

(Published in Part – III Section 4 of the Gazette of India, Extraordinary)

No. 157

New Delhi, the 15 June , 2001

Tariff Authority for Major Ports

NOTIFICATION

No.TAMP/16/2001 - CHPT

New Delhi, 15 June 2001

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 wharfage rate for coastal movement of Cars using the RORO system as in the Order appended hereto.

(**S. Sathyam**)

Chairman

Case No. TAMP/16/2001-CHPT

The Chennai Port Trust (CHPT)

...

Applicant

ORDER

(Passed on this 12 day of June 2001)

This case relates to a proposal submitted by the Chennai Port Trust (CHPT) for fixation of wharfage rate for coastal movement of Cars by Car Carrier Vessels.

2.1. In its proposal, the CHPT has stated that its existing Scale of Rates prescribes the wharfage rate of 0.3% ad valorem of FOB value for export of motor cars, jeeps and vans using RORO system and Rs. 2596/- per unit for coastal export and for import of cars by methods other than RORO system. This Authority had not approved its proposal for fixing a concessional wharfage charge for coastal movement of cars at the rate of 0.25% ad valorem for reasons stated in its Order passed on 19 July 2000. M/s. Shahi Shipping Limited (SSL) have again represented to the CHPT reiterating their plea for fixing wharfage @ Rs.400/- per vehicle for coastal movement of cars by RORO vessels as presently charged by the Jawaharlal Nehru Port Trust (JNPT).

2.2. The CHPT has further stated that on a representation from the SSL, the Ministry of Shipping (MOS) has advised all the major port trusts to take an immediate policy decision so that people may get employment opportunity. In view of this, the CHPT has proposed to fix the new wharfage rate of Rs.400/- per vehicle for coastal movement of cars for imports and exports by the RORO system on par with the JNPT with a view to boost exports of cars manufactured in India. The CHPT

has, therefore, requested this Authority to reconsider its earlier Order and approve a wharfage rate of Rs.400/- per vehicle for coastal movement of cars, jeeps and vans by the RORO system.

3.1. The CHPT had earlier submitted a proposal for revision wharfage on export of motor cars to foreign countries and on coastal movement of cars. We considered the proposal and through our Order dated 19 July 2000 approved the following:

- (i). A wharfage rate of 0.3% of FOB value for export of motor cars, jeeps and vans.
- (ii). The above rate will be applicable only in case of export of motor cars, jeeps and vans using the RORO system.
- (iii). There will be no storage charge for parking of cars awaiting shipment for the time being. The free period of 30 days available to all exports will be extended to this case also.
- (iv). The existing rate of Rs.2,596/- per unit will apply to motor cars (import), tourist caravans (import and export), and motor cars, jeeps and vans exported by methods other than the RORO system.

3.2. The proposal of the CHPT for a separate wharfage for coastal shipment of motor cars on an ad valorem basis by extending a concession was not approved by this Authority. We had then observed that the matter of extending concessions in cargo-related charges for coastal traffic was an issue on which separate decisions in respect of individual ports could give rise to avoidable conflicts of interest. We had in similar cases advised the Mumbai Port Trust (MBPT) and the Cochin Port Trust (COPT) also to get the proposal discussed in the forum of the Indian Ports Association (IPA) so that a coordinated appraisal of its implications could emerge for final consideration; till a common policy was evolved in this regard it would not be advisable to approve concessions in cargo-related charges for coastal cargo in the case of one port trust in isolation. The CHPT was also advised to approach the IPA in this regard.

4.1. The IPA in its meeting held on 29 December 2000 considered the matter of extending concessions in cargo-related charges for coastal traffic; and, conveyed its consensus of opinion that extension of concessions in cargo-related charges for coastal traffic was not desirable.

4.2. The opinion of the IPA was considered by us in our meeting held on 14 February 2001. It was decided that since no exceptional considerations were seen to govern this case, and bearing in mind the fact this Authority itself had not been in favour of cross-subsidisation, it was decided not to allow concessions in cargo-related charges for coastal cargo passing through major ports.

4.3. Subsequently, the IPA vide its letter dated 30 March 2001 intimated that while confirming the minutes of the Governing Body meeting held on 29

December 2000, the IPA had modified the minutes relating to extension of concession for coastal cargo as under:

“In view of the foregoing, the consensus was that because the situation is not identical and, therefore, ports should have freedom to fix its cargo related charges for coastal cargo”.

