

Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 50 of the Major Port Trusts Act 1963 (38 of 1963), the Tariff Authority for Major Ports hereby amends the Cochin Port Trust's Scale of Rates, as in the Order appended hereto.

(S. Sathyam)

Chairman

Tariff Authority for Major Ports

Case No. TAMP/106/2000-COPT

**The Cochin Port Trust
(COPT)**

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Applicant

O R D E R

(Passed on this 5th day of January 2001)

This case relates to a proposal from the Cochin Port Trust (COPT) on rationalisation, amendments / additions to its Scale of Rates.

2. The present Scale of Rates of the COPT was notified in January 1999. While compiling the same many terms and conditions which existed in the previous Scale of Rates were simplified and incorporated. While implementing the present Scale of Rates, however, the COPT has found that some of the clauses are vague and leave scope for different interpretations. Accordingly, the COPT Board at its meeting dated 30 August 2000 resolved to make the amendments/additions in the Scale of Rates to clarify some of the existing provisions.

3. The proposals of the COPT and the circumstances warranting such amendments, as is brought out by the COPT, are given below:

- (i). (a). In page No.24 of the present Scale of Rates under the clause 3 – “Berth Hire Charges”, it is indicated that the Defence vessels occupying a berth and requesting to keep the adjacent berth or berths vacant shall be charged additional berths hire charges for the berth/berths kept vacant taking into account the same GRT of the vessel berthed.
- (b). However, the same section provides that any other vessel occupying berth or berths and requesting for adjacent berth or berths to be kept vacant shall be charged with additional Port dues, Pilotage and Berth hire for such berth kept vacant. This gives an indication that the Defence vessels have to pay only additional berth hire charges, while other vessel have to pay additional port dues, pilotage and berth hire charges on account of berth kept vacant.
- (c). In the previous Scale of Rates all vessels including Defence vessels were being subjected to additional Port dues, and Pilotage in addition to berth hire. Therefore, to do away with the existing distinction between Defence vessels and any other vessel for levying charges when adjacent berth is to be kept vacant the COPT has proposed to substitute the existing Clauses 3(1) and (2) with the following:

“(1) Any vessel occupying a berth(s) and requesting for any other adjacent berth or berths to be kept vacant for their convenience or due to the nature of the cargo to be handled at that particular berth or for any other reasons, shall be charged with additional Port dues, Pilotage and Berth Hire for each such berth or berths kept vacant. The GRT of the vessel actually berthed shall be reckoned for computation of the dues to the port.

(2) The requisition for keeping the adjacent berth vacant may be given either by the vessels’ agent or by the consignee / consigner, or the berth(s) may be kept vacant by the Port considering the nature of the cargo handled. In all such cases, the additional Port dues, Pilotage and Berth hire shall be collected from the vessel agent / steamer agent, along with the normal charges, since they are vessel related charges.”

(ii). In the pre-revised Scale of Rates 7 days of demurrage free period excluding Sundays and Holidays was provided for export cargo in addition to the days the vessel (in which shipment is effected) remains in port. But in the present Scale of Rates, though free days on export cargo has been enhanced to 15 days, the vessel's stay in port is also accounted for demurrage computation if the shipment starts / continues beyond 15 days from the date of carting. This is an anomaly, which needs to be rectified. From the very beginning the principle adopted in the port has been to provide free days for both exports and imports in addition to the vessel's stay in port. Therefore, the existing para 3 under clause (e) "Free days" at page No.28 has been proposed to be substituted with the following:

" In case of export or trans-shipment, from the day following the date of admission of cargo / container the demurrage shall accrue from 16th day in case of exports / containers and from 31st day in case of trans-shipment containers till the time of commencement of shipment. In other words the cargo shall not attract any demurrage during the stay of the ship in Port on which the shipment is effected."

