

No. 347

New Delhi, the 27 December, 2001

**Tariff Authority for Major Ports**

**NOTIFICATION**

In exercise of the powers conferred by Sections 48 and 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation from the Bombay Stevedores Association Limited about revising the ceiling rates for stuffing /destuffing activity under the stevedoring services provided by the service providers authorised by the Mumbai Port Trust under Section 42(3) of the MPT Act as in the Order appended hereto.

( S. Sathyam )

Chairman

**Tariff Authority for Major Ports**

**Case No.TAMP/68/2001-MBPT**

**The Bombay Stevedores Association Limited**  
**Applicant**

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**Vs.**

**Mumbai Port Trust (MBPT)**

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**Non-applicant**

**O R D E R**

**(Passed on this 13th day of December 2001)**

This case relates to a representation received from the Bombay Stevedores Association Limited (BSA) for reviewing the ceiling rates for stevedoring services at the MBPT prescribed by this Authority vide its earlier Order dated 12 June 2001.

2.1 This Authority had passed an Order on 12 June 2001 (notified in the Gazette of India on 26 June 2001) fixing ceiling rates for the service providers authorised by the Mumbai Port Trust (MBPT) under Section 42(3) of the Major Port Trusts Act, 1963.

2.2. Subsequently, it was noticed that some omissions / typographical errors had occurred in Paragraph 16 of the said Order. A corrigendum in this regard was, therefore, notified in the Gazette of India on 17 September 2001.

2.3. The following rates were finally approved for the stevedoring services provided at the MBPT:

| Activity   | Port CFS Stuffed/Destuffed |      |                         |      | Factory stuffed/destuffed |     |        |     |
|--|----------------------------|------|-------------------------|------|---------------------------|-----|--------|-----|
|  | Import (FCL)               |      | Export and Import (LCL) |      | Import                    |     | Export |     |
|  | 20'                        | 40'  | 20'                     | 40'  | 20'                       | 40' | 20'    | 40' |
| <b>C. Stevedoring</b>                                  |                            |      |                         |      |                           |     |        |     |
| 1. On board stevedoring*<br>(including 5% contingency) | 788                        | 788  | 788                     | 788  | 788                       | 788 | 788    | 788 |
| 2. Stuffing/destuffing**<br>(including 5% contingency) | 1241                       | 2771 | 2846                    | 6250 | 0                         | 0   | 0      | 0   |
| 3. Forklift*** (including 5% contingency)              | 0                          | 0    | 315                     | 630  | 0                         | 0   | 0      | 0   |

\* (i). Interim rate computed on the basis of 'on-board labour' charges @ Rs.630/- plus piece rate per worker.

(ii). This element is already covered in ocean freight; it cannot therefore be a component of the THC also.

\*\* Interim rate.

\*\*\* Only when forklift is actually provided.

3.1. The BSA has independently of these proceedings filed an applications requesting this Authority to review the ceiling rates approved for stuffing / destuffing activity.

3.2. The BSA has made the following main points in its representation:

(i). The Scale of Rates prescribed by the MBPT which has been referred to in the Order has been worked out based on the costs existing during the year 1998-99.

(ii). Since then the supervisory staff and allied workers who were previously on a monthly pay roll of the Stevedores and who were being paid monthly wages, had been transferred to a common pool maintained by the MBPT. The MBPT Scale of Rates, however, had incorporated their monthly wages as the cost of such staff. Nevertheless, subsequent to the formation of the common Pool in August 2000, the MBPT had started charging a fixed rate for these supervisory staff alongwith a levy of 187%.

- (iii). It is, therefore, apparent that there has been a substantial increase in the cost of supervisory staff compared to the cost included in the original proposal of the MBPT and the rates prescribed in its Scale of Rates as contained in the present Order.
- (iv). Further, the MBPT proposal for fixation of stevedoring rates had been worked out on the volume and productivity level existing in the year 1998-99. Unfortunately, there has been a large transfer of cargo from the MBPT to the JNPT; and, both the volume and productivity at the MBPT have come down drastically.

