

No. 19

New Delhi, the 29th January 2001_

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 disposes of the representation submitted by the Tuticorin Steamer Agents' Association regarding anomalies in levying container handling charges by the PSA SICAL Terminals Limited, as in the Order appended hereto.

(**S. Sathyam**)

Chairman

Case No.TAMP/78/2000-TPT

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

Vs

The PSA SICAL Terminals Limited ... Respondent

O R D E R

(Passed on this 5th day of January 2001)

The Tuticorin Steamer Agents' Association (TSAA) has submitted a representation about container handling charges levied by the PSA SICAL Terminals Limited (PSA SICAL) at variance with the tariffs approved by this Authority.

2.1. The TSAA has tabulated the tariff applicable as per Scale of Rates vis-a-vis charges levied by the PSA SICAL as given below:

Activities	Applicable charges as per Tariff	Charges levied by PSA SICAL
Para 1.5 Charges for shifting Container with in Vessel a) For a 40' container shifted by landing and reshipping.		US \$ 38.81 + Lashing / unlashng Charges (twice) US \$ 16.08 + Container wharfage charges (twice) US \$ 2.76 + Cargo wharfage charges (twice) Rs.1500/-

	US \$ 38.81	
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The TSAA has stated that the PSA SICAL refused to accept its contention inspite of having exchanged correspondence and lengthy discussions with them.

2.2. The TSAA has further stated that PSA SICAL has been levying US \$ 8.04 per container towards lashing / unlashng and stowage planning charges which is not prevailing in any of the ports in India. Also, interest is being imposed on the users which is not mentioned in the tariff approved by this Authority.

3. The TSAA had earlier represented that there was no justification to collect lashing / unlashng, supervision and stowage planning charges on the following grounds:

(i). Any activity on board the vessel was the sole prerogative of the vessel owner / master.

(ii). Lashing is only for containers on deck; PSA SICAL was collecting this charge on all containers loaded / discharged.

4. Subsequently, the TSAA has informed that the PSA SICAL is not seeking authorisation from the concerned vessel before carrying out lashing / unlashng operations on board. It has also pointed out that when it was carrying out such operations in the past, the cost was less than Rs.25/- per unit.

5. In response, the PSA SICAL has offered the following comments:

(i). Stowage planning, lashing/unlashng of containers and supervision are terminal services carried out by all major international ports. It is an essential part of an integrated terminal operations. With such an integration in the work process it has been possible to achieve an average Gross Crane Rate of 23 moves per hour and a fast turn around of vessels within 12 hours. The operational efficiency and high productivity is a testimony of this best practice in port management and operations of international standards. It is on this basis that the charges for stowage planning, lashing/unlashng of containers and supervision must be viewed as a composite one.

(ii). The THC levied by the Lines includes the charges approved by the TAMP for stowage planning, lashing/unlashng of containers and

supervision services provided by the PSA SICAL. Since 7 January 2000, MLOs have been recovering this charge from shippers and consignees.

(iii). The PSA SICAL obtains prior approval from each and every Chief Officer/Master of the ship authorising it to perform lashing/unlashing services by getting a Notification form signed before commencement of any operation.

(iv). Its activities onboard the vessels are accepted by the Chief Officer/Master and the TSAA has also included the charges for stowage planning, lashing/unlashing of containers and supervision services as part of the THC.

(v). Lashing/unlashing operation is only a very small component of the total composite services provided by the PSA SICAL. The approved rate represents the average cost that covers integrated services.

(vi). Its terminal productivity is significantly higher than that at Cochin, Chennai, Bombay, JNPT and is comparable to that of the NSICT. The focus of comparison should not be on individual work process / practices, but on the final result in terms of terminal's overall productivity. Vessel turnaround time has declined by more than 100% and a year-on-year growth rate of 35% has been achieved. The number of Container ships calling at the TCT has increased by 50% as a result of its fully integrated operational process.