4.4. The revised communication of the IPA was considered in our meeting held on 16 May 2001. It was decided not to allow any concessions in cargo related charges for coastal cargo passing through major Ports. We had passed an Order on 16 May 2001 giving detailed reasons for this decision.

5. The proposal of the CHPT (which was being processed parallelly) was circulated to all concerned users / representative bodies of users for comments. The comments received are summarised below:

Tamil Chamber of Commerce (TCC)

The approval of the TAMP to revise the wharfage at Rs.400/- per vehicle like the JNPT will help the trade and also the CHPT to improve its income by way of handling cars which is presently moved by road to various destination.

M/s. Shahi Shipping limited (SSL)

We hereby accept the rate of Rs.400/- for movement of Coastal Vehicles as recommended by the CHPT.

M/s. Ashok Leyland Limited

- (i). We basically use Car Carriers / ROROs for our export shipments and do not utilise these vessels on coastal routes.
- (ii). The subject of reference being wharfage for Coastal movement, with attendant cost in picture, it is but natural that the charges at ports must be minimum and shall be charged at the rates to match or lower than that is incurred in land-route movements.
- (iii). The applicable wharfage rate at the MBPT is 0.11% of FOB value and in JNPT 0.5% of FOB value. However, at the CHPT the charge is Rs.5192/- for buses / FBU and Rs.2596/- for chassis, cars, vans and jeeps.
- (iv). The SSL actually asks for a major consideration and dispensation for coastal shipping for vehicles without reference to what the ports charge for export / import.

Indian National Shipowners' Association (INSA)

- (i). We feel happy that CHPT has come back with the proposal for fixing revised wharfage rates for coastal movement of cars by specialised

vessels. It is unfortunate that they have taken over 6 months to re-prepare it; and, the port and country may have lost heavily on this account.

- (ii). Almost all the users / representative bodies had in their own logical way supported the fixing of wharfage rates for coastal movement of cars during the last joint hearing held at Chennai in this regard, but TAMP without understandable reason was unable to approve the proposal then. The reasons then given were “till a common policy is evolved”. We most sincerely expect that similar reason is not used again.
- (iii). If a rate was fixed then, the trade may have been now in a position to review the six monthly results. Roads and Rails are saturated and economy demands competitive rates. A port shows sensitivity to public demand of wisdom, and when its proposal is rejected or not approved, we feel that decision was beyond our understanding.
- (iv). Some of the users had clearly opined that use of labour in handling car cargo was none or minimal. Hence levy and labour issue need not have held up the decision.
- (v). It is difficult to assess what volume of traffic port may have lost. It is a new avenue and a fresh thinking attempting to utilise the natural sea-roadway provided to the country.
- (vi). Port has proposed a high rate compared to rates as prevailing elsewhere. No cars move or likely to move from some of the ports. There are only limited number of car manufactures. Under the circumstance, our members are of considered view that wharfage rate for coastal movement be fixed keeping in mind the promotional tariff features.

Society of Indian Automobile Manufacturers (SIAM)

In order to encourage coastal movement of cars by car carrier vessel, the wharfage rates shall be charged lower than what is incurred in land route movements.

Madras Chamber of Commerce and Industry (MCCI)

- (i). The MCCI supports the reduction to facilitate the growth of trade and make Indian products more competitive.
- (ii). M/s. Shahi Shipping may be requested to clarify the following:
 - (a). Whether the movement envisaged related purely to coastal carriage of cars i.e., end user is domestic consumer.

- (b). Whether the movement envisages coastal relay to another hub port from where the cars will eventually be exported.
- (c). Since wharfage is a tariff item levied on the exporter / importer and not on the carrier, whether Shahi Shipping is acting on behalf of a named car manufacturer.

6.1. On a preliminary scrutiny of the proposal, further comments / clarifications on certain points were called for from the CHPT. It is noteworthy that these queries were raised well before the revised decision of the IPA, described in para 4.3 above, was communicated to us.

6.2. The main points raised in our said letter are as follows:

- (i). In view of the IPA's communication dated 15 January 2001, (refer para 4.1. above) the CHPT to indicate whether it disagrees with the IPA's views.
- (ii). Reasons for proposing concessional wharfage only in respect of coastal movement of cars and not in respect of other cargoes.
- (iii). The reasons for adopting the JNPT rates instead of a separate rate based on CHPT costs.

