

No. 283

New Delhi, 20 September , 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 rejects the representation of the Mormugao Port Trust for a review of the existing Efficiency Linked Tariff Scheme as in the Order appended hereto.

(**S. Sathyam**)

Chairman

Tariff Authority for Major Ports

Case No.TAMP/18/99-MOPT

The Mormugao Port Trust
Applicant

ORDER

(Passed on this 20th day of September 2001)

This Authority passed an Order on 24 November 1998 prescribing an efficiency linked increase in the Vessel Related Charges (ELT Scheme) at the Mormugao Port Trust (MOPT). Based on the experience gained from operationalisation of the formulation approved by this Authority, the Scheme was to be reviewed to reduce subjectivity in assessment and remove practical difficulties.

1.2. In the light of various issues that arose during the review of the ELT Scheme, and taking into consideration the views of the MOPT, the Goa Mineral Ores Exporters' Association (GMOEA) and other user organisations, the Scheme was revised by this Authority vide its Order dated 31 August 2000.

2.1. The MOPT has sent a representation for a review of the (revised) ELT Scheme on various grounds.

2.2. The MOPT has made the following points in its representation:

- (i). Out of 32 vessels loaded at the Mechanised Ore Handling Plant (MOHP) from 1 October 2000 to 18 November 2000, 12 vessels have exceeded the cut off limit prescribed under the ELT Scheme.

- (ii). In all the cases, the delay is due to shortage of cargo at the stockyard, which is primarily the responsibility of the shippers to arrange.
- (iii). These vessels have exceeded the cut-off limits in spite of a high loading rate achieved by the MOHP.
- (iv). The sample size considered may be small. But, the Port is apprehensive of repetition of such instances in which the Port's incentive is lost for reasons of negligence on the part of the users.

2.3. The MOPT has made the following requests for our consideration:

- (i). The formula for ELT Scheme may be modified by taking into account only the loading performance at Berth No. 9. The weightage given in the existing ELT Scheme to pre-berthing period should be excluded and the turn-around time at the berth should be calculated from the time the vessel is berthed till it is unberthed after completion of loading.
- (ii). The present loading rate fixed by the charters with the exporters for the vessels loaded at the MOHP is around 45000 tonnes per day. Hence this load rate is proposed as the norm while revising the ELT Scheme.
- (iii). An interim order may be passed for not releasing the rebate until the proposal is entirely reviewed by this Authority. This request has been made keeping in view the possible demand from the port users for payment of penal interest on delayed refund.

3. The representation of the MOPT was considered by us in our meeting held on 5 January 2001. It was decided to initiate a formal proceeding to review the ELT Scheme with a specific reference to the pre-berthing time component of the Scheme. The request of the MOPT to issue an interim Order was not acceded to. It was decided that unless and until the review proceedings resulted in a revised Order, the arrangement originally prescribed in our Order dated 31 August 2000 would remain in force. These decisions were conveyed to the MOPT.

4.1. In accordance with the procedure prescribed, a copy of the representation of the MOPT was forwarded to the concerned representative bodies of port users for comments specifically on the pre-berthing time component of the Scheme. The comments received are summarised below:-

Indian National Shipowners Association (INSA)

- (i). Due weightage may be given to the views of the exporters who will forward their comments on the statement made by the MOPT in its letter dated 14 November 2000 that "Delay, if any, on account of consolidation of cargo is attributed to the user exporters."

- (ii). The MOPT shall not insist on exclusion of the pre-berthing detention from the present ELT Scheme, specially under the present scenario where the ship owners, charterers, etc., look for an efficient and competitive port so as to keep the operational cost of vessels and commodities to a minimum possible level. The Port has to become efficient as well as competitive and user friendly in the present competitive scenario; otherwise, countries like Australia & Brazil, where the handling operations are faster and efficient, will be benefited further, if Japanese buyers shift their share of import of iron ore from Goa to these countries.

The Goa Mineral Ore Exporters' Association (GMOEA)

- (i). A review of the revised ELT scheme is unwarranted at present as the issue sought to be reviewed is not a rectification of a mistake apparent on record, but of prevailing logic and approach, and base model on which the ELT scheme has been designed.
- (ii). The issues on the basis of which the MOPT is seeking review are not new; and, have been raised during earlier deliberations, the apparent reason being a loss of revenue at berth no. 9. The review is unjustified on the following grounds:
- (a). It is extremely premature to arrive at the conclusive decision based on the operation of the ELT scheme for a period of one month only; and hence, the MOPT's request for a review is based on an unrepresentative sample and should be dropped.
- (b). The Port users are largely the same over the last five years (which constitutes the base average on which the ELT Scheme is designed); and, are responsible entities which operates with commercial profit motives. Therefore, the MOPT's allegation that users acts in a willful negligence and fails to arrange the cargo is an unfounded one and baseless.
- (c). The Authority's order dated 31 August 2000 specifically provides that the revenue earnings from the old scheme is not to be taken as a base for protection under all circumstances; hence, the MOPT's request to review the ELT scheme based on the reason of loss of incentive at berth no. 9 cannot be considered.
- (d). Since the Authority had already ruled out the possibility of review of the revised ELT scheme along with the proposal of the vessel-related charges, the review at this stage is unwarranted; hence, it is requested to reconsider the decision to initiate a formal review of the revised ELT scheme with specific reference to the pre-berthing time component.

