

Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal of the Jawaharlal Nehru Port Trust to levy special service charge for handling class 'A' Petroleum Product (Naphtha) at its BB-3 berth, as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No.TAMP/94/2000-JNPT

The Jawaharlal Nehru Port Trust (JNPT) - - - Applicant

ORDER

(Passed on this 14th day of February 2001)

This case relates to a proposal received from the Jawaharlal Nehru Port Trust (JNPT) to levy Rs.15/ MT as a special service charge from the consignee/importer of class 'A' Petroleum Product with retrospective effect from 1 August 2000.

2. The JNPT has stated the following in favour of its proposal:

- (i). The multi-purpose berth BB-3 and bulk berth BB-4 were not utilised fully. In 1993 – 94, it was decided to utilise these two berths for handling Class 'B' and 'C' liquid chemicals. Initially, the tank farm operators themselves handled the liquids individually for the consignee till 1998. With the rapid increase in liquid cargo, a competent organisation, experienced in handling of the liquids was selected and given the responsibility for wharf management of liquid cargo on behalf of the Port. Handling equipment like unloading arms and fire fighting arrangements with a pump house, etc., were provided by the Port. The additional capital expenditure and operation and maintenance charges are being recovered on an experimental basis in the form of management service charges @ Rs.2/MT from the consignee/importer with effect from 1 December 98.
- (ii). Subsequently, permission for handling class 'A' Petroleum Products was obtained. While giving permission, the Chief Controller of Explosives stipulated a condition that no other tanker should be berthed at the BB-4 jetty when unloading of an oil tanker at BB-3 was in progress. In order to follow the directive of the Chief Controller of Explosives, the JNPT is not able to handle vessels at BB-4 when BB-3 is occupied by a vessel carrying class 'A' Petroleum Products. This results in loss of revenue in respect of BB-4 which could have been used but for this restriction.

- (iii). As per statistics available for vessels handled at BB-4 in 1999-2000, the revenue earned out of cargo and vessel related charges is Rs. 3,21,07,805/- from 73 vessels occupying this berth for 113 days. Hence, the revenue earned in a day is Rs.3 lakhs approximately. To compensate this loss of revenue, the JNPT has proposed to levy a special charge for Naphtha vessel @ Rs.15/ MT from the consignee/importer of the cargo. This calculation is based on a forecast of two Naphtha vessels calling in a month with a parcel size of about 40000 MT each and a total berth occupancy of 96 hours in a month.
- (iv). Since the wharfage for Naphtha is less at the JNPT as compared to other ports like Haldia (Rs.175/- per MT), Tuticorin (Rs.59/- per MT), etc., there may not be any objection from the consignee / importer to pay an amount of Rs.15/ MT as a special service charge in addition to Rs.2/ MT which is presently paid as management service charges.

3. The JNPT had reportedly discussed this proposal with the J.N.P.T. liquid Chemical Berth Users Association. The Association had confirmed its acceptance and requested the JNPT to issue a trade notice in this respect so that they can plan their Naphtha vessels. Accordingly, the JNPT issued a trade notice to levy a special charge with effect from 1 August 2000.

4. In this backdrop, the JNPT has submitted the following proposals:

- (i). To levy Rs.15/ MT as a special service charge to the consignee/importer of class 'A' petroleum product (Naphtha) with effect from 1 August 2000, in addition to the Rs.2/ MT for Management Service Charge and wharfage which are being levied on all liquids.
- (ii). To notify the charge as applicable with retrospective effect from 1 August 2000 as mentioned in the trade notice issued by it.

5. The proposal of the JNPT was circulated to the BCCI, MANSA, IMC, SCI, INSA, WISA and J.N.P.T. Liquid Chemical Berth User's Association. The comments received from them are summarised below:

J.N.P.T. Liquid Chemical Berth User's Association

The Association confirmed its acceptance of the proposal to levy a charge of Rs.15/ MT for Class 'A' Petroleum Product (Naphtha) to be handled at BB-3 of JNPT, due to idling of BB-4.

