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New Delhi, the 19 July, 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 proposal of the Chennai Port Trust for fixation of hire charges for grabs as in the Order appended hereto.

(**S. Sathyam**)

Chairman

Case No. TAMP/23/2001-CHPT

The Chennai Port Trust (CHPT)

...

Applicant

ORDER

(Passed on this 28th day of June 2001)

This case relates to a proposal received from the Chennai Port Trust (CHPT) for fixation of hire charges for grabs.

2.1. In its proposal, the CHPT has made the following main points:

- (i). The CHPT Scale of Rates prescribes the hire charges as Rs.592/- and Rs.974/- for grabs with the capacity 1½ Cu. Yard and 2½ Cu. Yard respectively.
- (ii). The Government Audit has pointed out that though two different rates are available for hire in the Schedule of Rates, the CHPT had been collecting the hire charges for grabs fitted with cranes at the rate of Rs.296/- per shift (pre-revised rate) irrespective of the capacity which is not in order.
- (iii). The 1½ Cu. Yard and 2½ Cu. Yard capacity grabs were already replaced by 3.5 Cu. m. grabs and 4 Cu. m. grabs for traffic operations. In the light of the objection raised by the Audit, a provisional rate of Rs.1000/- for 3½ Cu. m. grabs and Rs.1,100/- for 4 Cu. m. grabs were recovered from August 1997.
- (iv). The provisional rates were fixed in accordance with a provision in the Scale of Rates which allows discretionary powers to the Chairman

(CHPT) to fix the charges for use of the crafts or appliances for which the tariff is not included in the Scale of Rates.

- (v). The hire charges of grabs are now worked out on cost based approach at Rs.1,000/- and Rs.1,100/- per shift for 3.5 Cu. m and 4 Cu. m. grabs capacity respectively.
- (vi). It is, however, proposed to follow a uniform rate of Rs.1000/- for period of 8 hours and a minimum of Rs.500/- for 4 hours or part thereof for both the grabs.

2.2. In view of above, the following amendments in the Scale of Rates have been proposed by the CHPT:

- (i). Book-I under Chapter-IX, Scale-D – Charges for floating craft, appliances etc., Category-II a new serial No.9 may be added after serial No.8. as follows:“

Serial Number and Description	Rate of Hire (Rs.)	Period of Hire	Minimum (Rs.)	Remarks
9. Grab (3.5 Cu. Metre and 4 Cu.Metre) Fitted to Shore crane of any Capacity	1,000/-	Per Period of 8 hours.	500/-	(a). Minimum charges shall be for four hours or part thereof. (b). The hire charges for the grab shall be in addition to the charges for the hire of the crane to which the grab is fitted except where the use of shore (wharf) crane is included in the Berth Hire charges.

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- (ii). The existing serial No.3 under Chapter-XI, Berth Hire, in Book-I of the Scale of Rates may be deleted and substituted as under:

“ 3. Hire of Grabs, (fitted to the Shore Cranes) whenever hired for handling bulk cargo of vessel’s loading and unloading work at the rates, as provided under Category-II (such as Nos. 7 to 9) Scale-D of Chapter-IX of the Board’s Scale of Rates.”

2.3. It has further proposed to increase the proposed rates by applying the appropriate percentage hike as approved by the TAMP in general revision of Scale of Rates for crantage with effect from 10 April 2000. (This Authority approved a 100% increase for crantage / FLT in the case of CHPT vide its Order dated 22 March 2000 which was notified in the Gazette of India on 10 April 2000).