The Mormugoa Ship Agents Association (MSAA)

- (i). The MOPT has considered only the first month (October 2000) as the basis of its review petition. It is submitted that the Port opens in the middle of September after the monsoon season for shipment of iron ore, but heavy nomination of vessels takes place only during October, as there are some intermittent post-monsoon showers in September and the cargo still remains too wet to ship. In spite of the best efforts of the exporters to collect cargo in time, the intermittent post-monsoon showers at mines even in October affects the loading and discharging points at berth no. 9 and 10; and, the normal handling takes more than the average time. This is the reason the vessels have to wait for collection of cargo during October. This situation has been happening during earlier years also. The data submitted by the port is a testimony to this effect. In the month of October, 10 out of 20 vessels were eligible for the rebate whereas in November, only two vessels were eligible for the rebate and likewise very few vessels were eligible for rebate in the month of December and, January & February 2001.
- (ii). The pre-berthing detention of vessels at berth no. 9 as informed by the port to the users for the months of November (1.29 days), December (2.05 days) and, January 2001 (1.91 days) were all lower than the pre-berthing detention in October (2.41 days). The number of vessels eligible for refund will go down further in the subsequent months; and, therefore, there appears to be no ground for revision of the ELT scheme based on the experience of one month or at the beginning of the season.
- (iii). If at all it is considered necessary to exclude the delay on account of vessels waiting for cargo from the present ELT scheme, then, the pre-berthing detention formula of 2.83 days will have to be lowered down further to accommodate the vessels already having the cargo ready at berth, but have to wait for various other reasons.
- (iv). While arriving at the figure of 2.83 days as the average pre-berthing detention in the ELT scheme, initial waiting period of the vessels for reasons explained in sub-para (i) above have already been covered in the cut-off limit.
- (v). In view of above, sufficient time may be allowed for implementation of the scheme, (at least one season); and, based on its results, the case may be taken up at the end of the season.

4.2. The Goa Chamber of Commerce and Industry has not sent any comments.

5. Copies of the comments received from the user-organisations were forwarded to the MOPT as feed back information. The points made by the MOPT in response are summarised below:-

- (i). Pre-berthing time under the revised ELT Scheme should exclude the time on account of delay in consolidation of cargo by the user.
- (ii). The same argument repeatedly advanced by the INSA, GMOEA and others on the viability of ore trade and other factors, which have not affected the iron ore traffic through this port for decades of its existence, has no substance.
- (iii). As regards the contention of the GMOEA, it is stated that the port had reckoned the pre-revised ELT Scheme (upto 30 September 2000) as a sequel to the totality of vessel-related charges as per the TAMP Order dated 30 November 1998. The TAMP had itself clarified that the income from the revised ELT Scheme is to be treated as different from that arising out of vessel-related charges revision.
- (iv). It is agreed that the cut off limits will be based on past 5 years performance evening out the effect of high, low or abnormal working conditions over a period of time. The period reckoned should, however, not weigh against the interest of the port and the delay on account of cargo accumulation by the exporters needs to be isolated in order to find the actual productivity at berth no. 9.
- (v). The present ELT Scheme is defective to the extent that it does not reward the agency that enhances efficiency; but, on the contrary, results in losses to the port for becoming more efficient at a higher cost (e.g., incentive to workers, relatively high maintenance cost of machinery for uninterrupted service etc.).

6. The MOPT was requested to furnish vessel-wise details of pre-berthing waiting time (with its break up) relating to vessels handled at the MOHP for the period from October 1995 to May 2000 and for the period October 2000 to May 2001. The MOPT has furnished the requisite information.

7. A joint hearing in this case was held on 14 May 2001 at the MOPT and this case was taken up along with the proposal of the MOPT for revision of vessel-related charges. At the joint hearing, the following submissions were made with reference to the instant case:—

Mormugao Port Trust (MOPT)

- (i). We are giving rebate for no fault of ours, the TAMP must take some decision in this regard. (In the old scheme, there was a provision for working anchorage; it is not there now.)
- (ii). We have to allow a vessel to enter; otherwise, they cannot register arrival and ask for the berth, etc. We cannot keep them outside.

