by the TAMP. Subsequently, no tariff has been finalised for iron ore.

(ii). The VPT has informed that existing rates will be revised with retrospective effect from 1 April 1998 and has been insisting the vessel agents to give an undertaking that they would pay the enhanced port dues retrospectively as and when they are finalised.

(iii). At the request of vessel agents to indicate the quantum of proposed increase, the VPT issued a circular in June 1998 stating that the wharfage, handling and vessel-related charges in respect of iron ore traffic would be increased approximately by 25% with retrospective effect from 1 April 1998.

(iv). In most of the cases, especially in the case of tramp vessels, the relationship between the vessel agent and the owner will not be of long standing and it will not be possible for the agents to recover vessel handling cost from the owners, after a lapse of time.

(v). Port tariffs should be revised prospectively and also they should be notified in the Gazette before implementation.

3. A copy of this representation was forwarded to the VPT for its comments. The VPT in its reply dated 21 October 1999 has clarified that since 1988, the tariff for iron ore traffic was being fixed based on mutual discussion with the MMTC under the directions of the Ministry of Surface Transport (MOST). The MMTC had, however, not come forward to finalise the iron ore tariff effective from 1 April 1998; and, the VPT had requested the MOST to intervene and resolve the matter. Meanwhile, the VPT had also issued a circular dated 3 June 1998 intimating the users that the tariff for iron ore would be increased approximately by 25% with retrospective effect from 1 April 1998.

4.1. As comprehended from the VPT reply, this practice of fixing tariff for iron ore was prevalent since 1988 with the approval of the (then) MOST, the Ministry was requested to give the factual position of the case.

4.2. The MOST in its reply has explained that there was a lot of delay in finalisation of iron ore rates from the inception of outer harbour in 1976. Therefore, the VPT suggestion to discuss and finalise the rates with the MMTC and the finalised rates to be approved and notified in the gazette with retrospective effect by the Ministry was accepted by the MOST. Since 1989, this practice continued. The rates based on mutual understanding was last fixed in 1997; and, was approved by the TAMP to be valid upto 31 March 1998. Subsequently, in pursuance of earlier practice the VPT persuaded the MMTC for finalising the rates for iron ore. Finding no response from the MMTC, the VPT was forced to revise the iron tariff retrospectively from 1 April 1998.

5.1. A copy of the VSAA representation was circulated to the MMTC, SAIL and TISCO for their comments. The comments received from them are summarised below:

The MMTC Limited

(i). From 1989-90 onwards the MMTC and the VPT fixed the tariff for iron ore after mutual discussion based on the scenario prevailing at the domestic and international market for iron ore trade. The mutually fixed rates was then formalised by Gazette notification.

(ii). The last increase was mutually agreed in 1997-98 and was to be valid for next two year. But, with the beginning of 1998-99 itself, the VPT proposed 25% increase on iron ore trade.

(iii). The international market is not conducive for any increase by the MMTC in the iron ore rates.

(iv). The present system of fixing the iron ore tariff based on mutual discussion may be continued. The matter could be referred to TAMP in case there is a dispute between the parties for two continuous years.

(v). Alternatively, the discussion between the MMTC and the VPT for fixation of tariff for iron ore could be held in the presence of TAMP.

Steel Authority of India Limited (SAIL)

(i). Any charges payable with retrospective effect is not desirable in shipping trade. It will be difficult to cater for future liabilities when tariff is not certain.

(ii). Iron ore berth is not exclusively used by the MMTC. There are other users bringing in iron ore. Therefore, the present system of fixing tariff cannot hold good and needs to be replaced under the aegis of TAMP.

5.2. The TISCO has mentioned that they do not operate from the VPT.

6.1. Meanwhile, the VPT had submitted a proposal for general revision of tariff in November 1999 wherein revision of cargo and vessel- related charges for handling iron ore was also proposed. The representation of the VSAA was considered alongwith the general revision proposal and was taken up in the joint hearing held on 3 April 2000 at the Visakhapatnam.

6.2. At the joint hearing, the VPT agreed with the proposition for a prospective application of tariff for iron ore. They also admitted that the old practice of getting the tariff fixed in consultation with the MMTC was not appropriate; and, henceforth, the tariff for iron ore handling activity would be fixed with the approval of the TAMP.

7. Subsequently, the VSAA have submitted further information in favour of their representation summarised as follows:

(i). The method of fixing iron ore tariff on mutual agreement between the MMTC and the VPT was appropriate when MMTC was the only shipper exporting iron ore.

(ii). Presently, both the MMTC and private parties are exporting iron ore to other destinations. Therefore, there should be a separate system of fixing tariff for the iron ore exported by the MMTC to Japan Consortium of Steel Mills and other exporters to avoid such delay in fixation of tariff.

8.1. The main issue agitated by the VSAA is for a prospective application of the (revised) rates after proper gazette notification. In the joint hearing held in April 2000, the VPT has also agreed for a prospective application of the iron ore rates. That being so, the issue agitated by the VSAA stands resolved. It is relevant here to mention that the tariffs approved by this Authority are normally for prospective application.

8.2. The MMTC has argued for continuance of the present practice of mutual discussion between it and the port to continue. Statutorily, this Authority is to fix the rates levied by the major ports for their services / facilities. While the mutual discussion between users and port for formulating tariff proposals is desirable, it cannot be accepted as a pre-condition in the tariff setting process. As has happened in this case, if one party shows unwillingness to participate in mutual discussions or such discussions do not yield any consensus decision, the rates will remain unrevised causing financial loss to the Port. It is noteworthy that the procedure adopted by this Authority includes a consultative process and all relevant users are given an opportunity to

express their comments / objections, which are taken into consideration before any tariff order is passed by this Authority. The general procedure adopted by this Authority will apply in the case of fixing iron ore tariffs at the VPT.

It is noteworthy that the VSAA and the SAIL have also pointed out that the MMTC is not the only user exporting iron ore from the VPT. That being so, the consultation cannot be restricted to MMTC and all concerned users will also be included.

8.3. The VPT has incorporated its proposal for revision of vessel and cargo related charges for iron ore in its general revision proposal, which has been considered separately by this Authority today. The tariff increase proposed by the VPT for iron ore traffic is for a prospective application. The revised rate for iron ore will come into force with prospective effect with the implementation of the revised Scale of Rates of the VPT as approved by this Authority in the general revision case.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority disposes of the representation of the VSAA as superfluous.

(S. Sathyam)

Chairman

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