3. The proposal of the CHPT was circulated to all concerned users / representative bodies of port users for their comments. The comments received from them are summarised below:

The Chennai Custom House Agents’ Association (CCHAA)

The proposal put-forth by the Chennai Port Trust is reasonable. _

Tamil Nadu Electricity Board (TNEB)

- (i). The proposed upward revision of grab hire charges from Rs.296/- to Rs.1000/- per shift is exorbitant and unreasonable. The increase proposed is nearly 350%.
- (ii). This will increase the landed cost of coal substantially which in turn will increase the cost of generation, thereby, affecting the public of Tamil Nadu.
- (iii). The TNEB may be accorded a special status and exempted from the proposed increase in grab hire charges. _

Indian National Shipowners’ Association (INSA)

- (i). Basis for considering 225 number of shifts in the computation of hire charges has not been explained.
- (ii). Return on capital considered @18% is monopolistic. It shall be frozen at not more than 12%.
- (iii). Rounding off the rates for both the grabs has been done in favour of the port.

The Shipping Corporation of India (SCI)

- (i). The CHPT has estimated the life of the grabs as five years, which is very much on the lower side. Considering the nature of cargo to be

handled, the number of shifts shall be at least 360 as against 225 shifts considered in the cost sheet. The cost per shift then will be Rs.617/- and Rs.647/- for 3.5 Cu. m and 4.00 Cu. m grabs respectively.

- (ii). The CHPT has requested the TAMP to approve 100% increase in the rates fixed by applying the tariff increase approved in the Order relating to general revision of the Scale of Rates notified by the Authority in the Gazette of India on 10 April 2000. As a result the CHPT is proposing to levy an amount of Rs.2000/- for 8 hours and a minimum of Rs.1000/- for 4 hours for part thereof which is very much on the higher side.
- (iii). Since the cost sheet submitted by the CHPT shows a figure of Rs.1000/- per shift for the said grabs, it will not be logical or rational to seek approval for an amount which is higher than the cost shown in the cost sheet.
- (iv). The CHPT is already charging provisional rate of Rs.1000/- for 3.5 Cu. m. grabs and Rs.1100/- for 4.00 Cu. m. grabs, from August 1997 onwards. These figures are in line with the per shift cost shown in their cost sheet. It is, therefore, proposed to maintain the same rates.

Chennai Port Stevedores Association (CPSA)

There is total slump in bulk traffic at the Chennai Port and any further increase by applying the percentage approved by the TAMP with effect from 10 April 2001 will be detrimental to the interest of the Trade.

Chennai Steamer Agents' Association (CSAA)

The users of the grabs are mostly the Stevedores. The TAMP may be guided by the concerned user body which in this case happens to be the Chennai Port Stevedores Association.

4. A copy each of the comments furnished by the users was sent to the CHPT as feed-back information. The CHPT has offered the following further comments on the feed-back information:

- (i). The rate of Rs. 296 per shift referred by the TNEB for 1 ½ Cu. Yard grabs has been revised to Rs.592 per shift with effect from 10 April, 2000.
- (ii). The proposed rate of Rs.1000 for both 3.5 Cu. m. and 4 Cu. m. grabs is very reasonable compared to the pre-revised rate of Rs. 487 for 2 ½ Cu. Yard grab considering the higher carrying / handling capacity of these grabs.
- (iii). No concession in hire charges for such grabs can be given for any port users.
- (iv). The estimated life of the grab is considered as 5 years as per the life norms of different assets fixed by the (then) MOST.

(v). In the computation of the hire charges 225 shifts has been reckoned with based on past average operational performance.

(vi). Any increase approved by the TAMP in general revision of Scale of Rates would be applicable on the appliances / equipments which were already in use. As the grab is in use since 1997, the increase of 100% as approved by the TAMP w.e.f. 10 April 2001 has to be applied on the proposed rate of Rs.1000/- per shift. This shall be applicable retrospectively from 10 April 2001.

