

No. 304

New Delhi, 23 November, 2001

Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation of the Goa Mineral Ore Exporters' Association to re-introduce the relevant entry in Scale of Rates of the MOPT to allow a rebate of 25% in vessel-related charges for vessels of 1,60,000 DWT and above as in the Order appended hereto.

(**S. Sathyam**)

Chairman

Tariff Authority for Major Ports

Case No.TAMP/24/2001-MOPT

The Goa Mineral Ore Exporters' Association - - - Applicant

Vs

The Mormugao Port Trust (MOPT) - - - Respondent

ORDER

(Passed on this 5th day of November 2001)

This case relates to a representation made by the Goa Mineral Ore Exporters' Association (GMOEA) has requesting to review the Order of the Authority dated 9 August 2001 revising the vessel related charges of the Mormugao Port Trust (MOPT) to include a relevant entry in the Scale of Rates to allow a concession of 25% in vessel related charges for vessels of 1,60,000 DWT and above.

2.1. In its representation, the GMOEA has made the following points:

- (i). In its Order dated 9 August 2001, the Authority stated that the concession for bigger vessels was granted by the Board of Trustees of the MOPT up to 31 December 2000 subject to further review. Since no further proposal for continuance of the concession was received, it had presumed that the concession was not proposed to be maintained any more; and, therefore, deleted the relevant entry in the Scale of Rates as being redundant.

- (ii). The Board of Trustees of the MOPT had passed a resolution on 27 December 2000 to continue the above concession for a further period of one year from 1 January 2001 to 31 December 2001.
- (iii). It appears that the Resolution of the Board of Trustees was not brought to the notice of the Authority by the MOPT. The MOPT had, however, issued a trade circular on 25 January 2001 informing that the rebate would continue till end of December 2001.
- (iv). In Para 8 (i) of the Authority's Order dated 9 August 2001 it has been stated that the MOPT has already covered for the expected loss of revenue arising out of the 25% rebate on larger vessels.
- (v). In view of above, the Authority may issue an amendment to its Order to restore the relevant entry in the SOR to give effect to a remission of 25% on vessels of 1,60,000 DWT and above.

2.2. The Mormugao Ship Agents' Association and the Indian National Shipowners' Association have also submitted similar representations for reviewing certain decisions of this Authority including restoration of the rebate of 25% on vessel related charges for vessels of 1,60,000 DWT and above.

3. The representations made by the user-organisations mentioned above were referred to the MOPT for its comments. The comments received from the MOPT are summarised below:

- (i). A 25% rebate of berth hire and anchorage charges on iron ore vessels of size 1,60,000 DWT and above had been decided by the Board of Trustees in terms of Section 53 of the Major Port Trusts Act without resorting to Government for approval. The Board of Trustees approved from time to time for continuation of the scheme. The last such extension was given upto 31 December 2001.
- (ii). The extension of the rebate on berth hire and anchorage charges has been allowed upto 31 December 2001 for vessels having 1,60,000 DWT and above was inadvertently not communicated to the TAMP.
- (iii). In the meanwhile, the MOPT has also received a communication from the Ministry directing the Port Trusts to exercise the powers conferred on their Boards of Trustees by Section 53 of the MPT Act only in special cases and not as a general concession.
- (iv). The Order of the Authority dated 9 August 2001 revising the vessel-related charges was implemented with effect from 28 September 2001 and the rebate for 1.6 lakh DWT vessels was granted up to that date only. This issue was raised by the Trustees representing user interests. The Board of Trustees in its meeting held on 28 September 2001 approved continuance of the scheme for one more year and decided to request the TAMP to include it in the SOR of the MOPT.

4.1. This Authority had considered a proposal of the MOPT about revision of charges relating to cargo handling, warehousing and estate rentals and passed an Order on 2 June 2000. The Order was notified in the Gazette of India on 12 June 2000. In this order, this Authority considered the rebate allowed by the MOPT on vessel related charges for large size vessels of 1,60,000 DWT and above and observed as follows:

“The Port allows a rebate on vessel-related charges on large size vessels of 1.6 lakh DWT and above. This remission is based on a decision of the Board of Trustees of MOPT. The Board Resolution does not specifically indicate whether such rebate has been allowed in exercise of the powers conferred on it under Section 53 of the MPT Act. However, this concession has been in vogue for a long period; and, as per the recent Board resolution it will continue upto 31 December 2000 subject to further review. When pointed out that such a standing remission may not be continued to be allowed by the Board for ever but shall be included in the SOR with the approval of the TAMP, the MOPT has requested to approve the rebate scheme in vogue and include it in the SOR. This request is accepted.”