3.3. The BSA has worked out the actual cost incurred by the Stevedores for stuffing/destuffing containers taking into consideration the changes that have occurred during the years 1999-2000 and 2000-2001. It has considered the revised wage cost for all relevant categories of employees / workers and also an element of 5% Service Tax at each stage. The revised stevedoring rates worked out by the BSA for stuffing / destuffing are set out in a tabular format below:

| Activity   | Port CFS Stuffed/Destuffed |      |                               |       |
|--|----------------------------|------|-------------------------------|-------|
|  | Import<br>(FCL)            |      | Export and<br>Import<br>(LCL) |       |
|  | 20'                        | 40'  | 20'                           | 40'   |
| <b>C. <u>Stevedoring</u></b>                               |                            |      |                               |       |
| 2. Stuffing / Destuffing<br><br>(Including 5% contingency) | 2790                       | 6431 | 4604                          | 10155 |

3.4. The BSA has requested for a review of the ceiling rates for stuffing / destuffing notified by this Authority in light of the points referred in Para 3.2. above and also to approve the revised stevedoring rates indicated in Para 3.3. above.

4. The representation of the BSA was circulated to the MBPT, the concerned representative bodies of port users, and other relevant organisation for comments. The comments received are summarised below:

**Indian Merchant's Chamber (IMC)**

It broadly agrees with the representation made by the BSA.

**Mumbai and Nhava-Sheva Ship-Agents' Association (MANSA)**

- (i). The working provided by the BSA basically covers the total cost of Stevedores for a year and yearly throughputs, etc.

- (ii). The MANSAs has proposed a simple and straight forward working of per shift cost, based on the format and manning scale provided by the MBPT in November 2000 as well as reckoning with the current wages (after revision). It has requested to consider its working for fixing the stevedoring cost for stuffing/destuffing.
- (iii). It has also suggested that ceiling rates may also be stipulated for on-board stevedoring charges for containers and stevedoring charges for General Break Bulk cargo, Pulses and Grains (loose / packed in bags), Iron and Steel and Wooden logs.

#### **The Shipping Corporation of India Limited (SCI)**

- (i). The BSA has requested for revision of charges within two months of the Authority's Order. The Authority must have taken into account all these parameters before passing the Order.
- (ii). Any revision in stevedoring charges will also result in an increase in the Terminal Handling Charges (THC). This will be counter productive to the efforts of the TAMP in reducing the costs incurred at the MBPT for handling containers.

#### **The Container Shipping Lines Association (CSLA)**

It fully supports the views expressed by the MANSAs.

#### **Karmahom Conference**

It entirely agrees with the comments made by the MANSAs.

#### **The Bombay Custom House Agents' Association (BCHAA)**

- (i). The Stevedores must ensure that the Order notified by the TAMP with reference to the THC is accepted and implemented by its Principals who are the Shipping Lines.
- (ii). Prior to considering the appeal made to review the ceiling rates, the Stevedores Association must confirm that the transportation rates, etc., notified by the Authority are acceptable. It must compel its Principals to accept and implement the same.
- (iii). The Stevedores recover from the Shipping Lines, a consolidated charge, which is known as a box rate. This rate includes the cost of discharging the container from vessel, transporting it to the nominated CFS for destuffing and moving the container to the empty storage yard. Thereafter, the container is repositioned for loading export cargo or if it is empty the container is brought alongside and loaded on the vessel. The cost incurred for these services are recovered from the Trade by the Shipping Lines as the THC.

- (iv). The costing based on which the MBPT carried out its study undoubtedly proved that the Shipping Lines were and are still recovering huge sums in excess of the actual cost incurred for handling the container at the Terminal.
- (v). The Stevedores are the contractors of the Shipping Lines. In case it wants to revise the tariff, they must address the Shipping Lines who are recovering a substantial cost from the Trade as the Terminal Handling charges. The ceiling fixed by the TAMP need not be revised.
- (vi). The THC is being notified by the Shipping Lines and Karmahom Conference unilaterally without having any discussions with either the Port or the Trade.
- (vii). The THC were fixed based on the cost incurred by a very small Shipping Line / Operator. This fact about the basis of fixing the THC cannot be defied since all the Shipping Lines and even the small Forwarders / Consolidators, who handle 150 containers a year recover the same THC. There are no separate THC rates for smaller Shipping Lines.
- (viii). Since there is no slab rate for handling different quantum of containers either monthly or annually, the Shipping Lines in connivance with its Stevedores have exploited the Trade over the past three decades.