5. A joint hearing in this case was held at the CHPT premises on 9 May 2001. At the joint hearing, the following submissions were made: _

Chennai Port Trust (CHPT)

- (i). The new grabs are additions not replacements.
- (ii). The Govt. circular has also fixed the life of grabs as 5 years.
- (iii). The proposal now is to increase the hire charges from provisional rate of Rs.1000 / 1100 per shift for 3.5 Cu. m / 4 Cu. m grab capacity to Rs.2000/- per shift.
- (iv). We have gone by average number of shifts. We do not know how the SCI says it shall be 360 and not 225 shifts.
- (v). The proposal for regularising the rates of these grabs was somehow missed in the April 2000 general revision proposal.
- (vi). We are doing many things for cost saving, efficiency improvement, etc. These are not relevant for grab as it is a very small equipment.
- (vii). We had been charging a low rate from 1989 to 1991. There was no change in the tariff up to the year 2000. The present rate is based on actuals. If we had proposed this in April 2000, we would have got a 100% increase.
- (viii). We apply 5 years life for these grabs only from 1997.
- (ix). We have to restrict the use of the grab for fertiliser for safety of the grab on density considerations and also due to the transportation time from fertiliser berth to coal berth.

Tamil Chamber of Commerce and Industry (TCCI)

- (i). 5 years life for a grab is too short. It is not used so frequently so as to exhaust its life so fast.

- (ii). The existing rate for 2½ Cu. Yard grab capacity is Rs.974/- per shift. The hire charges proposed for 3.5 Cu.m grab capacity is Rs.2000/- per shift. There is no logical equation.
- (iii). Grab work for at least half year; and, 2 shifts a day. That is how we worked out 360 shifts.
- (iv). There is maintenance repair even for these grabs. There is downtime. That is why we say, the working life of these grabs has to be more.
- (v). April 2000 revision of 100% was with respect to 1991 rates. Grabs rate were fixed in August 1997. On that (recent) base the MBPT can not ask for a 100% increase.

Seaport Logistics

- (i). There is no justification for a 100% increase. The grab handles only 200 MT per shift per ship against a norm of 1500 MT.

A.M. Ahamed Company

- (i). They say this revision is prospective. But, the CHPT has demanded arrears from bulk fertiliser handlers. This was discussed in the Port Users meeting, but, no decision was taken. We are not given 'No Arrear' certificate for Tender purposes.

M/s. Bhoruka Steel

- (i). Grab capacity of 3.5 Cu. m was bought in 1989, but, it is still counted. Where is the consideration for 5 year life?.
- (ii). For a 1989 grab there can not be a 100% increase from Rs.1000/- of 1997. The CHPT must replace the grab if they want such increases.
- (iii). Consideration of 225 shifts is too low a figure. We endorse the observation of the SCI.

SICAL

- (i). Will there be a rebate if the grab breaks down? The Scale of Rates must have a provision for rebate. In such contingencies the labour gang also has to sit idle. We lose on that.
- (ii). Grab is used only for fertiliser. Do not exclude coal. If this is done grab utilisation will increase and, cost will go down.

Tamil Nadu Electricity Board (TNEB)

- (i). Grab is working from 1989. Please take into account that it has worked for 12 years. Depreciation and interest on the cost of the asset gives them 198% return, which is not correct. _
- (ii). Consideration of 225 number of shifts appears to be low. But, if it is average of actuals, we have to accept it.

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

- (i). The CHPT levied provisional rates of Rs. 1000/- and Rs. 1,100/- from August 1997 for the grabs of the capacity 3.5 Cu. m. and 4 Cu. m respectively. These provisional rates were fixed by the CHPT based on a provision in the pre-revised Scale of Rates which gave discretionary powers to its Chairman to fix the tariff of such appliances/ crafts for which tariff is not prescribed in the Scale of Rates. It will not be congruous with the arrangement envisaged in the MPT Act for tariff setting, if such discretionary powers to fix tariffs are delegated to the regulated entities. Realising this position, the provision giving discretionary powers to the Chairman (CHPT) has already been deleted in the revised Scale of Rates notified by this Authority on 30 March 2001.
- (ii). The CHPT levied the provisional rate from August 1997 and has now arrived at the cost based tariff of Rs.1000/- for both the grabs. The rates being provisional, it was incumbent on the CHPT to regularise them by seeking approval of this Authority at the immediate available opportunity. The CHPT did not do this (even) at the time of the general revision of tariffs effected in the year 2000. It is unfortunate that it took nearly four years to take action to regularise its 'provisional' levy of charges.
- (iii). The CHPT has considered 5 years life for arriving at the depreciation of the assets from 1997. The contention of the TCCI that the 5 years life of the grab is too low cannot be accepted because the CHPT has considered the economic life of 5 years life based on the Govt. guidelines. Incidentally, we have been allowing the life-norms fixed by the Government for computation of tariffs at all the major ports. The depreciation figure estimated by the CHPT need not, therefore, be modified. Without prejudice to the decisions taken above, the point made by the TNEB about the 'life' of one of the grabs in this case deserves consideration. As has been alleged by them, and as has been admitted by the CHPT also, one of the grabs has been working from 1989 i.e., for 12 years; and, there is no proposal to scrap it even now.

