

No. 277

New Delhi, the 10 October, 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 approves the proposal of the Mumbai Port Trust for fixation of Licence Fee in its Dock Scale of Rates for storage of cargo for longer periods; and, for management of cargo operation as in the Order appended hereto.

( S. Sathyam )

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**Case No.TAMP/46/2001-MBPT**

**Mumbai Port Trust (MBPT)**

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**Applicant**

**ORDER**

(Passed on this 20th day of September 2001)

This case relates to a proposal from the Mumbai Port Trust (MBPT) for approval of Licence Fee in its Dock Scale of Rates for storage of cargo for longer periods and for management of cargo operation.

2.1. In its proposal, the MBPT has made the following points:

- (i). Licence (storage) fees in lieu of demurrage were levied on the over-dimensional packages stored in the docks, sheds and yards after clearance by the Customs prior to 31 May 2000. Subsequently, in May 2000, the TAMP amended these provisions. For the purpose of clarity the TAMP has defined the over-dimensional packages which shall be subjected to licence fee.
- (ii). There has been a general decline in the traffic resulting in substantial storage space lying vacant thereby, leading to non-utilisation of the port premises. It is, therefore, proposed to earmark some of the available areas for storage of cargo on payment of licence fee by incorporating suitable provisions in the Scale of Rates.
- (iii). The port users have to carry out all documentations and other related work in and around the Docks. It is, therefore, proposed to allot some areas in the Docks to the port users to carry out their port related

activities. In view of this, it is proposed to levy licence fee for occupation of port premises for usage other than cargo storage.

- (iv). The existing Scale of Rates does not prescribe any levy for occupation of port premises for cargo storage or usage other than cargo storage. In case any such request is received it has to be placed before the Board for orders. This is a time consuming process; and, the delay in granting the facility shall divert the cargo from the MBPT. It is, therefore, proposed to empower the Traffic Manager to earmark the areas for the above purposes and levy the licence fees as per the Dock Scale of Rates.

2.2. The MBPT has proposed to insert the following as Sub-Section (C) below existing Sub-Section (B) of Section III of the Scale of Rates charged at the Docks in the MBPT Scale of Rates:

**“(C). (I). Licence (Storage) Fees on the goods stored in the areas specified by the Traffic manager for storage of cargo.**

	<b>Period of Storage</b>	<b>Rate</b>
(a).	In sheds.	
	i) For 30 days or part thereof	@Rs.25/- per sq. mtr. or part thereof per month or part thereof.
(b).	In the open Yards	
	ii) For 30 days or part thereof	@ Rs.20/- per sq. mtr. or part thereof per month or part thereof.

Notes:

(i). *The cargoes lying uncleared beyond 30 days shall be subjected to demurrage from 31<sup>st</sup> day onwards under Section II of the DSRs. For the purpose of levy of demurrage 31<sup>st</sup> day of storage of cargo will be treated as day number one.*

(ii). *The Traffic Manager reserves the right to reject the request or withdraw the permission granted without assigning any reason, should this become necessary for smooth operation of the Docks and extended Docks.*

(II). *Licence fee for management of cargo operation (for occupation other than for cargo storage):*

	<b>Description</b>	<b>Rate</b>
(i)	Licence Fee for space allotted to Vessel Agents / Stevedores / CHAs / Transporters/Port Users including Govt. agencies in the Port Trust building.	Rs.165.00 per sq.mtr. or part thereof per month or part thereof.
(ii)	Licence Fee for open areas permitted to be used for carrying out	Rs.90/- per sq.mtr or part thereof per

	cargo activities by placing	month or part thereof.
	chowkey/port cabin etc.	

**Note:** *The Traffic Manager reserves the right to accept/reject the request or withdraw the permission granted without assigning any reason, should this become necessary for smooth operation of the Docks or it is found that the area allotted is not utilised for the purpose for which it has been allotted."*

3. The proposal of the MBPT was forwarded to various port users/ representative bodies of port users for their comments. The comments received from them are summarised below:

**Container Shipping Lines Association (CSLA)**

- (i). The proposal to earmark some of the available areas for storage of cargo on payment of licence fee in lieu of demurrage is a welcome move. This will have a positive impact on the Port throughput.
- (ii). Currently the demurrage rates are very high. It acts as a deterrent to route cargo through the MBPT.
- (iii). We trust that this facility shall be extended for the containerised cargo and especially to the consignees who wish to store cargo for longer term after customs clearance and destuffing.