Shipping Corporation of India (SCI)

- (i) The JNPT must ascertain from the representative body of consignee/importers of Naphtha with respect to their willingness to pay such charge.
- (ii) The freight for Petroleum Products including Naphtha is normally paid in the World Scale terms, which include all ship related port expenses. In case the proposed charge is accepted, such a charge is to be levied only on consignee/importer; otherwise, there is a likelihood of these charges being claimed from shipowners either inadvertently or otherwise for which there is no provision in the freight being paid to the shipowners.

6. On a preliminary scrutiny, the JNPT was requested to furnish additional information / comments on various points arising from its proposal. The salient points of the clarifications given by the JNPT are as follows:

- (i). The levy of management service charges @ Rs.2 PMT with effect from December 1998 was not notified in the Gazette earlier. It was mainly levied to recover the cost payable to M/s. Indian Oil Tanking Limited who are responsible for handling liquid cargo.

- (ii). Naphtha is being handled from August 2000. Hence, approval is sought from 1 August 2000.
- (iii). Non-occupancy of the berth BB-4 will result in loss of both vessel related charges and cargo related charges. Accordingly, the calculations for levy of special charges are done.

7. A joint hearing in this case was held on 21 November 2000 at the JNPT premises in Mumbai. During the joint hearing the following submissions were made:

The Jawaharlal Nehru Port Trust (JNPT)

- (i). While giving clearance to the Naphtha operation, the Government stipulated that there would be no operation in the adjacent berth (BB-4) while handling Naphtha in BB-3. This proposed levy is for making up the loss in BB-4.
- (ii). The wharfage for Naphtha at present is very low. Therefore, this additional levy will not be a big burden.
- (iii). Approval of the TAMP was not taken for the levy of Rs.2/- from December 1998 towards a management service charge. It was an omission. No malafides. Please ratify now.
- (iv). Our calculation is based on reasonable projections with respect to berth hire of BB-4.

J.N.P.T. Liquid Chemical Berth User's Association

- (i). Earlier each consignee managed the imports. This was objected to by concerned authority from a safety angle. It was, therefore, required to be given to one centralised agency. In this backdrop the JNPT took over; and, we agreed to pay Rs.2/- MT.
- (ii). BB-4 is a shallow berth. There is not much of operation. Therefore, we did not object to the whole burden being added to BB-3.
- (iii). IOC/BPC are constructing a separate jetty for class 'A' chemicals. When that is ready, class 'A' chemicals will shift there. Then, the extra Rs.15/- levy must stop at BB-3.
- (iv). We have only given a consent indicating our view about reasonableness of the proposition.
- (v). The trade notice clearly says, importer / exporter will pay._

Mumbai and Nhava-Sheva Ship-Intermodal Agents' Association (MANSA)

If Tank Farm Owners have consented, will they pay? They must not require the ships to pay.

8. As agreed at the joint hearing, the JNPT has furnished on 3 January 2001 the details of traffic likely to be handled at the berths BB-3 and BB-4 for the year 2000-01 and 2001-02. Based on the actual traffic of Naphtha handled and revenue generated at the BB-4 berth for the period April 2000 to October 2000 the JNPT has worked out the opportunity cost of handling Naphtha at BB-3 as Rs.23.25 per tonne, which is more than the proposed charge of Rs.15/- per tonne.

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). This proposal relates to levy of a special charge for handling Naphtha at the JNPT. The Port has obtained permission to handle class 'A' petroleum products recently. The Chief Controller of Explosives has, however, stipulated a condition that while handling class 'A' petroleum product (Naphtha) no other tanker shall be berthed at BB-4 when unloading of oil tanker at BB-3 is in

progress. This means that the JNPT will have to keep the berth BB-4 vacant when Naphtha is handled at the BB-3 berth. As a result, the JNPT will suffer a loss in revenue, which would have been generated from a normal operation at the BB-4 berth.

As per the details furnished by the JNPT, the average revenue earned from vessels and cargo handled at berth BB-4 is Rs.3 lakhs per day approximately. With reference to a traffic forecast of 80000 MT of Naphtha per month (based on traffic handled during 1999-2000), which is to be discharged from vessels occupying BB-3 for a total period 96 hours, the pecuniary loss to the Port works out to Rs.15/- per tonne due to idling of BB-4 berth during this operation. That being so, the Port's proposal to impose a special levy to compensate this loss is found to be reasonable. It is noteworthy that based on current information on Naphtha traffic handled at BB-3, the loss works out to Rs.23.50 per tonne. The Port has, however, proposed to limit the special charge to the level of Rs.15/- per tonne.