(iii). Presently there is no separate charge envisaged for lifting the hatch covers utilising the shore cranes and therefore Rs.200/- prescribed as hire charges of wharf electric crane is being charged per lift of a hatch cover. As there is no specific rate prescribed for this operation, it is not possible to maintain proper records and recover the charges. During rainy season, the hatches are opened and closed frequently without prior requisition and it may not be possible to keep record of all such events. It has, therefore, been proposed to provide specific charge for opening / closing hatches using the shore cranes by adding the following as clause (D) under the "Wharf Electric Crane charges for the Second Operation".

" (D) Whenever Electric Shore Cranes are used for opening / closing the hatch Rs.400/- per shift shall be received per hook irrespective of the number of opening and closing of the hatch."

4. A copy of the proposal was circulated to the concerned representative bodies of port users for comments. The Cochin Steamer Agents' Association (CSAA) and the Cochin Customs House Agents' Association (CCHAA) have fully agreed with the COPT proposal. The SCI has intimated that it has no comments to offer in this regard. The Indian National Shipowners' Association (INSA) has mentioned that no wharfage rate is being proposed for export or coastal movement of motorised vehicles by car carriers and requested for a promotional rate for such movements.

5. A joint hearing in this case was held on 19 December 2000 in Cochin. During the joint hearing the following submissions were made:

Indian Navy

- (i). Why charge Port Dues and Pilotage? We are not using any additional services. Pilot is not fixed for any particular berth. There is, therefore, no question of opportunity cost. All variable costs should be removed. Only fixed cost should be recovered.
- (ii). This additional levy may discourage vessels from calling at the COPT.

Indian National Shipowners' Association

- (i). We agree with the views of Indian Navy.
- (ii). If other berths are vacant in normal course, will this additional charge be still levied?

The Cochin Steamer Agent's Association (CSAA)

Port due and pilotage shall not be charged because in any case the other ships will pay later.

Container Shipping Lines Association (India)

- (i). Has there been any case of vessel having diverted because of this, thereby causing loss of Port due and pilotage?
- (ii). In any case, as Navy says, all variable costs must be excluded.
- (iii). In the name of opportunity cost, we should not be required to pay for activities not actually performed.
- (iv). We pay for cargo handling, we hire a crane. How does it matter what use we put it to?
- (v). Definition of 'wharfage' needs to be clearly stated. Hatch is not always placed on wharf.

The Cochin Customs House Agent's Association

- (i) We agree with the views of Indian Navy.
- (ii). Tariff includes a profit margin. Why should other components of tariff be recovered as 'opportunity cost'? Only the profit margin should be recovered._

Cochin Port Trust (COPT)

- (i) We have to pay the pilot whether pilot is used or not. We have to recover opportunity cost to earn the tariff in lieu thereof.
- (ii). There is very little variable cost in pilotage it mostly consists of fixed costs.
- (iii). It is not correct to say that crane is hired for any use. There are restrictions on usage of crane.
- (iv). We only wish to rationalise and remove ambiguities. We are not introducing anything new. Even today Rs.200/- is being charged for every act of hatch operation. With this change users will save.
- (v). This proposal is not motivated by any audit observation. There is no audit objection. Our motivation is totally tariff rationalisation and also, removal of all subjectivity and discretion.
- (vi). By such reservation of berth of one vessel, we may also loose goodwill of the vessels kept out.

6. 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). The COPT proposal is not for introducing any new rate or conditionalities. It is to be seen as an elaboration and correction of the existing provisions in the Scale of Rates to remove any ambiguity, subjectivity and discretion. The COPT deserves to be complimented for raising this user-oriented proposal which will introduce a measure of transparency in its Scale of Rates.
- (ii). When the adjacent berth(s) is required to be kept vacant, a port's revenue earning asset is forced to idle. Whether the berth would have remained idle in the normal course of

activities is irrelevant. When a specific request is made to keep the berths vacant, the port is entitled to be compensated for the opportunity of revenue earning foregone.