(vii). It has stopped collecting the charges for wharfage and stowage planning, lashing / unlashing and supervision services for the landing and reshipment (L&R) of containers till the representation of the TSAA is decided by the TAMP.

(viii). The tariff approved for L & R operations is only for stevedorage charges. As long as a box passes the wharf, wharfage is applicable. Hence, wharfage charges are collected twice for boxes requiring landing and reshipping.

(ix). Similarly, stowage planning, lashing / unlashing and supervision is charged twice since the service is performed two times.

(x). It was agreed between the PSA SICAL and the TSAA that two options (viz. Deposit System or Current System) would be given to the customers for settlement of bills; and payment of interest beyond the credit period under the two systems was also agreed between them. The interest

rate of 2% per month charged by it for delayed payments is the same as that charged by the TPT.

(xi). Since, charging of interest is an administrative matter, the BOT operator should be allowed to decide this issue based on commercial principles customised service levels and the financial policy of the company.

6. The representation of the TSAA was circulated among various port users / representative bodies of port users and the Tuticorin Port Trust (TPT) for their comments. Comments received from them are summarised below:

Container Shipping Lines Association (India)

- (i). The PSA SICAL is charging twice for the same activity.
- (ii). There is no dispute in the rationale for transshipment charge but lines cannot be charged the transshipment charge and the other charges which is unjustifiable and double charging.

The Customs Licensed Agents' Association

They fully agree with the views of the TSAA and request the TAMP to guard the Port Users by taking appropriate action to avoid payment of unapproved charges to the PSA SICAL.

7.1. A joint hearing in this case was held on 6 September 2000 in Tuticorin. During the joint hearing following submissions were made:

Tuticorin Steamer Agents' Association

- (i). The PSA SICAL charges double wharfage which is illegal. It also charges for extra movements.
- (ii). No stevedoring is involved. Therefore, landing and reshipping cannot be said to cover that. Even if stevedoring is recognised, it shall cover lashing also.
- (iii). Lashing charge shall not be collected at all. The terminal charge covers that. In any case, it shall not be passed on to users.
- (iv). Rate of US \$ 8.04 towards stowage planning, lashing / unloading and supervision services is very high.

(v). The TAMP in its order has stated that this charge is conditional upon obtaining specific authorisation from the vessel. This is not being followed by the PSA SICAL. They are compelling us to pay, without allowing us to exercise the option.

(vi). The PSA SICAL is charging interest without authorisation from the TAMP.

(vii). Why penalise a consignee for a ships' fault in wrongly loading containers? If at all, treat such containers as transshipment containers; not as import and export separately.

PSA SICAL_

Our position is explained in our letter dated 5 September 2000. We will submit our further submissions by 25 September 2000.

7.2. During the joint hearing, it was decided to allow the PSA SICAL to submit a detailed written submission alongwith break up of cost of rendering services by 25 September 2000. The TSAA was also advised to give details of costing from its side.

8.1. As decided in the joint hearing, the PSA SICAL has furnished its written submissions, a summary of which is given below:

(i). Stowage planning, lashing / unloading and supervision is an essential part of integrated terminal operation designed to provide high level of terminal services to their customers. This is also a critical prerequisite to achieve productivity obligations as stipulated in its Licence Agreement with the TPT.

(ii). The basis and rationale of their tariff structure is to deliver higher productivity at most competitive prices. Its tariff structure is lower compared to the container handling charges prevailing in COPT, JNPT and NSICT.

(iii). Its charges for various services were bench-marked against Chennai Port's tariff structure. The extra services that it offers using its integrated operational process and computerised terminal management system are packaged within this bench- marked tariff structure. The total container handling charges in the PSA SICAL terminal should be considered in the decision making process.

(iv). Services provided under this charge are an integrated process that starts from the time the container arrives at the gate, flowing through the

yard, to the wharf, and finally on to the vessel. All operations are computer integrated on real time date.

(v). Stowage planning requires capturing of relevant container details, determining the best crane split given the storage on-board, planning the discharge sequence, yard space, slotting sequence of export/import containers and stuffing /shifting of containers in the yard prior to and during vessel operations to achieve high productivity.