7.1. A joint hearing was scheduled to be held on 5 March 2001 at the CHPT. A few days before the scheduled date of hearing, the CHPT requested to defer the hearing since it wanted to collect more details from the IPA and carry out a further in-depth study. The request of the CHPT was accepted.

7.2. While postponing the joint hearing, the CHPT was requested to intimate immediately the time required by it to furnish its comments on various issues raised by us for clarification so that a revised date for joint hearing could be fixed. The CHPT, however, did not respond, despite a reminder. Finally, a joint hearing was fixed on 9 May 2001; and, all concerned were notified accordingly.

7.3. A few days before the joint hearing, the CHPT submitted a revised proposal and furnished clarifications on the various issues referred to it by us. The salient points of the revised proposal are given below:

- (i) The CHPT had proposed concessional wharfage only for export of cars as coastal movement of cars was not anticipated. The TAMP had also approved the concessional wharfage of 0.3% of F.O.B. value only for exports. Since the TAMP had given specific approval only for exports the present proposal was sent for coastal movement.
- (ii). The CHPT does not disagree with the IPA view for not desiring to extend the concessional wharfage for coastal traffic. The coastal movement of cars is at present relevant only for the CHPT and the JNPT. The IPA views are more relevant to general cargo which is handled in all ports. Since the coastal movement of the cars by RORO

system does not involve any specialised equipment or labour and it is an additional traffic, which has to be encouraged by the CHPT to offset loss in traffic due to shifting of coal to Ennore.

- (iii). Based on the pricing principles of “ what the traffic can bear”, the concessional tariff suggested is 0.3% of the basic cost of the vehicles excluding taxes and duties, for coastal movement by the RORO system
- (iv). Handling of RORO vessels at the CHPT does not require any involvement of any labour gangs. The MDLB is likely to be merged with the CHPT in due course and after merger this issue will be taken up and the proposal will be put up to the TAMP. The suggestion of TAMP to introduce a scale of tariff with reference to level of traffic and performance has been noted and this will be taken up after reviewing the performance over a period of time.

7.4. The CHPT has proposed to fix a revised wharfage rate for coastal movement of vehicles Cars, Jeeps, Vans by Car carrier using RORO system @ 0.3% of the basic cost of the vehicles excluding taxes and duties. The CHPT, has requested this Authority to amend its Scale of Rates under item No. 24(3) (d)- Motor Cars, Jeeps and Vans- Coastal - Export and Import by RORO system in Scale ‘A’ – General; Chapter II A accordingly.

7.5. The revised proposal could not be circulated among port users since it was received just two working days prior to the joint hearing. At the joint hearing, however, the Chairman (CHPT) explained the revised proposal.

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

Chennai Port Trust (CHPT)

- (i). There is a lot of potential for this kind of traffic. We will get a lot of revenue.
- (ii). The TAMP may decide on the legal aspect in this case. The objections of other ports which have no potential, about concessions to cargo may be rejected.
- (iii). In coastal movement also, as in exports, consider the basic cost without the excise and customs components.

Shahi Shipping (Private) Limited

- (i). We accept Rs.400/- per vehicle as wharfage.
- (ii). The GRT of a pure car carriers is very high. Please reduce the Port Charges.

(iii). Please give preferential berthing.

Tamil Chamber of Commerce (TCC)

We fully endorse the proposal. The CHPT is losing cargoes to Ennore. The CHPT has, therefore, to grab all available opportunities.

Shipping Corporation of India (SCI)

- (i). The proposal of the CHPT must be accepted. It will be good for the Port.
- (ii). We do not agree to preferential berthing. Other ships can not be affected.
- (iii). Even if wharfage is reduced, there is no guarantee that traffic will flow. We have to wait and see the comparative position of Railways/Roadways.

Southern India Chamber of Commerce & Industry (SICCI)

- (i). We endorse the proposal.
- (ii). SCI's points must also be addressed. The CHPT must study the potential. Shahi Shipping must also address this issue.

Chennai Steamer Agents Association (CSAA)

- (i). No Indian owners have PCCs . They have to charter from abroad. Who benefits ultimately? Our Railways / Roadways suffer and foreign vessel owners benefit.