Some of the users objected to the proposal of levying Port Dues and Pilotage fees also on account of the berth kept vacant. The suggestion is to segregate the costs and profit margin and to seek compensation for fixed costs and profit margins only. The COPT's argument is that there is little variable cost in such operation. Be that as it may, it is to be recognised that payment of port dues and pilotage are incidental to the vessels stay in the Port (at berth). Services covered under Port Dues and Pilotage are not optional services, which the vessels may decide not to avail of. These services being mandatory in nature, the loss of revenue to the port includes the Port dues and Pilotage fee which it would have earned, if the berth requested to be kept vacant had been occupied by some other vessel. It is, therefore, reasonable for the Port to seek compensation for the total vessel related charges.

It is noteworthy that this provision already exists in the Scale of Rates. The proposal is only to set right the confusing wording.

- (iii). The COPT has proposed to levy the additional vessel related charges from the vessel agents. It is relevant here to mention that requisition for keeping the adjacent berths may be given by the consignee / consignor also; and, the Port can also decide to do so considering the nature of cargo handled. In view of this arrangement proposed, it becomes necessary for the Port to intimate the vessel agents in advance about such an action by the shippers or by the port itself.
- (iv). The port's proposal about limiting demurrage on exports upto the time the shipment commences is reasonable. This will provide relief to exports shipments carted and shipped when the vessel's sailing is delayed due to various reasons. The proposed clause, however, needs to be reworded to provide clarity of the intention. In fact, it is more apposite to add this exemption under clause 10(d) relating to 'Demurrage' instead of clause 10(e). The wording can be as follows:

“In cases of export / transshipment cargo/containers, however, this levy shall cease when the nominated vessel commences loading”.

- (v). The COPT proposal about charges for wharf cranes used for hatch opening / closing is to be seen in the context of elimination of accounting hassles and doing away with field level exercise of discretion. A rate of Rs. 200/- is already prescribed in the Scale of Rate for wharf crane usage. The Port has proposed to consider two such usages for determining the rate for hatch opening / closing. The proposed rate is reasonable, when seen alongwith the port's proposal to charge this rate irrespective of the number of openings and closings of the hatch in a shift.

The CSLA objection appears to be misplaced in the COPT context since the port has only proposed to charge (at the existing rate) a fixed rate irrespective of the number of operations. A portion of crane hire charges may be included in the berth hire. However, the usage of crane is relevant. It can be only for cargo handling operation. This is augmented by the fact that the balance portion of the crane hire charge (not included in the berth hire) is included in the wharfage or handling charges.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following amendments in the COPT Scale of Rates:

- (i). The existing clauses 3(i) & (ii) in D. Berth Hire Charges under terms and conditions are substituted with the following:

“(a). Any vessel occupying a berth or berths and requesting for any other adjacent berth or berths to be kept vacant for their convenience or due to the nature of the cargo to be handled at that particular berth or for any other reasons, shall be charged with additional Port Dues, Pilotage and Berth Hire for each such berth or berths kept vacant. The GRT of the vessel actually berthed shall be reckoned with for computation of the dues to the Port.

(b). The requisition for keeping the adjacent berth vacant may be given either by the vessels' agent or by the consignee / consigner, or the berth(s) may be kept vacant by the Port considering the nature of the cargo handled,

provided advance notice of such action is given by the Port to the vessel-agent. In all such cases, the additional Port Dues, Pilotage and Berth Hire shall be collected from the vessel agent / steamer agent, along with the normal charges, since they are vessel related charges”.

- (ii). The following sentence is added at the end of the existing sub-para 3 under clause 10 (d) – ‘Demurrage’ in General conditions relating to Cargo Related Charges :

“In cases of export / transshipment cargo/containers, however, this levy shall cease when the nominated vessel commences loading”.

- (iii). The following clause is added at the end of the existing rates schedule for ‘Wharf electric cranes – charges for second operation’:

“(a) Whenever Electric Shore Cranes are used for opening / closing the hatch, Rs. 400/- per shift per hatch shall be charged irrespective of the number of openings and closings of the hatch”.

8. The amendments approved under para 7 (i) above shall take effect on expiry of 30 days from the date of notification of this order.

(S.Sathyam)

Chairman