(vi). The integration of lashing / unlashng in their total operation enables them to discharge the first container within 15 minutes of berthing of the vessel and to maintain high level of productivity through their computerised terminal management system.

(vii). Supervision services involve co-ordination of all integrated terminal operations both on-board and on shore.

(viii). The stevedoring rate for container handled at Chennai is Rs.375/- which includes lashing / unloading, shoe and cone fixing, etc., performed by the stevedoring agent by employing Port Trust and Dock Labour Board labour. The nature and services provided at the PSA SICAL are not the same as those provided by the stevedoring agents at the CHPT. It has, however, adopted the rate of Rs.350/- in consistent with this philosophy to adopt the rate structure of Chennai Port. The rate adopted is definitely reasonable considering its efficient services and high productivity.

8.2. The PSA SICAL has mentioned that it is not possible to give a detailed break up of the cost of rendering these services since they are part of integrated terminal operation. It has, however, provided an indicative break up of the cost. The PSA SICAL has requested this Authority to maintain confidentiality of the information furnished since it is commercially sensitive.

9. With reference to the totality of information collected during the proceedings of this case, the following position emerges:

(i). The existing Scale of Rates of the PSA SICAL was approved by this Authority in December 1999. The approval has been accorded based on the proposal from the PSA SICAL seeking to adopt the CHPT rates. It is relevant to mention here that the existing tariffs of the PSA SICAL fixed for the first time are not based on its own cost of operations and capital employed; but, basically, are an adoption of the notified tariffs in the neighbouring port, i.e. the Chennai Port Trust.

(ii). The TSAA has represented that the Terminal Operator levies twice the charges relating to lashing/unlashing, wharfage on containers, and wharfage on cargo, in the case of shifting of containers within the vessel by landing and reshipping (L&R).

The Scale of Rates of the PSA SICAL contains a specific tariff for the handling operation relating to a container shifted within the vessel by landing and reshipping. The Scale of Rates is silent about levy of wharfage on container and containerised cargo in such cases. As has been mentioned earlier, the existing tariffs of the PSA SICAL are an adoption of the CHPT tariffs. It is, therefore, relevant to refer when in doubt to the CHPT Scale of Rates including the conditionalities governing the tariffs. *Item No.17(c) in Chapter II(A) of the CHPT Scale of Rates clearly specifies that the containers and containerised cargo covered by the operation of shifting of the containers from one hatch to another of the same vessel via the quay using the CHPT tractor trailers or other equipment shall not attract any wharfage.* A similar prescription has, therefore, to be applicable in the case of the PSA SICAL also. That being so, the PSA SICAL cannot levy any wharfage on the containers and the containerised cargo shifted within the vessel by landing and reshipping.

The reasonableness and justification of levying lashing/unlashing charges are discussed later in this Order. Here, the discussion is confined only to the issues of charging this rate twice in the case of shifting of containers. The explanation offered by the PSA SICAL shows that this charge is mainly to cover capital and operating expenditure of its computer system and activities relating to stowage planning. The actual cost of lashing/unlashing included in this charge is negligible.

The PSA SICAL Scale of Rates allows charging of tariff for lashing/unlashing, etc., on containers shifted on board vessels. The question is whether this charge is to be levied twice, as allegedly done by the PSA SICAL. In the case of shifting of containers, the Terminal Operator's efforts in stowage planning and general supervision may not be of the same order as in the case of normal import/export containers passing through its gate. In fact, in these cases, it comes to the knowledge of the Terminal Operator in advance that the container landed is to be reshipped and this aspect is taken into account in stowage planning. That being so, the Terminal Operator's involvement is only for one time and not twice warranting collection of this charge twice.

In the light of the discussion above, the PSA SICAL can levy the (handling) charges prescribed in the Scale of Rates for shifting the

container by landing and reshipping alongwith lashing/unlashing, stowage planning and supervision charge only once in such cases.

