

No.53

New Delhi, the 1st March, 2001

Tariff Authority for Major Ports

NOTIFICATION

Case No. TAMP/111/2000-CHPT

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 Chennai Steamer Agents' Association relating to fixation of container storage charges at the Chennai Port Trust, as in the Order appended hereto.

(S. Sathyam, Chairman)

The Chennai Steamer Agents' Association - - - Applicant

Vs

The Chennai Port Trust (CHPT) - - - Respondent

ORDER

(Passed on this 14th day of February 2001)

This case relates to a representation submitted by the Chennai Steamer Agents' Association (CSAA) relating to fixation of container storage charges at the Chennai Port Trust (CHPT).

2. In its representation, the CSAA has given the following points:

- (i). In July 1994, container storage charges were considerably enhanced by the CHPT. The CSAA filed a petition in the High Court of Madras and stay was obtained on 11 July 94.
- (ii). The CHPT, set up a Sub-Committee in 1995 and revised the rates denominated in US \$. This was approved by the Ministry of Surface Transport on 19 July 1995 retrospectively with effect from 6 July 1994. As the rates for certain slabs were still on the high side and some new elements were introduced, the another writ petition (WP No.5806 of 1997) was filed in April 1997 and stay was extended.
- (iii). In the meanwhile, the TAMP undertook a general revision of the CHPT and an Order passed on 22 March 2000. However, this item was excluded as it was subjudice.
- (iv). The two Writ Petitions came up for final hearing in February/August 2000 and the Hon'ble High Court struck down the two Port Trust Notifications and allowed the Writ Petitions.

(v). After learning that the CHPT was going in Appeal against the judgment, the CSAA requested the CHPT to withdraw the Appeal and seek the intervention of TAMP to revise the Container Storage Charges which could not be done earlier.

(vi). As there was no response from the CHPT, the CSAA has approached the TAMP to intervene and do the needful as it felt that such a course of action would be in the best interests of both parties saving on time and legal expenses.

3.1. The representation of the CSAA was forwarded to the CHPT and various users/representative bodies of users for their comments. Comments received from them are summarised below:

The Container Shipping Lines Association (CSLA)

The arbitration by the TAMP should be most helpful as otherwise a protracted legal process will ensue to the detriment of the Port, the Steamer Agents' Association and ultimately to the trade. Therefore, the TAMP should intervene in the matter and secure a commercial settlement.

Madras Chamber of Commerce and Industry (MCCI)

(i). The representation made by the CSAA has valid arguments and the TAMP must intervene and adjudicate on the container storage rates.

(ii). The TAMP was not in existence when these disputed container storage charges were promulgated by the CHPT in 1994.

(iii). The TAMP was unable to include container service charges in the gamut of Port tariff revision ordered in March 2000, as the matter was subjudice, but after pronouncement of judgment on 28 August 2000, the matter was no longer subjudice. The CHPT should then have to use this opportunity to bring up the matter to TAMP for a final decision. As to the dispute regarding the rates levied in 1994, these can be struck down as per the judgment of the High Court.

(iv). By directly proceeding to appeal against this judgment, the CHPT has excluded utilising the services of TAMP which was specially set up by the Government of India for Port tariff and instead continues to waste the Court's time.

(v). The situation prevailing in 1994 has since been changed. As many as 11 off Dock CFSs are now active which give ample opportunity for the importers to have their FCL containers moved away from the Port premises, resulting in less congestion at the Port Trust premises. Therefore, there is little chance for the port trust premises being congested and in turn this defeats the argument of the Port Trust that their extraordinarily high storage rates were to act as a disincentive for consignees to leave their boxes inside the port trust premises. Legal recourse is unwarranted since the issue at dispute have been rendered almost academic by the turn of events subsequent to 1994.

The Hindustan Chamber of Commerce (HCC)

(i). The two levies collected by the Port Trust on cargo imported in containers are demurrage charges levied on the cargo on a per MT basis which is collected from the consignee and the container storage charges which is collected from the shipping lines. The shipping lines in turn collect the storage charges from the consignee when approached for delivery order. Hence, both the levies are borne by importers only. As the Shipping Lines have running accounts with the Port Trust, the storage charges are debited to this account on a regular basis and even for containers that are abandoned which is a loss to them.

(ii). The CHPT had been facing the problem of increasing dwell time on imported FCL containers and this was also resulting in congestion at the Container Terminal. In order to reduce the congestion the CHPT increased the container storage charges in 1994. The increase was, however, very steep.

(iii). Prior to 6 July 94, the Steamer Agents used to absorb the container storage charges. However, after the rates were increased abnormally by the CHPT, the Steamer Agents have started collecting storage charges from the consignees. Hence, in actual, the Steamer Agents are fighting this in the interest of the consignees and protecting themselves from the prospect of losing large sums of money when the consignment is abandoned.

(iv). The CHPT should call the Steamer Agents Association for a discussion and amicably settle the issue with negotiating and fixing the rate notified by the GOI in the order dated 17 September 95 with effect from 1 April 98 with regard to the Container Storage Charges and for the Shut out, extra Movement, and removal charges may be implemented from 1 April 2000.