The JNPT Liquid Chemical Users Association has also opined that the proposed charge is reasonable.

(ii). The SCI has cautioned that the levy should not be claimed from shipowners. The fear is unfounded since the Port has made a categorical proposition to levy the special charge of Rs.15/- per tonne from the consignee / importer. Since the charge is to be collected on the basis of cargo handled, the question of imposing this charge even inadvertently, as alleged by the SCI, on vessels does not arise at all.

(iii). It is noteworthy that this Authority had recently passed an Order in a COPT case approving levy of additional Port Dues, Pilotage and Berth Hire on any vessel occupying a berth and requesting to keep an adjacent berth or berths vacant. The GRT of the vessel actually berthed shall be reckoned with for computation of the dues to the port.

In the instant case, the JNPT is required to keep only the BB-4 berth vacant when class 'A' Petroleum product Naphtha is handled at BB-3. The JNPT has worked out the loss of revenue taking into account the cargo related charges also, as it has to keep a specific berth (BB-4) vacant when a specific commodity is handled at the adjacent berth. This case is different from the COPT where cargo-related charges have not been considered to determine the notional loss since the berth and the commodities are not specifically identifiable.

The methodology of charging, therefore, differs in the JNPT context. What is relevant is that a port can seek adequate compensation for the opportunity of revenue earnings foregone by it due to compelling operational reasons, which are not for the port's convenience. Viewed from this perspective, the proposal of the JNPT to levy a special service charge on class 'A' Petroleum Products (Naphtha) handled at BB-3 due to idling of BB-4 is reasonable.

(iv). It is to be recognised that the special service charge is to compensate the loss of earning due to idling of berth BB-4, when Naphtha is handled at berth BB-3. This special service charge will naturally automatically cease to be in operation when Class 'A' Petroleum Products are handled at a specially designed terminal, which is stated to be under construction.

(v). The JNPT has sought approval of this special service charge with retrospective effect from 1 August 2000. In fact, the JNPT is collecting this charge at the proposed rate with effect from 1 August 2000. The Port has justified retrospective fixation of this special charge stating that it has started handling Naphtha from 1 August 2000. Commencement of operation may have taken place from 1 August 2000 but its planning must have been underway long before that. The JNPT could have submitted its proposal well in time before commencement of the Naphtha handling operations instead of forcing the Authority to approve the rate retrospectively. Since payment of this charge is being made by the users at the proposed rate without any objection, this Authority approves the proposal with retrospective effect from 1 August 2000. Nevertheless, this Authority is constrained to advise the JNPT to refrain from prescribing any tariff through trade circulars in future and to submit its proposal well in time for prescription of tariffs for new operations / services.

(vi). While processing this case, it has come to the notice that the JNPT is collecting a charge of Rs.2/- per MT for Management services on liquid cargo since 1 December 1998. This is not a notified tariff item. The JNPT has not submitted any formal proposal seeking ratification of this charge by this Authority. When pointed out during the joint hearing, the JNPT has very casually requested this Authority to ratify this charge. Even this request can not be acted upon since the JNPT has not given any details of cost break up of the management services charge. That being so, this Authority can not ratify this charge and if it continues, it will be at the risk and responsibility of the JNPT only.

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the proposal of the JNPT and takes the following decisions:

(i). A special service charge of Rs.15/- per MT shall be levied from the consignee / importer of Class 'A' Petroleum Products (Naphtha) handled at berth BB-3, when berth BB-4 is to be essentially kept vacant.

(ii). The special service charge on Class 'A' Petroleum Product as mentioned at (i) above is approved to be effective with retrospective effect from 1 August 2000.

(iii). The JNPT is directed to incorporate the provision give at (i) above in its Scale of Rates appropriately.

(iv). The (casual) request of the JNPT for ratification of the Rs.2/- PMT management service charge that is being unauthorisedly levied since 1 December 1998 is not approved for want of adequate information and a formal proposal.

(v). The JNPT is advised to be more particular in future about obtaining prior approval of this Authority for levy of any tariffs.

(S. Sathyam)

Chairman