Ford India Limited

The costing given by Shahi Shipping does not seem to be a workable proposition. A more detailed analysis is required.

Madras Chamber of Commerce & Industry (MCCI)

- (i). We always support any proposal for rate reduction.
- (ii). Wharfage is paid by an Exporter/Importer. Shahi Shipping in only a carrier. How can they be involved in wharfage?
- (iii). Will only wharfage be reduced or will freight also be reduced?
- (iv). Will this rate apply to cars coastally moved for eventual export?

9.1. It was decided in the joint hearing that the CHPT would give a note about the legal implication of the proviso under Section 51 of the MPT Act. The

CHPT was given time up to 30 May 2001 to submit the note. The CHPT, however, forwarded on 6 June 2001 a note on the proviso under Section 51 of the Act, as analysed by its Legal Adviser.

9.2. The position analysed in the note is summarised below:

- (i). 'Discrimination' in legal parlour means the intentional and purposeful differentiation thereby involving an element of unfavourable bias.
- (ii). Differential treatment does not per se constitute violation of equal protection. It denies equal protection when there is no reasonable basis for differentiation.
- (iii). Permissible and reasonable classification has to be tested on two basic principles –
 - (a). The classification must be rested on an intelligible differentia which distinguishes a person from others left out; and,
 - (b). The differentia must have rational relation to the object to be achieved by the said provision.
- (iv). Wharfage in a port is fixed depending on a variety of relevant factors, such as investment, manpower, equipment and other special factors pertaining to the port. If the concessional rate is fixed on the basis of the relevant factor and it differs from Port to Port, it cannot be said that the fixation is discriminatory.
- (v). If the CHPT proposal is approved by the TAMP, the provision (in the Act) implies that it may not fix a higher concessional rate for other similar ports under Section 51 of the Act.

10. With reference to the totality of information collected during the processing of this case, and based on a collective application of mind, the following position emerges:

- (i). This Authority had already passed an Order on 19 July 2000 fixing the wharfage on export of motor cars, jeeps and vans using the RORO system. The then existing rate of Rs.2596/- per unit was allowed to continue in case of import of motor cars, jeeps and vans exported by methods other than the RORO system. It is noteworthy that the CHPT did not propose any separate rate for import of cars using the RORO system at that time.

Even if no separate rate has been prescribed in the Scale of Rates of the CHPT for import of motor cars using the RORO system, it is not correct to say that there is no rate available for such imports; it is, in fact, Rs. 2596/- per unit. Even if a distinction for coastal trade is to be made, and if that is not available specifically, a residuary rate of 0.39% ad valorem is already specified in the Scale of Rates of the CHPT under Item No. 24 (8) of the wharfage schedule. That being so, a rate

is available for import or coastal movement of cars in the Scale of Rates of CHPT. The issue can be that this available rate is slightly more than the rates prescribed for export of motor cars using the RORO system.

- (ii). The existing wharfage schedule of the CHPT does not make any distinction in the rates for coastal cargo and foreign cargo. The wordings used in this Authority's Order dated 19 July 2000 might have created confusion. The words 'export' and 'import' used in that Order are meant to refer to 'loaded' and 'unloaded' without having any foreign trade connotation. Since the existing formulation in the Scale of Rates of the CHPT has created some confusion, it can now be modified and correctly specified.
- (iii). The comments made by the INSA about the earlier decision of this Authority deserve to be ignored as they have been offered without proper application of mind or appreciation of the relevant issues. It is amazing to note that a responsible national level organisation makes such loose comments without proper examination of the issues and legal provisions. It is to be recognised that a Regulator has to balance the interests of the regulated entities and the market within the legal framework. This Authority cannot go by popular demands and consensus between two parties in total disregard of wider repercussions of its decisions and the governing legal provisions.
- (iv). This Authority had already passed an Order on 16 May 2001 deciding not to allow any concessions in cargo related charges for coastal cargo passing through the major ports. This decision is primarily based on the legal provisions under Section 51 of the MPT Act and also due to the fact that this Authority itself is not in favour of cross-subsidisation. In the present cost plus regime of tariff regulation, if concessions are allowed and they are not met out of the port's reserve funds, there will have to be enhancement of some other tariffs to meet the deficit. This apart, there is no consensus among the major ports in allowing concessions in cargo related charges for coastal movement of cargo.
- (v). The Note submitted by the CHPT about the legal implications under proviso of Section 51 of the MPT Act cannot be accepted in toto as reflecting the correct position. There is no denying that wharfage rate in a port is fixed with reference to various relevant factors and the rates across the ports vary because of changes in these factors. A rate fixed with reference to the pre-determined factors cannot be called a concessional rate. The question here is about the quantum of discount to be allowed on the rates so arrived at as to allow a concession to coastal cargo. The view of this Authority has been that this quantum of concession cannot vary from commodity to commodity and from port to port in the light of the legal provisions. If the quantum of concession is varied, as pointed out by the Legal Adviser of the CHPT, it will amount to discrimination and not differentiation.