(v). The TAMP can consider and notify new rates, i.e., the container storage charges for FCL containers be deleted and the demurrage charges be increased after 15 days after permitting the 10 free days allowed today.

The Southern India Chamber of Commerce and Industry (SICCI)

The disputed container storage charges were promulgated by the Chennai Port Trust way back 94 when the TAMP was not established. Since the TAMP has now come into existence and in view of the useful role played by the TAMP it will be better if the TAMP can arbitrate in the matter and settle the issue once for all. This will also save considerable time to all parties concerned with the issue.

The Indian National Shipowners' Association (INSA)

The TAMP should intervene and call for all relevant data from all parties concerned and give its considered decision.

The Shipping Corporation of India (SCI)

The TAMP may take up the representation made by the CSAA.

3.2. The CSAA vide its letter dated 12 December 2000 has forwarded a copy of the legal opinion of Shri. C.A. Sundaram, Sr. Advocate, Chennai who opined that the TAMP's Order can be extended to Customs notified Off-Dock CFSS operating in Chennai and the TAMP has the authority to refix the container storage charges during the pendency of WAs and also limit levy of storage charges on containers to a period of 75 days.

4. The CHPT vide its letter dated 27 December 2000 has submitted its comments. The CHPT has stated that in respect of container storage charges, CHPT has obtained stay against operation of the judgment by learned single judge and the Division Bench of the Hon'ble High Court has ordered for payment of container storage charges as per revised tariff of 19 July 95 from 22 November 2000 by the Respondent (CSAA). The CHPT has mentioned that final action in the matter can be taken only after the outcome of appeal filed by CHPT. The CHPT has requested the Authority to defer this proceeding, since the matter is subjudice.

5.1. A copy of the above letter of the CHPT has been forwarded to the CSAA and also to other various users / representative body of users for their specific comments on why the request of the CHPT shall not be accepted.

5.2. The HCC, CSAA and SCI have sent their comments on the views of the CHPT, which are summarised below:

The Hindustan Chamber of Commerce (HCC)

The judgment against which the CHPT has gone on appeal also had directed the Port that they should hold discussion with the CSAA. Hence, TAMP can act as an

arbitrator and decide the issue by holding joint meeting wherein the views of the port and the Steamer agents can be discussed and a consensus can be arrived at. The decision of TAMP can be filed with the Court for final disposal as the court will have no objection to this arrangement. The port will also be able to find a way out from the long drawn litigation that may follow if the issue is not settled.

The Chennai Steamer Agents' Association (CSAA)

- (i). When there was a general revision of the CHPT Scale of Rates in April 2000, this particular item 'container storage charges' was excluded by the TAMP as it was subjudice.
- (ii). The judgment in the WPs Nos. 11747 of 1994 and 5806 of 1997 was pronounced on 28 August 2000 and the CHPT had one month time to decide whether to prolong the litigation or to refer the matter to TAMP to revise the rates which had to be omitted during the general revision. Instead, the CHPT have filed Writ Appeals which action is cantankerous. At this juncture the CSAA wrote to the Chairman, (CHPT) and personally appealed to him to refer this matter to TAMP for a speedy and early resolution of the issue relating to container storage charges.
- (iii). When there is an alternate body specifically created to revise port tariff (Scale of Rates), the CHPT should have approached the TAMP instead of continuing the litigation.
- (iv). User Bodies like the HCCs, INSA and Chennai Custom House Agents Association who have a nominee on the CHPT Board have already written to TAMP seeking its intervention in the matter with a view to end the litigation. The MCCI and CSLA have also made a similar request.

The Shipping Corporation of India (SCI)

- (i). The contention of CHPT that the matter is subjudice and, a such, TAMP cannot intervene in the matter is totally misleading and not in the interest of the trade. The CSAA has very clearly set out the reason as to why the request should not be granted, vide their letter dated 9 January 2001. The matter, regarding the revised storage charge is no longer subjudice as far as the prospective cases are concerned.
- (ii). Recently, CHPT has started qualifying the container bills with a condition that the difference in charges between the pre-revised and revised rates will be collected separately. It is, therefore, amply clear that the matter is no longer subjudice as it has been cleared by the court, vide their order dated 22 November 2000 stating that the trade will have to pay the container storage charges at the rates as per the revised tariff from 22 November 2000. The applicability of the revised tariff for the period from 6 July 94 to 21 November 2000 is only required to be decided by the court.
- (iii). The revised tariff which has been cleared by the court is not only exorbitant but also the highest among all Indian ports which definitely requires to be reviewed again. It is, therefore, felt that the TAMP should intervene in the matter and the views of the trade should be heard which may help the TAMP to weigh the reasonability of the tariff which has been imposed upon the trade.

6. The CSAA has sent another representation vide its letter dated 4 January 2001 for consideration at the joint hearing. The CSAA has enclosed genesis and chronology of the case, comparison of storage charges in main Indian ports, comparison in free days in main Indian ports and salient points to be considered. The main points are given below:

- (i). The CHPT notified charges are already arbitrary, exorbitant, and with no relationship to the service rendered or to the tariffs prevailing in other Indian Ports.