### **The Mumbai Port Trust (MBPT)**

- (i). The MBPT has worked out the cost of stuffing / destuffing charges taking into consideration the wage cost prevailing during the year 2000-2001 and the productivity achieved during that period. The stevedoring rates for stuffing / destuffing the containers computed by the MBPT (including contingency provision @ 5%) are given below:

| Activity            | Port CFS Stuffed/Destuffed |         |                               |         |
|---------------------|----------------------------|---------|-------------------------------|---------|
|                     | Import<br>(FCL)            |         | Export and<br>Import<br>(LCL) |         |
|                     | 20'                        | 40'     | 20'                           | 40'     |
| Stevedoring         | Rs. Ps.                    | Rs. Ps. | Rs. Ps.                       | Rs. Ps. |
| Stuffing/Destuffing | 2135.00                    | 4909.00 | 4386.00                       | 9672.00 |

- (ii). The representative of the BSA was one of the members of Bipartite Wage Negotiation Committee constituted by the Government of India in connection with the revision of wages of Port

and Docks workers. The proposal of the MBPT was also heard by the TAMP in the presence of the port users. The users were well aware of the wage revision proposal.

- (iii). In this backdrop, the submission of the BSA that they were not aware of the impending increase in the wages is not understood. The Stevedores should have considered the increase in charges; and, accordingly should have entered into an agreement with the vessels agents by loading some percentage for escalation of cost due to impending wage revision.

5.1. The comments received from the MBPT and other port users / representative bodies of port users were sent to the BSA as feedback information.

5.2. The BSA has offered the following points with reference to the comments of the MANSA and the MBPT:

- (i). The format suggested by the MANSA for computing the per ship cost does not include various cost elements such as piece-rate paid by the Stevedores to the MBPT, cost of 4 GPMS in case of 40' container, 6% Workmen's Compensation and PPE, 20% overhead and insurance, Profit element and 5% provision for contingency. Further, the output adopted by the MANSA for the purpose of stuffing and destuffing is not actually achieved.
- (ii). The MBPT has, however, taken into consideration all relevant cost elements. It has considered the performance based on the agreed manning scale.
- (iii). The costing furnished by the MANSA is not workable. The BSA is in total agreement with the methodology adopted by the MBPT.
- (iv). It agrees with the computation furnished by the MBPT with respect to stuffing cost and destuffing cost for destuffing FCL containers.
- (v). The MBPT has considered destuffing cost for LCL containers same as the stuffing cost of containers. This needs to be clarified.

6.1. On a preliminary examination of the comments received from the MBPT, it was requested to furnish additional information / clarification on the following points:

- (i). Specific comments on the cost details worked out by the BSA.
- (ii). A detailed working sheet in support of the stuffing and destuffing cost suggested by it based on the wage cost prevailing during the year 2000-01.
- (iii). On-board stevedoring charges for container is also required to be reviewed based on the wage cost prevailing during 2000-01. The

MBPT has, therefore, been requested to suggest an appropriate on-board stevedoring rate in consultation with the BSA.

6.2. In reply, the MBPT has made the following points:

- (i). The BSA has considered the element of 5% Service Tax with effect from July 2001 at every stage of the calculations. In fact this Service Tax is leviable on the consolidated final bill payable by the Port users and not at every stage of working. Moreover, this Service Tax is recovered by the Stevedores from the Vessel Owners or Vessel Agents. It cannot, therefore, be considered as cost attributable to the Port by the Stevedores; and hence, cannot be admitted as a cost element.
- (ii). The stevedoring charges were earlier worked out after considering the cost of labour at Rs.630 per worker plus piece rate at actuals. This factor has remained unchanged even now. The cost of supervisory staff was worked out on the basis of wages prevailing then. Apart from introduction of recovery at wage plus levy at 187% for supply of supervisory staff to the stevedores, there is no noticeable change in the parameters considered for arriving at the element of cost of THC under its earlier proposal.
- (iii). The on-board stevedoring cost has been revised considering the existing system of wage plus levy @ 187% at Rs. 891/- as against Rs. 788/- indicated in its earlier proposal.
- (iv). The rates arrived at by the MBPT in its earlier proposal relating to fixation of ceiling rates under Section 42 of the Major Port Trust Act were based on the actuals in respect of few vessels which worked during that period. The MANSAs have now suggested to re-work the charges by substituting certain cost elements. The suggestion made by the MANSAs shall be taken into account while framing the proposal for fixation of per tonne / per TEU rate of stevedoring charges as suggested in the Authority's Order dated 12 June 2001.