(iii). The TSAA has also objected to the levy of interest imposed by the PSA SICAL on delayed payments beyond an agreed lead-time. The PSA SICAL has mentioned that it charges a penal interest @ 2% per month which is same as the one charged by the TPT. The PSA SICAL has also argued that it must be allowed to decide this issue based on its business policy.

The Authority has prescribed a 24% p.a. penal interest on delayed payments by the users as well as on the delayed refunds by the port trusts subject to certain conditions. The practice adopted by the PSA SICAL to levy penal interest on delayed payments cannot be termed as unreasonable as such a levy is a general practice in vogue in the normal course of business. What is relevant here is that the Terminal Operator shall also pay the same penal interest on delayed refunds to the users at the same rate. Besides, the PSA SICAL shall adopt the penal interest rate notified by this Authority from time to time.

(iv). The Scale of Rates of the PSA SICAL stipulates that the vessel operator shall authorise the PSA SICAL to undertake the services relating to stowage planning and lashing/unlashing of containers. The TSAA objection is that the Terminal Operator does not seek such authorisation from the concerned vessel before carrying out operations on board. The PSA SICAL has mentioned that it obtains a prior approval from each vessel authorising it to perform lashing/unlashing services by getting them to sign a Notification Form before commencement of any operation. It has further argued that its activities on board the vessel are accepted by the Chief Officer/ Master and the Lines have also included this charge as part of the THC.

A reading of the General Notification Form (GNF) furnished by the PSA SICAL does not indicate explicitly that such specific authorisation is made under that Form. It is a fact that the Masters of the vessels after signing this notification form have been allowing the Terminal Operator to carry out lashing / unlashing and stowage planning. This shows that the vessels have been treating the GNF as an authorisation for the PSA SICAL to undertake lashing/unlashing and stowage planning also. It will, however, be appropriate for the PSA SICAL to modify the Form to explicitly provide for a specific authorisation from the Master of the Vessel.

The PSA SICAL's argument about inclusion of this charge in the THC cannot be taken as a substitute for obtaining specific authorisation.

The rationale of inclusion of charges for on-board services in the THC is currently under examination of this Authority in a different case relating to the MBPT. The THC issue raised by the PSA SICAL is, however, not relevant to the issue being canvassed for adjudication in this case.

(v). It is to be recognised that lashing/unlashing of containers and stowage planning do not ordinarily form part of terminal services. The Authority has allowed a specific charge for these services after seeing force in the PSA SICAL's contention that integration of such activities will be necessary for it to achieve the productivity obligations. The PSA SICAL, however, has been advised to seek a specific authorisation by the vessels before undertaking these activities. Possibly, the PSA SICAL may negotiate with the vessels as a part of its contract with the Lines to allow it to carry out these on board activities. If this does not happen, obtaining a specific authorisation in individual cases is inevitable; and, levying this charge will be conditional upon obtaining such authorisation.

(vi). The reasonableness of the charge for lashing/unlashing, stowage planning and supervision is also questioned by the TSAA.

As has been mentioned earlier, the existing tariffs of the PSA SICAL have been adopted from the then existing tariffs of the Chennai Port Trust. At the CHPT, the port does not levy any charge for lashing/unlashing and stowage planning. These activities are carried out by private Stevedores and Surveyors. The PSA SICAL has in this case adopted the market rate charged by these Stevedores and Surveyors. In the CHPT context, this charge is primarily for booking of labour gangs of the Port Trust and the Dock Labour Board. As has been admitted by the PSA SICAL, such labour booking does not arise in the context of its terminal operation.

The break up of costs, as furnished by the PSA SICAL now, indicates that about 79% of this charge is proposed to be accounted for capital and maintenance cost relating to computer hardware and software. This fact was not disclosed to this Authority when the PSA SICAL submitted its tariff application at the time of commencement of its Terminal. In any case, expenditure relating to computers cannot be seen as confined only to lashing/unlashing and stowage planning. The computer system is used in all terminal activities; and, hence the related expenditure is to be allocated to all the activities carried out in the Terminal. The cost calculations given by the PSA SICAL contain some errors, a detailed analysis of which is not made in the light of the above observation relating to expenditure on the computer system.