- (ii). Prolonged litigation to resolve this issue is a drain on the time and resources of both CHPT and CSAA.
- (iii). TAMP is the Statutory body empowered by the Government of India to adjudicate on tariff matters in Major Port Trusts.
- (iv). The CSAA prays for the intervention of TAMP in this long pending dispute and requests the action of TAMP in:
 - (a). Notifying storage charges in Chennai Port prospectively in line with the tariffs in other main ports, giving due cognisance to the very limited free time extended to users in CHPT.
 - (b). Formalising the application of the storage tariff prevailing in June 1994, through the period from July 1994 till the commencement date of the new tariff to be fixed by TAMP.

7. A joint hearing in this case was held on 25 January 2001 at the CHPT premises in Chennai. At the joint hearing the following submissions were made:

The Chennai Steamer Agents' Association (CSAA)

- (i). The Court has not restrained the TAMP from looking into the matter prospectively.
- (ii). CHPT says, it is a deterrent. Is it against congestion by Trade or against Lines bringing in containers?
- (iii). There are enough off-dock CFSs now.
- (iv). Port is duly bound not only to receive containers but also to provide for reasonable storage facilities.
- (v). Rates are abnormally high.
- (vi). When this rate was notified in 1995, TAMP did not exist. That is why we now want TAMP to review and revise the rates.
- (vii). In the general revision, this tariff was not covered on the sub judice consideration. Now that the Court has cleared a prospective consideration, the CHPT should go back to the TAMP.

The Shipping Corporation of India (SCI)

Port has accepted the ruling about prospective application. That shows they are willing to discuss the whole matter. Where is sub judice?

The Chennai Port Trust (CHPT)

- (i). Retrospective application was ordered by the Government.
- (ii). The whole matter is still in the court.
- (iii). The court has implicitly accepted the reasonableness of the rate.
- (iv). Only the 'date of effect' remains to be settled. The CHPT is willing to fix the date as July 95. There can be a settlement.

- (v). If we reduce the rate today, there will be audit objection. Further, it can also weaken our case in the court.

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

(i). This rate was not taken up for review/revision at the time of the general revision of the Scale of Rates ordered by this Authority in March 2000 as the matter was then pending before a Single Judge Bench of the Madras High Court.

(ii). The case has since been disposed of by the Single Judge Bench. The case was decided in favour of the Petitioners viz., the CSAA.

(iii). The CHPT has gone up in appeal to a Division Bench of the Madras High Court which has stayed operation of the impugned Order while permitting levy of the revised rates prospectively with effect from 22 November 2000.

(iv). The Court has not restrained this Authority from taking up this case for prospective consideration. This fact has been highlighted by the CSAA to urge this Authority to intervene in the matter. They have also sent a copy of an opinion given by their Counsel to the effect that, notwithstanding the pendency of the appeal before the Division Bench, this Authority can intervene in the matter.

While this legal issue can be argued both ways, the balance of convenience would seem to lie in favour of non-interference. It has, in this context, to be recognised that what is in reference, in fact, is an order of a Judge of the High Court. Any analysis by and any order of this Authority even on a prospective perspective can be seen to amount to expression of opinions about the impugned order. And, it will not at all be appropriate for this Authority to be seen in that position.

(v). The action taken by the CHPT to go up in appeal to a Division Bench cannot be faulted. There is no way in which the impugned order could have been challenged in the forum of this Authority.

Incidentally, there is also an observation in the impugned order that there could be no retrospective prescription of tariffs. But, according to the Ministry of Law, this Authority has the power in special circumstances to notify tariff rates with retrospective effect also. In the event, it is best that a proper Appellate Authority decides on this issue also.

If there is to be any parallel proceedings in the forum of this Authority without prejudice to the merits of the appeal filed by the CHPT, it can best be so only in pursuance of a directive to that effect from the Division Bench concerned. Otherwise, the vulnerability/sensitivity cited in paragraph (iv) above will still loom as a hurdle for this Authority to intervene.

The Petitioners will, therefore, be well advised to approach the Division Bench concerned for such a directive.

(vi). It can possibly be argued that there will be no legal hurdle to the CHPT approaching this Authority for a prospective prescription of the tariff in this case. But, as has been contended by the CHPT, it will have two real difficulties to reckon with in such a contingency:

(a). There can be an audit objection about the sudden reversal of its stand.

(b). Any acceptance of a lower rate (even) prospectively can have a repercussion of weakening its appeal case before the Division Bench.

(vii). The CSAA and other users have advanced arguments about the CHPT being duty bound not only to receive containers but also to provide for reasonable storage facilities, there being enough off-dock CFSs now, etc. In the backdrop of the legal position described above, it is not necessary for this Authority at this stage to go into the merits of the case.

(viii). Some of the user-bodies have pleaded that, in the alternative, this Authority may arbitrate in the matter. This is not possible since, for arbitration, both the parties have to consent; and, equally importantly, this Authority is an adjudicative and not an arbitral body.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides that it is not legally appropriate for it to intervene in the matter at this stage. That being so, the representation of the Chennai Steamer Agents' Association is rejected.

(S. Sathyam)

Chairman

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