4.2. Since the remission granted by the Board of Trustees under Section 53 of the MPT Act was (then) extended only upto 31 December 2000, a suitable provision in the Scale of Rates in this regard was included stipulating its validity upto 31 December 2000 and subject to further review thereafter. This Authority did not receive any request from the MOPT for continuance of the provision in the Scale of Rates relating to rebate on charges for vessels of 1.6 lakh DWT and above.

5.1. In the meanwhile, this Authority received another proposal of the MOPT for revision of its vessel-related charges. In this proposal also the MOPT did not propose any rebate for vessels of 1.6 lakh DWT and above for inclusion in the Scale of Rates. The proposal of the MOPT for revision of its Vessel Related Charges was considered by this Authority and an Order was passed on 9 August 2001. The Order was notified in the Gazette of India on 29 August 2001. As regards the rebate of 25% on vessel related charges given for vessels of 1,60,000 DWT and above, this Authority in its Order observed as under:

“The Port allows a rebate of 25% on Vessel Related Charges on vessels of size 1,60,000 DWT and above. So far, the Board of Trustees of MOPT has been granting this remission. When pointed out at the time of last revision of Cargo Related Charges that such a long standing remission might not be continued to be allowed forever but should be included in the Scale of Rates, the MOPT requested to include the rebate scheme in the Scale of Rates. Since the concession was allowed by the Board upto 31 Dec. 2000 subject to further review, a provision in the Scale of Rates was introduced accordingly. Since no further proposal for continuance of this concession has been received from the MOPT after a review, it is presumed that the concession is not proposed to be maintained anymore. That being so, the relevant entry in the Scale of Rates is deleted as being redundant.”

5.2. With the observations mentioned above, this Authority deleted the provision in the Scale of Rates inserted by it earlier to allow a rebate of 25% in the

Vessel Related Charges of vessels of 1.6 lakh DWT and above upto 31 December 2000.

6.1. Earlier, a provision in the Scale of Rates of the MOPT about allowing a 25% rebate upto 31 December 2000 on vessels of 1.6 lakh DWT and above was introduced at the request of the MOPT to regularise a long-standing remission allowed by its Board of Trustees in this regard. The Board of Trustees of the MOPT had already decided to extend this concession upto 31 December 2001 subject to review thereafter. This Authority has, therefore, no objection to accepting the decision already taken by the Board of Trustees of the MOPT in this regard and to introduce a suitable provision in the Scale of Rates. It is noteworthy in this context that the MOPT had also issued a Trade Circular on 21 January 2001 informing all the users about the 25% rebate would continue till end of December 2001.

6.2. The Government of India has already advised all the major ports to exercise the powers conferred by Section 53 only to allow remission in charges and only in specific cases; and, not to alter the tariff arrangement prescribed in a general way. Recognising this position, the MOPT earlier requested this Authority to introduce a provision in the SOR to allow a rebate in the case in reference instead of its resorting to exceptional provisions for allowing remissions under Section 53. The sudden turn around in the MOPT's stand in this regard to again resort to allowing remissions under Section 53 for the period beyond 1 January 2001 remains intriguing.

6.3. The MOPT had earlier indicated that a lump sum levy of US\$ 3500 (now stands revised at US\$ 4550.23) was fixed to be charged from the vessels ranging between 50,000 to 100,000 DWT to set off the loss on account of the 25% remission in charges on vessels of 1.6 lakh DWT and above. This lump sum levy still continues; and, therefore, it provides a cushion to absorb the loss, if any, on account of the rebate allowed on vessels on more than 1.6 lakh DWT.

6.4. The MOPT was allowing the rebate till implementation of this Authority's Order dated 9 August 2000, which has come into effect from 28 September 2001. The Board of Trustees of the MOPT had also decided to allow the remission for a further period from 1 January 2000 to 31 December 2001. That being so, this Authority is inclined to introduce a suitable provision in the Scale of Rates in this regard with retrospective effect from 1 January 2001 in order to regularise the transactions that had already taken place based on the Board of Trustee's decision and on the Port Trust's trade circular dated 25 January 2001.

6.5. Eventhough it has been liberally referred to as concessions on Vessel Related Charges or Port Charges, the circular issued by the MOPT clearly indicates that the concession is allowed only on berth hire and anchorage charges leviable from vessels of size 1.6 lakh DWT and above. That being so, the provision to be inserted in the Scale of Rates will need to clearly indicate the items of tariff on which the concession is applicable.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority inserts the following provision under Part-I- Vessel Related Charges; Section-C Berth Hire / Anchorage Charges; Notes

common to Sections C(i) and C(ii) in the Scale of Rates of the MOPT with retrospective effect from 1 January 2001.

“(12). A concession of 25% will be allowed on the berth hire and anchorage charges on vessels of size 1,60,000 DWT and above. The concession will continue upto 31 December 2001.”

(**S. Sathyam**)

Chairman

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