Three points arise for consideration:

- (a). In this backdrop, can a 5-year life prescription be said to be justified?
- (b). As demanded by M/s. Bhoruka Steel, should the CHPT be required to replace the grab with a new one if any increase in tariff is to be considered?
- (c). As represented by the TNEB, the return on this fully paid-up asset is phenomenal. Should the CHPT be required, therefore, to fix the tariff in this case differently?

As has already been stated, this Authority has been allowing the life-norms fixed by the Government. In this case, the life-norm so fixed is five years. That being so, no change in the norm is needed. The point agitated by the TNEB about a fully paid-up asset is not wholly correct because fully paid-up assets are excluded from the 'net block' which alone is reckoned with for purposes of computing return on capital employed. Nevertheless, it has to be considered that the tariff base at the existing rate incorporates an element of this factor. This will have to be so unless this Authority is in a position to adopt the marginal cost pricing system the introduction of which is fraught with complexities and, in any case, is in a very preliminary stage of consideration. The demand of M/s. Bhoruka Steel, however, is worthy of attention. If the CHPT are to increase the tariff for an equipment which is being operated for beyond its technical life-span, then, the users can have a legitimate expectation of it to replace the old equipment with a new one. The CHPT is, therefore, so advised and required to cover this point at the time of the next (concerned) revision.

- (iv). The CHPT has considered a return of 18% as against 19.5% allowed in the other cases by this Authority reckoning with 13.5% towards interest on Govt. loans and 6% (3+3) towards a Development Fund and a Renewal Fund. The impact of this differential of 1.5% shall be around Rs.26-28 per shift. Since the CHPT has rounded off the rates from Rs.987/- and Rs.1036 for 3.5 Cu. m. and 4 Cu. m capacity grab to Rs.1000/- and Rs.1100/-, the modification in ROCE working to the extent of Rs.26/- will be negligible and therefore, ignored.
- (v). The TCCI and a few other users have contended that 225 number of shifts considered by the CHPT is too low; and, at least 360 shifts shall be reckoned with in the computation of hire charges. The CHPT has, however, clarified that 225 number of shifts considered by them is based on the average of past actuals. In this context, the estimation of the CHPT seems reasonable as they are based on an average of past actuals and, therefore, is accepted. Significantly, even the TNEB, a main-user, has conceded that 'if the CHPT computation is based on average of actuals it has to be accepted.'
- (vi). Although the cost estimates for the two grabs are different, the CHPT has proposed a uniform tariff for both the grabs. There is no significant

difference in the provisional rates levied by the CHPT and the rates proposed on a cost based approach. Also, considering the points discussed at (iii) (iv) and (v) above, the rate proposed by the CHPT is found to be reasonable and, therefore, is approved.