7. Subsequently, the BSA has given the following points in favour of its proposal:

- (i). The MBPT had issued a circular on 12 July 2001 prescribing a levy of Service Tax @ 5% of gross amount in respect of the services rendered and charged by the MBPT with effect from 16 July 2001 in accordance with the terms of Finance Act, 2001. Accordingly, the MBPT is levying this 5% Service Tax on the bills rendered by it to the Stevedores on the revised labour charges. The Stevedore members are actually paying 5% Service Tax with effect from 16 July 2001.
- (ii). In this backdrop, the element of 5% Service Tax has been considered while computing the revised stevedoring rates for stuffing / destuffing of the containers.

8. A joint hearing in this case was held on 26 November 2001. At the joint hearing the following submissions were made:

The Bombay Custom House Agents Association (BCHAA)

- (i). There is no case for increase.
- (ii). This is an internal matter between the Lines and the Stevedores.
- (iii). They are not honouring the TAMP Order. How can they be allowed to come before the Authority with further representations?
- (iv). As per the MBPT study there is already a surplus in the THC. There is no need for any increase.
- (v). Service Tax shall not be included in the tariff.
- (vi). As regards on-board stevedoring, the MBPT or the TAMP is not to be bothered. It is included in sea freight.
- (vii). The cut-off indicated is eight containers per gang. If a gang does more, the trade does not get a share of the benefit. The Lines pay at unit rate to Stevedores; but, they collect from us 'gang rates'. Thus, we end up paying more.

The Bombay Stevedores Association Limited (BSA)

- (i). We do not like to talk of THC. We are concerned with the 'ceilings' as prescribed by the TAMP.
- (ii). We totally agree with the MBPT; and, to that extent our earlier proposal stands revised.
- (iii). For 'FCL' containers both stuffing and destuffing are the same. The difference is relevant only for 'LCL' containers.
- (iv). The MBPT has used a devisor for conversion of wages from time rate to piece rate. The devisor has slumped; therefore, the box rate has gone up.
- (v). Please give retrospective effect to the revisions. Otherwise, we will lose heavily.
- (vi). We had made some mistakes in our calculations. The MBPT has corrected them. We agree with their calculations.
- (vii). The incentive per extra container (i.e. more than the norm of 7 prescribed by the MBPT) is based on an agreement between the BSA and the Union. If it is not possible to recognise our agreement, this item may be dropped.

(viii). We certify that we have not been collecting more than what is now proposed. If in any case it has been more, the excess will be refunded with interest. Wherever there are bilateral agreements, please allow us to collect arrears with respect to the new rates.

(ix). The rates for on-board stevedoring may also be fixed. We will discuss with the MBPT and give a consensus proposal.

### **The Mumbai Port Trust (MBPT)**

- (i). We have computed with respect to actuals.
- (ii). We prefer a 'per box' rate. We will bill Stevedores on that basis.
- (iii). The average output per gang has suffered, therefore, the traffic has declined.

### **The Shipping Corporation of India (SCI)**

- (i). If rates are revised retrospectively, the Lines will need to increase the THC to recover it from our side.
- (ii). We have no objection if the Order is only prospectively enforced; and, 'arrears' are collected only in cases of bilateral agreements.

### **Mumbai and Nhava-Sheva Ship-Agent's Association (MANSA)**

- (i). Do not work out with respect to whole year figures. Go by norms applicable to output per shift.
- (ii). We have no objection if the Order is only prospectively enforced; and, 'arrears' are collected only in cases of bilateral agreements.

### **Indian National Shipowners' Association (INSA)**

They have agreed with the views of the MANSA with reference to prospective application of the Order; and, arrears to be collected only in cases of bilateral agreements.

### **The Maharashtra Rajya Bus Tempo Truck Vahtuk Mahasangh**

We have represented. Our case may be heard separately.