Goa Chamber of Commerce and Industry (GCCCI)

- (i). The ELT formula is perfect. There is a 2.83 days for 'slack'. The MOPT is exaggerating.
- (ii). The traffic has increased and the port has earned more than Rs.2 crores as premium.

(iii). The MOPT has not updated the cut-off figure by taking into account the rolling five-year average. The same shall be done with effect from 1 April 2001 as stated by the MOPT.

8. Even as this case was being processed, the MOPT has been regularly sending communications every month intimating the performance of the ELT Scheme. The emphasis in all these communications has been the 'notional loss' to the MOPT due to operation of the revised ELT Scheme vis-à-vis the original Scheme.

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

- (i). Under the original ELT Scheme, the Port was earning a premium on almost all the vessels loaded at the MOHP. At the time of revision of the ELT Scheme, the Port had also pleaded for protecting the revenue earned out of the original ELT Scheme. This Authority did not agree to this request.
- (ii). The financial loss reported by the MOPT is with reference to loss of premium it would have earned if the original ELT Scheme had continued. The net earnings out of this scheme are no doubt below the earnings the MOPT would have achieved if the original scheme had continued. In absolute terms, however, the revised ELT Scheme has not resulted in any financial loss to the MOPT.
- (iii). As has been mentioned earlier, the 'notional loss' reported by the MOPT is with reference to what the Port would have earned under the original ELT Scheme. It cannot really be called a loss. The notional loss indicated by the Port only shows the quantum of reduction in what can be called an unjust enrichment to the Port. It is noteworthy that the issue of protecting the revenue from the original ELT Scheme was specifically considered by this Authority while introducing the revised scheme. It was then decided that revenue from the original scheme could not be taken as a base for protection. That being so, determination of (notional) financial loss with reference to the original scheme is irrelevant, and does not stand scrutiny.
- (iv). One of the reasons for the 'notional loss' cited by the Port is that the existing scheme is not applicable to the working anchorages. The issue of inclusion of the time taken for transshipment at midstream in the ELT Scheme was specifically considered by this Authority at the time of introducing the existing scheme. In the proceedings relating to that case, the MOPT had stated that this operation be excluded from the ELT Scheme since delays in transshipment would not affect other incoming / outgoing vessels. The GMOEA had also agreed with this. Accordingly, it was decided that the Scheme would encompass only the period from entry of the vessel into the Port to its exit from the berth. No change is, therefore, called for in respect of this provision.

- (v). As has already been mentioned, the loss reported by the MOPT is with reference to the 'loss' of additional premium it would have earned under the original ELT Scheme and the (notional) loss on working anchorages.

The position reported by the MOPT every month reveals that out of 160 vessels handled at the MOHP during October 2000 – May 2001, the MOPT has had to pay the rebate on berth hire only in 50 cases. The net additional earning to the port on account of operation of this scheme is around Rs. 81 lakhs for this period. That being so, there is no reason to apprehend that the introduction of ELT Scheme has affected for Port's financial position adversely.

- (vi). The Vessel Related Charges at the MOPT have recently been revised. The Income from the ELT Scheme has been considered under vessel related activity. This had to be done since some of the expenditure relating to performance improvements at the MOHP had been considered at the time of revision of Cargo Related Charges. The MOPT has already been advised to maintain a separate account of income and expenditure relating to the ELT Scheme so that a clear picture can emerge of the net impact on the port as a result of productivity improvements. In any case, berth hire charges of the MOHP have recently been revised upwards by 15%. This will enable the MOPT to levy premium and allow rebate, as the case may be, on the revised berth hire. Considering the trend in the past and recognising the productivity improvements in the last 5 years, the future trend indicates that the cases where rebate is to be allowed by the Port will be less than the cases where the port can charge premium. That being so, the additional net income from the ELT Scheme can only be expected to go up in the future. It is noteworthy that this position had also been recognised by the MOPT while estimating income for the exercise relating to revision of Vessel Related Charges. The MOPT had itself projected net income (i.e. Premium less rebate) from the ELT Scheme as Rs.245 lakhs for each of the years 2001-02 and 2002-03 at the pre-revised rate of berth hire and anchorage fees.

- (vii). The MOPT's request to exclude pre-berthing detention has already been considered by this Authority while framing the revised ELT Scheme. Both the MOPT and the users agreed that the Scheme should be applicable to anchorage charges also. The MOPT's request to exclude some delays in pre-berthing was not agreed to, since such delays were also considered in the 5-year average against which the actual performance would be measured.