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

- (i). The MBPT proposal to extend warehousing facilities for consignments within the port premises is acceptable. This will be of great benefit to the Trade.
- (ii). The proposal to levy licence /storage fees on the goods is accepted. The proposal to levy licence fee for management of cargo operation, cannot, however, be accepted. It shall not exceed Rs.50/- per sqr. mtr. per month or part thereof.
- (iii). The MBPT needs to clarify the activities covered under the licence fee proposed for management of cargo operation.

**Bombay Chamber of Commerce and Industry (BCCI)**

The storage charges for the cargo as well as the licence fee for management of cargo operations are reasonable and shall be approved.

4. Subsequently, the MBPT has forwarded relevant cost details in the format prescribed by the TAMP. The cost statement for the warehousing services at the proposed rates indicates a steady fall in net surplus from this activity.

5.1. A joint hearing in this case was held on 13 August 2001 at the MBPT. At the joint hearing, the MBPT was requested to specifically clarify the following points:

- (i). The proposal incorporates an item about charging Rs.165/- per sq. mtr. per month as Licence Fee for management of cargo operation. No costing-details have been given arrived at.
- (ii). The proposal also incorporates an item about charging Rs.20/- per sq. mtr. It is relevant here to point out that, only a few months ago, the MBPT had, in the context of another case relating to storage of cargo, stated this Licence Fee as Rs.5/- (and, **not** Rs.20/-) per sq. mtr. This wide variance needs to be explained.
- (iii). It is also proposed to allot land for non-cargo use. In this context, it will be necessary to specify the purposes; it will be relevant to know whether only port-related purposes will be considered or any other also.

5.2. In response, the MBPT has made the following submission at the joint hearing:

- (i). There are no details of costing. The figure of Rs.165/ - per sq. mtr. was just borrowed from the JNPT Scale of Rates.
- (ii). The rate of Rs.20/-per sq. mtr. is for storing general cargo in open yards. The rate of Rs.5/- per sq. mtr. proposed last time was only for over-dimensional cargo; and, when special Railway rakes are not available at that. This is a concession given to over-dimensional cargo.
- (iii). The non-cargo use will also be confined to port-related purposes. Generally speaking, this facility will be more for the Agents to set up their offices.

6. With reference to the totality of information collected during the processing of this case, and bearing in mind the arguments advanced at the joint hearing, the following position emerges:

- (i). There has been a general decline in the traffic at the MBPT resulting in substantial storage space lying vacant thereby leading to non or under-utilisation of the port premises. The proposal is therefore to earmark some of the available areas for storage of cargo on payment of license fee or for management of cargo operations or (even) for non-cargo use.

(ii). The proposal undoubtedly involves concessions to cargo interests; but, it is basically born out of an effort to organise better utilisation of port properties. Understandably, therefore, it has been unreservedly welcomed by all the concerned users.

(iii). (a). The most significant component of the proposal is to introduce a system of allotment of areas for storage of goods on 'license fee terms' instead of on 'demurrage terms' as at present. The demurrage rates are obviously high whereas the proposed license fee rates are not. This is expected to attract (or, at least, prevent flight of) cargo. In view of the financial incentive involved, this has been welcomed by all the users concerned.

(b). One item of the proposal is to charge Rs.25/- per sq. mtr. or part thereof per month or part thereof in sheds and, likewise, Rs.20/- per sq. mtr. or part thereof per month or part thereof in open yards.

At the joint hearing, it has been clarified that the rate of Rs.5/- per sq. mtr. cited in a similar proposal submitted a few months ago is only for over-dimensional cargo; and, when special railway rakes are not available at that. In other words, this rate of Rs.5/- per sq. mtr. is a concession given to over-dimensional cargo and does not in any way contradict the present proposal.

(c). The proposal to replace the demurrage system by the license fee system is, however, for a limited period of only 30 days. In other words, in cases of cargo lying uncleared for more than 30 days, demurrage will start accruing from the 31st day onwards. The general expectation is that all cargo by and large will move within the 30-day limit and, this will only be a contingent provision. In the circumstances governing the flow of traffic at the MBPT, this is a reasonable arrangement.

(iv). In the Scale of Rates, at present, there is no provision for use of port premises for any purpose other than cargo storage. For any exceptional cases, prior permission is being sought from the Board of Trustees. Besides the questionable validity of such a process, it has also been seen to be very time-consuming. Hence the proposals for use of port premises for management of cargo operations as also (even) for non-cargo purposes. But, there can be a genuine apprehension, as has been indicated by the BCHAA, that port premises may come to be used for totally unrelated purposes which may clash with port activities and may thereby, in the long run, defeat the very purpose of the proposal. The MBPT has categorically affirmed at the joint hearing that the non-cargo use will be confined entirely to port-related purposes.