9. With reference to the totality of information collected during the processing of this case, the following position emerges:

- (i). The ceiling rates for stuffing / destuffing activity notified earlier by this Authority vide its Order dated 12 June 2001 were admittedly based on the actual cost incurred during the year 1998-99. The actual cost was only updated with reference to a provision for revision of wages of port and dock employees to arrive at those rates. Further, the supervisory staff of the MBPT who were earlier on deputation

with individual stevedores had been repatriated to the MBPT in August 2000. The earlier calculation did not include the full implication of the cost of providing supervisory staff for stuffing / destuffing activity. More importantly, there is a significant drop in volume of container traffic through the MBPT since 1998-99. For example, a total number of 5816 labour gang-shifts were required in 1998-99 to destuff 109550 containers of 20' length whereas a total number of 7341 labour gang-shifts had to be utilised during the year 2000-01 for a similar operation on only 79147 containers. Thus the falling volume of traffic has pushed up the cost of handling. Since the rates prescribed earlier do not consider these factors which were relevant at the time of their notification, it becomes necessary now to review the rate for stuffing / destuffing prescribed in our Order dated 12 June 2001 as requested by the BSA.

(ii). Eventhough this Authority is willing to readjust the tariff levels with reference to relevant factors, it is disturbed by the fact that the stevedoring cost at the MBPT has to go up primarily due to fall in volume of trade. While labour redundancy is a reality, it has to be tackled in a more broad-based manner in tariff setting. It is the stated position of this Authority that cost of surplus labour must be spread over the entire traffic of the Port. Continuance of the age old levy system will only aggravate the problem of pushing up the quantum of levy higher and higher in the context of changing pattern of traffic and thus will not help the cause of merger of DLBs with Port Trusts. In realisation of these facts, the MBPT had already been advised to switch over to a 'per tonne / TEU' rate of on-board services instead of the traditional method of labour levy system. Though the MBPT was allowed three months time vide this Authority's Order dated 12 June 2001 to come up with an appropriate proposal in this regard, the MBPT has not, regrettably, responded positively so far. This Authority, therefore, requires the MBPT to come up with such a proposal within two months from now failing which *suo motu* action will be initiated to cancel the interim on-board labour charges approved earlier and notify 'per tonne / TEU' rates. The representative bodies of users are being requested by this Authority to send their proposals / suggestions in this regard.

(iii). The BCHAA has referred again to the unreasonable level of the THC levied by the Lines and suggested that the increase in stevedoring charges, if any, should be settled between the Lines and their Stevedores from out of the cushion available in the existing THC levied. This Authority is empowered to prescribe rates for those services provided by the persons authorised by a Port Trust, subject to the sanction of the Government, under Section 42 of the MPT Act. Stevedoring services at the MBPT fall under this category. Accordingly, this Authority had already prescribed the ceiling rates for different components of stevedoring services provided at the MBPT. As has already been clarified in our earlier Order, the THC being reimbursement of cost incurred by the Lines, it shall take into account the relevant ceiling rate for the corresponding cost component in the THC computation.

(iv). The MANSA has furnished an alternative method of calculation of stevedoring rates. Both the MBPT and the BSA have pointed out that the method suggested is not workable since it does not factor in all relevant costs. The MBPT has, however, assured that the suggestion made by the MANSA will be taken into account while framing its proposal for fixation of stevedoring charges on a per tonne basis.

- (v). In its calculation, the BSA has included a provision at every stage for recovery of 5% service tax. Taxation is generally recognised for total re-imburement and not included as a cost element in computation of tariff for services provided. In this case also, service tax needs to be excluded from the calculation to modify at the stuffing / destuffing rates and set apart for reimbursement with reference to actuals.
- (vi). The rates notified earlier were based on the proposal submitted by the MBPT. The MBPT has now updated its earlier calculations with reference to the actual cost of stuffing / destuffing incurred during the year 2000-01. The BSA has also agreed with the rates arrived at by the MBPT now. That being so, this Authority is inclined to approve the revised rates proposed by the MBPT for the stevedoring activity relating to stuffing / destuffing.
- (vii). The calculation of rates made by the MBPT, however, requires one modification. One of the elements included in the calculation relates to 'cost of extra container'. From the arguments advanced at the joint hearing, it became evident that this element did not represent any officially recognised payment made to the labour deployed for stuffing / destuffing containers. The BSA has admitted that this expenditure is being incurred based on an (informal) understanding between it and the labour unions. It may not be possible for this Authority to recognise such a payment as a valid cost element in the computation of rates to be notified by it.