The facts that integration of on board operations with the Terminal activities to achieve the desired level of productivity and the investment made in the computer system definitely deserve consideration. As has been mentioned earlier, the entire expenditure on computer is sought to be recovered through the charges on lashing/unlashing, stowage planning, etc. Since the existing tariffs of the PSA SICAL are not based on its own cost, it becomes difficult to comment whether this expenditure is loaded to other activities also. The existing tariffs have been allowed to be adopted by the PSA SICAL bearing in mind a projected level of future revenue it has to earn. In these circumstances, if the charge for lashing/unlashing, etc., is reduced by excluding the expenditure on the computer system without giving the Terminal Operator an opportunity to distribute such expenditure on all activities, the revenue model considered earlier will be somewhat disturbed. That being so, the tariff item in reference cannot be altered in isolation. It is noteworthy that from the users angle, the total terminal cost of container handling is one of the lowest at the PSA SICAL, even with the levy of the charge in reference. This benefit multiplies when the (higher) productivity levels achieved at the PSA SICAL, in comparison with many other Indian Ports, are also taken into account.

(vii). Nearly one year has passed since the PSA SICAL has commissioned its operations. It can be reasonably expected that it has sufficient operational and financial data for the past based on its working to be able to forecast such details for the future also. So the time has ripened for the PSA SICAL to branch off from the CHPT-based tariffs to a separate specification based on its own revenue and cost projections. It is noteworthy that the Nhava Sheva International Container Terminal (NSICT) at the Jawaharlal Nehru Port Trust (JNPT), which had also adopted the JNPT tariffs initially at the time of commencement of its operations, has recently opted for a separate set of tariffs based on its own revenue and cost projections.

This Authority, therefore, finds it reasonable to allow the PSA SICAL to so formulate its proposal for a review of the existing Scale of Rates by 1 May 2001. It is to be recognised that a tariff review need not necessarily end in a tariff increase. If the PSA SICAL wants to stick to the two year tariff revision cycle prescribed by this Authority earlier ignoring the specific suggestion made now for an ahead-of-schedule review, this Authority will have no option but to take up the tariff item relating to lashing/unlashing, stowage planning, etc., *suo motu* for refixation.

While accepting the PSA SICAL's argument about integration of on-board activities for achieving higher productivity, it needs to be emphasised that tariffs shall also relate to productivity levels. This Authority has already

prescribed an Efficiency-Linked Tariff (ELT) Scheme at the NSICT. The NSICT has also submitted a revised proposal for the ELT Scheme which is under consideration. While formulating its proposal for revision of its Scale of Rates, the PSA SICAL is advised to take into consideration introduction of an ELT Scheme in its Terminal also.

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority allows the representation of the TSAA to the extend of directing the PSA SICAL as follows:

(i). It shall not levy wharfage on containers and containerised cargo in the case of shifting within the vessels (via quay) by landing and reshipping. It can levy lashing/unlashing charges only once in such cases. Billing done so far contrary to this position shall be amended and the excess payment received shall be refunded.

(ii). It can levy a penal interest @ X% per annum on delayed payments from the users. In such cases, it has to pay penal interest at the same rate in case of delayed refunds. (For the major ports the rate of penal interest prescribed is 24% per annum. But, there is no sanctity about 24%. What is relevant is that the rate shall be the same both for delayed payments by users and delayed refunds by the PSA SICAL.)

(iii). It has to seek a specific authorisation from the vessels prior to commencement of lashing/unlashing and stowage planning activities. Alternatively, it can include such authorisation in the contract it may enter into with individual Shipping Lines.

(iv). It shall formulate its proposals for revision of the existing Scale of Rates based on its own revenue and cost projections. Such proposals shall be submitted by 1 May 2001 to this Authority for approval.

(**S. Sathyam**)

Chairman

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