(v). The second item of the proposal is to charge Rs.165/- per sq. mtr. or part thereof per month or part thereof for management of cargo

operation. This facility will be confined to Vessel Agents/ Stevedores / CHAs / Transporters / (other) port users including Government Agencies; and, it will be of allotment of space in the Port Trust building(s).

As stated earlier, there is general acceptance of this proposal amongst users. Only the BCHAA have objected to it; but, even that only in respect of the rate proposed. It may be recognised in this context that such an arrangement exists even at other places e.g., in the neighbouring port of the JNPT. In fact, as has been clarified by the MBPT at the joint hearing, the rate of Rs.165/- per sq. mtr. or part thereof per month or part thereof has been borrowed from the JNPT Scale of Rates. And, it cannot be anybody's contention that the land values are more in the JNPT than in the MBPT. In the circumstance, notwithstanding the vehement BCHAA protest about the rate, the proposal is acceptable.

- (vi). The third item of the proposal is to charge Rs.90/- per sq. mtr. or part thereof per month or part thereof for carrying out cargo activities by placing chowkey, port cabin, etc. This facility, again, will be confined to the same group of port users detailed in paragraph (v) above; and, it will be of allotment of open areas. *Ceteris paribus*, this also is an acceptable proposition.
- (vii). The 'Notes' proposed under both the items detailed in paragraph 2.2. above, seek to delegate discretionary powers in this regard to the Traffic Manager. It has been the consistent practice of this Authority not to prescribe delegation of authority to different functionaries of Port Trusts. In all such cases, we have been naming the Port (in place of the functionary proposed) and leaving it to the Port Trust to decide on the delegation. Accordingly, here, again, we approve reference to the 'MBPT' wherever 'Traffic Manager' has been named.
- (viii). The 'Notes' propose that the Port Trust will have the right to accept / reject the request or withdraw the permission granted without assigning any reason, should this become necessary for smooth operation of the Docks or it is found that the area allotted is not utilised for purposes for which it has been allotted.

The following three points are relevant in this connection:

- (a). Bearing in mind the principles of equity and objectivity, the Port Trust cannot be given the right to accept/reject a request or withdraw the permission granted without assigning any reason.
- (b). In case of withdrawal of permission for smooth operation of the Docks, the port must be required to bear the cost of shifting.

(c). If the area allotted is found to be utilised for any unauthorised purpose, then, the port can be allowed to withdraw the permission granted without having to bear the cost of shifting.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following insertions in Section III of the MBPT Scale of Rates charged at the Docks:

“ (C). (I). *Licence (Storage) Fees on the goods stored in the areas specified by the MBPT for storage of cargo.*

	<b>Period of Storage</b>	<b>Rate</b>
(a).	In sheds.	
	i) For 30 days or part thereof	@ Rs.25/- per sq. mtr. or part thereof per month or part thereof.
(b).	In the open Yards	
	ii) For 30 days or part thereof	@ Rs.20/- per sq. mtr. or part thereof per month or part thereof.

**Notes:**

(i). *The cargoes lying uncleared beyond 30 days shall be subjected to demurrage from the 31<sup>st</sup> day onwards under Section II of the DSRs. For the purpose of levy of demurrage the 31<sup>st</sup> day of storage of cargo will be treated as day number one.*

(ii). (a). *The MBPT can reject the request or withdraw the permission granted. In such cases, the reasons therefor will be communicated to the allottee.*

(b). *In case of withdrawal of permission for smooth operation of the Docks, the port will bear the cost of shifting.*

*If the areas allotted is found to be utilised for any unauthorised purpose, then, the MBPT will withdraw the permission granted. In such cases the MBPT will not bear the cost of shifting.*

(II). *Licence fee for management of cargo operation (for occupation other than for cargo storage):*

	<b>Description</b>	<b>Rate</b>
(i).	Licence Fee for space allotted to Vessel Agents / Stevedores / CHAs / Transporters/Port Users including Govt. agencies in the Port Trust building.	Rs.165.00 per sq. mtr.or part thereof per month or part thereof.
(ii).	Licence Fee for open areas	Rs.90/- per sq. mtr

	permitted to be used for carrying out cargo activities by placing chowkey/port cabin etc.	or part thereof per month or part thereof.
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**Note:**

*The MBPT can reject the request or withdraw the permission granted. In such cases, the reasons therefor will be communicated to the allottee.*

*In case of withdrawal of permission for smooth operation of the Docks, the port will bear the cost of shifting.*

*If the areas allotted is found to be utilised for any unauthorised purpose, then the MBPT will withdraw the permission granted. In such cases the MBPT will not bear the cost of shifting.”*

**( S. Sathyam )**

Chairman