It is relevant here to mention that this element of cost formed part of the computation of the relevant rates notified by this Authority earlier on 12 June 2001. Before notifying the rate in that case, the concerned parties were requested to specifically comment on the cost estimates furnished by the MBPT. None of the users consulted in that proceeding pointed out the impropriety of including the cost element in reference. That being so, inclusion of this cost element in the earlier rate notified by this Authority cannot be taken to mean that it had recognised a payment which had no official sanctity. It is inexplicable that the MBPT, which is fully aware of the nature of this transaction, has chosen to recognise such payment by including it in computation of cost made by it earlier as well as now.

- (viii). The factors contributing to revision of rates for stuffing / destuffing activity may also equally warrant revision of on-board stevedoring charges. The MBPT has indicated a revised rate for this activity. The BSA has, however, requested that it will discuss with the MBPT and come up with a mutually agreed proposal. Since the MBPT is reportedly formulating a revised proposal for supply of on-board labour (on a per tonne of cargo handled basis), it seems reasonable to consider revision of on-board stevedoring rates separately after receipt of a mutually agreed proposal. In this context it is relevant to consider the request of MANSAs about prescribing ceiling rates for on-board stevedoring in case of other commodities and cargo also. The MBPT is, therefore, advised to consider this request of the MANSAs and come up with suitable proposal alongwith its proposal (under formulation) for revision of on-board labour charges.
- (ix). Eventhough the earlier Order was passed in June 2001, the rate prescribed therein were with reference to the actual expenditure incurred in 1998-99. Since these rates are now updated with reference to the relevant figures for the year 2000-01, it may be necessary to prescribe the revised rates with retrospective effect. In fact, the

BSA has requested for such a retrospective revision. The INSA, MANSA and SCI have, however, pointed out difficulties in recovering the enhanced rates retrospectively from the trade. It is also relevant that retrospective application may create complication since the Lines and the stevedores may have entered into bilateral agreements based on negotiated rates. The BSA has pointed that some of the agreements contain a specific provision that the negotiated rate will be subject to revision to be ordered by this Authority. The user bodies representing shipping interests have, however, agreed that the revised rates can be made applicable prospectively; and, arrears can be allowed to be collected only in cases of bilateral agreements specifying such collection. That being so, the revised rates are approved with retrospective effect from 26 June 2001 subject to the condition that arrears arising out of revision of rates will be demanded by a stevedore only if a bilateral Agreement had been entered into by him with the Lines / Shipping Agents incorporating a specific provision in this regard.

- (x). Responding to the MBPT observation about the service providers not honoring this Authority's Order, the BSA averred that it was not their intention to flout the Regulator's directives. Since the rates in reference were prescribed obviously and admittedly with reference to outdated data, the BSA had to take some precautionary steps to protect their interests. This was done by collecting charges at the rates now proposed by the MBPT and not at the prescribed rates. There have been no collections in excess of the rates now proposed. The BSA has assured that, if something in excess of what is now proposed had been collected, the excess will be refunded with interest. This assurance is formally accepted so as to have a binding force on all concerned.

10.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority revises the rates for stuffing / destuffing activity under the stevedore services provided by the service providers authorised by the MBPT under Section 42(3) of the MPT Acts as follows:

| Activity            | Port CFS Stuffed/Destuffed |         |                               |         |
|---------------------|----------------------------|---------|-------------------------------|---------|
|                     | Import<br>(FCL)            |         | Export and<br>Import<br>(LCL) |         |
|                     | 20'                        | 40'     | 20'                           | 40'     |
| Stevedoring         | Rs. Ps.                    | Rs. Ps. | Rs. Ps.                       | Rs. Ps. |
| Stuffing/Destuffing | 2135.00                    | 4909.00 | 4296.00                       | 9491.00 |

- 10.2. The revised rates are approved with retrospective effect from 26 June 2001 subject to the condition that arrears arising out of revision of rates will be demanded by a stevedore only if the bilateral agreement entered into by him with the Lines / Shipping Agents contain a specific provision in this regard.

( S. Sathyam )

Chairman

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