Further, it is to be recognised that the issue is not confined only to motor cars. Even in the case of the CHPT itself, if this concession is allowed in case of motor cars, it is legally binding on this Authority to extend the same concession to other coastal cargo passing through this port. The CHPT has not mentioned anything in this respect. Likewise, there can be a similar demand from the side of users at other ports irrespective of the willingness or the capacity of the concerned port to absorb the burden, which this Authority cannot legally turn down if this principle is accepted in the case of the CHPT.

The arguments put forth by the CHPT and different parties in the context of extending concessions to coastal movement of motor cars do not therefore warrant a review of the decision already taken by us about not extending any concession in cargo related charges for coastal cargo.

- (vi). (a). The original proposal of the CHPT cannot be accepted for reasons stated in sub-para (iv) and (v) above as it amounts to deliberately allowing a concessional rate to coastal movement only of motor cars and only through the CHPT especially in the wake of opposition to the practice from some other ports.
- (b). The revised proposal of the CHPT is partially accepted to the extent of allowing the same rate already fixed for export (loaded) using the RORO system to unloading of motor cars by the same method.
- (vii). The proposal of the CHPT about considering only the 'basic cost' for levy of wharfage on ad valorem basis excluding taxes and duties does not deserve approval. It is to be recognised that the system of levy of wharfage on ad valorem basis itself is not appropriate. As long as this system continues, however, the relevant value for assessment of port charge will be the stated value of the commodity at the time of its presentation to the port. Note No. 7 under Scale A Chapter II A of the existing CHPT's Scale of Rates prescribes the method of assessment of ad valorem levy on goods. In case of coastal goods, it is stipulated that the value to be taken for ad valorem levy shall be as given in the coastal bill of lading. There appears no reason for us to modify the existing provision in the Scale of Rates only in respect of motor cars. That being so, the ad-valorem levy of wharfage on coastal movement of motor cars will also be governed by the existing provision in this regard.

In this context, the sheer impracticability of the proposition will also have to be recognised. Taxes and duties keep changing. It will, therefore, be a tremendous burden on a Port Trust to verify these details with reference to every consignment thereby rendering billing an excruciating and cumbersome process.

- (viii). While approving the wharfage rate for shipment of motor cars using the RORO system, this Authority in its Order dated 19 July 2000 had prescribed that rate as an interim arrangement valid for two years. As has already been mentioned, the tariff arrangement for levy of wharfage based on ad valorem cannot be a reasonable arrangement that can continue for long. While reviewing the position, at the end of the two year period, the CHPT is required to workout the wharfage rate based on its cost and propose a unit based rate.

It is reasonable to prescribe the validity period of the tariff fixed now co-terminus with the period of tariff validity allowed by this Authority in its order dated 19 July 2000. Accordingly, the wharfage rate for handling motor cars, jeeps, vans, etc., will be reviewed by this Authority by mid-July 2002. The CHPT is required to make a suitable tariff application well before this time, based on its experience gained in operation of loading and unloading of cars using the RORO system.

11. In the result, and for the reasons given above, and based on a collective application of mind, this Authority deletes the existing provisions in the Scale of Rates of the CHPT under Item 24 (3) (a) (b) & (c) in Scale A; Chapter II A and inserts instead the following provisions:

Item No.	Nomenclature	Unit	Rate
24 (3)			
(a).	Motor cars, jeeps, vans and tourist caravans loaded or unloaded by the RORO System.	Ad valorem	0.3%
(b).	Motor cars, jeeps, vans and tourist caravans loaded or unloaded other than by the RORO System.	Each	Rs. 2596/-

(S. Sathyam)

Chairman