- (viii). The cut-off period has been prescribed based on the performance achieved during the past 5-year period. The average pre-berthing detention time prescribed in the cut-off limit includes delay on account of consolidation of cargo. It can be reasonably presumed that delay on account of consolidation of cargo had occurred in the past also since such delays have been (and, are) a part of the shipping trade. The

GMOEA's arguments that the port users are largely the same over the last five years; and, they are responsible entities operating with commercial considerations are relevant in this context. Further, a ship-owner may not like to delay his ship at the port only to take advantage of the ELT Scheme. The benefit of rebate in berth hire cannot come anywhere near the standing cost of the ship. Since the actual performance is compared with the cut-off limit, the MOPT cannot reasonably seek exclusion only of the delay on account of consolidation of cargo from the actual performance.

- (ix). The pre-berthing detention has two components viz. delay on account of port and delay on account of users. The MOPT's request to exclude pre-berthing detention can be justified if it is found that the delay on account of users forming part of pre-berthing detention time prescribed in the cut-off limit varies significantly from similar delay in the actual performance and such variation is disproportionate with the overall trend of pre-berthing detention time.
- (x). Based on a 5-year average pertaining to the period from October 1995-May 1996 to October 1999-May 2000, the pre-berthing detention time in the cut-off limit in the ELT Scheme has been prescribed at 2.83 days. This comprises 0.86 day of delay on account of port and 1.97 days of delay attributable to users (which includes 1.87 days of delay on account of non-stacking of cargo). The data for the pre-berthing detention period October 2000 to March 2001 (i.e. the period after introduction of the existing ELT Scheme) furnished by the MOPT indicates an average pre-berthing detention time of 1.80 days. This includes 0.46 day of delay attributable to the port and 1.34 days of delay attributable to users. Non-stacking of cargo has reportedly contributed to an average delay of 1.22 days.

With reference to the cut-off limit, there is definitely a reduction in the pre-berthing detention time during the period October 2000 to March 2001. The share of delay attributable to users is about 69% in the cut-off limit prescribed; whereas it has been observed that its share in the pre-berthing detention time during the period October 2000 to March 2001 is about 74%. This shows that the reasons attributable to users have contributed marginally higher to the pre-berthing detention time during October 2000 – March 2001 when compared with the 5-year period average. Nevertheless, inclusion of pre-berthing detention in the Scheme has not put the MOPT in a disadvantageous position. During the period from October 2000 to March 2001, there has been an average slack of about 1 day available in the pre-berthing detention component of the MOPT, which it could have utilised to compensate (even) if there was any deficiency in the loading performance at the MOHP during the corresponding period and still would have turned around vessels within the cut-off time limit prescribed. That being so, there appears no reason to exclude the pre-berthing detention period from the ELT Scheme on the ground that it causes an adverse impact on financial position of the MOPT.

- (xi). The possible delay in aggregating cargo by the shippers can be tackled by the port operationally. The Port can admit only such vessels to enter the Port, which have adequate cargo for loading at the stackyard as certified to that effect by the concerned shippers. Further, the existing provision in the Scale of Rates of the MOPT about levying penal berth hire charges for unauthorised occupation of the berth beyond the stipulated time period can also be suitably amended to cover the instances of vessels idling at berth for want of sufficient cargo for loading. It is noteworthy that a similar provision exists in the Scale of Rates of the JNPT to discourage idling of vessels at berths.

The MOPT is advised to examine the suggestions made above and to come up with an appropriate proposal if any amendment to the existing conditionalities in the Scale of Rates is to be made. It will be useful for the MOPT to consult its users while formulating such a proposal. It is, however, relevant here to mention that the period of idling of vessels at berths for want of cargo will continue to be accounted for while measuring the actual performance under the ELT Scheme since such delays have been reckoned with while prescribing the cut-off limit.

- (xii). The average daily loading rate during the 5-year period from 1995-96 to 1999-2000 was 47040 tonnes. Accordingly, this loading rate has been prescribed in the cut-off limit for the fair season 2000-01. When the past 5-year average loading rate exceeds 45000 tonnes per day, there is no logic in reducing the level of the loading rate to 45000 tonnes per day, just because of its stipulation in the charter deed.
- (xiii). As has been correctly pointed out by the GMOEA, the issues agitated by the MOPT in this case are not for rectification of mistakes apparent on the face of the record. The MOPT has only requested this Authority to modify the logic and approaches adopted while formulating the revised ELT Scheme. Further, the issues raised by the MOPT are not new and have been considered in the proceedings relating to formulation of the revised ELT Scheme. The information furnished by the MOPT shows that the ELT Scheme during its operation from October 2000 to May 2001 has not had any adverse impact on the financial position of the Port. That being so, there is no merit in the request of the MOPT for a review of the revised ELT Scheme.

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority rejects the representation of the MOPT for a review of the existing ELT Scheme.

(**S. Sathyam**)

Chairman

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