- (vii). This Authority does not generally approve tariffs with retrospective effect unless some exceptional special circumstance prevails. Since, these grabs are in use since 1997 for which provisional rates are being collected even now, the provisional hire charges levied by the CHPT retrospectively from August 1997 need to be considered for ex-post facto approval in order to ratify the action taken by the CHPT. The CHPT is, however, advised to refrain from presenting such 'fait accompli' cases before this Authority in future. The CHPT has proposed one rate now for both the grabs although earlier, in their provisional arrangement, they had adopted two different rates. The one rate now proposed is a step towards simplification; and, since the lower rate has been retained, it can also be said to be a concession to users. This concession, however, incidentally, raises a point about some 'excess recovery' in some cases. Bearing in mind the altruistic intentions of the CHPT that have given rise to this (unanticipated) problem, it will not be necessary to require the CHPT to refund the 'excess' recovered.

Bearing in mind this position, this Authority decides to approve the revised tariffs in two phases. In phase-I (i.e., from August 1997 to the date of notification of this Order), the 'provisional rates' charged by the CHPT; and, in phase-II (i.e., prospectively from the date of notification of this Order onwards), the single rate of Rs.1,000/- for both the grabs.

- (viii). The CHPT has proposed to increase the hire charges by 100% based on the tariff increase approved by this Authority in the April 2000 general revision case.

It is to be noted in this context that the tariff increase approved by this Authority in the general revision case was based on surplus/deficit position reflected in the cost statements. The CHPT had not incorporated any provision to fix the tariff of these two grabs in the general revision proposal. It, therefore, appears that cost elements relevant to these grabs were not included in the cost statements submitted at that point of time. That being so, the 100% increase over the cost based tariff for the two grabs proposed by the CHPT now is not approved.

Further, the following facts are also relevant in this context:

- (a). The hire charges are fixed with reference to estimates. Actual income & expenditure during the past 4 years on hire of the relevant grabs have not been provided by the CHPT.

- (b). Return on capital employed is on the depreciated value of the asset. In this case acquisition cost has been taken for determining the return, since the computations of hire charges has been made based on cost of the facility. If costing of activity/service, as done in the case of general revision of tariff, is considered, then, only the depreciated value of grabs will qualify for return from the second financial year onwards.

The additional return earned by the CHPT by considering the gross block of the grabs instead of net block of the grabs can reasonably be assumed to offset any increase in the operational expenditure incurred during the period.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following hire charges of grabs proposed by the CHPT following a cost based approach:

- (i). Provisional hire charge of Rs.1000/- for 3.5 Cu. m. grabs and Rs.1,100/- for 4 Cu. m. grabs being levied by the CHPT with retrospective effect from August 1997 till the date of notification of this Order in the Gazette of India.
- (ii). A uniform hire charge of Rs.1000/- for the period of 8 hours and a minimum of Rs.500/- for 4 hours or part thereof for both 3.5 Cu. m. grabs and 4 Cu. m grabs with prospective effect from the date of notification of this Order in the Gazette of India.

9. Accordingly, the Scale of Rates of the CHPT is amended as follows:

- (i). A new Serial No. 9 after the Serial no. 8 in Book-I under Chapter-IX, Scale D – Charges for floating cranes and appliance, etc., Category-II is inserted as follows:

Serial Number and Description	Rate of Hire (Rs.)	Period of Hire	Minimum (Rs.)	Remarks
9. Grab (3.5 Cu. metre and 4 Cu.metre) Fitted to Shore crane of any Capacity	1,000/-	Per Period of 8 hours.	500/-	(a).Minimum charges shall be for four hours or part thereof. (b). The hire charges for the grab shall be in addition to the charges for the hire of the crane to which the grab is fitted except where the use of shore (wharf) crane is

				included in the Berth Hire charges.
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- (ii). The note under S.No.3 in Book –I, Chapter XI – Berth hire charges is amended as follows:

“3. Hire of Grabs, (fitted to the Shore Cranes) whenever hired for handling bulk cargo of vessel’s loading and unloading work at the rates, as provided under Category-II (such as Nos. 7 to 9) Scale-D of Chapter-IX of the CHPT’s Scale of Rates.”

(**S. Sathyam**)

Chairman

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