

No. 57

New Delhi, 8th March 2001

Tariff Authority for Major Ports

No.TAMP/84/2000 -TPT

NOTIFICATION

In exercise of the powers conferred by Sections 48 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation submitted by the South India Corporation Limited relating to the penalty levied for belated payment of wharfage by the Tuticorin Port Trust, as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No.TAMP/84/2000-TPT

The South India Corporation Limited

Applicant

Vs

The Tuticorin Port Trust (TPT)

Respondent

ORDER

(Passed on this 14th day of February 2001)

The South India Corporation Limited (SICL) has submitted a representation relating to the penalty levied by the TPT for belated payments of wharfage.

2.1. In its representation, the SICL has stated that the TPT demanded penal interest charges of Rs.1,86,63,929/- for delayed payment of wharfage charges on cargo handled from 152 vessels, out of 240 vessels handled by it during the period 17 October 97 to 28 February 99. Penal interest on wharfage has been levied @ 15% per month or part thereof for belated dues which works out to a simple rate of interest of more than 180% per annum.

2.2. The SICL has pointed out that this penalty was levied in pursuance of the provision of paragraph (5) and paragraph (8) under Part II cargo-related charges) 'wharfage dues' of the TPT Scale of Rates.

2.3. The SICL has informed that it had made a representation to Chairman and Board of Trustees of TPT requesting that the levy of penalty at the rate of 180% per annum was arbitrary and unreasonable. Considering the merit in the representation, the Board of TPT, under Section 53 of MPT Act 1963, has waived 80% of the penal interest amounting to Rs.1,49,31,143/- for belated payment of wharfage charges. The TPT is now claiming a penalty of Rs.37,32,786/- after the remission of 80% of the actual penalty.

3. The SICL has stated that even the reduced penal interest in most cases exceeds 180% p.a. which is abnormally high and unreasonable. It has given following points for consideration:

(i). There was no deliberate intention to make delayed payment of wharf dues. Earnest efforts were made to make the payment in time. Out of the 240 vessels handled during the period from 17 October 1997 to 28 February 1999, payment of wharfage on cargo handled from 88 vessels were made before commencement of discharge and in respect of 95 vessels, payments were made during discharge of cargo. In the case of two vessels, payments were made on next working day on completion of the vessels. In the case of another three vessels the payment were made immediately after completion of discharge but before sailing of vessels. Only, in the remaining case of 52 vessels the payments were made after sailing of vessels.

(ii). Only for the 52 vessels where wharfage was paid after the sailing of the vessels, may attract penalty for belated payment. In these cases also the delays in payment were close 4 to 5 days only. Even this delay was unintentional and caused due to the following reasons:

(a). Arrival of vessels was almost on a continuous basis, i.e., about 12-15 vessels per month.

(b). As stevedores, they did not get sufficient notice / official information of arrival of vessel; at times they got a very short notice about it from the TNEB.

(c). On many occasions vessels loaded for Chennai Port were diverted to Tuticorin Port and some vessels lightened at Chennai Port were diverted to Tuticorin for discharge of balance cargo. Such unplanned arrivals also caused delay in making wharfage payment.

(iii). No other major port has ever levied such a high penal interest for belated payment of wharf dues. In the COPT, delay in payment of dues against services of the COPT beyond 10th day from the date of issue of intimation of the accrual of charges or the date of issue of bills whichever is earlier alone attracts penal interest @ 20% per annum. The COPT and other Major Port Trusts charge 20% to 24% per annum as penal interest for delayed wharf payment as compared to 180% per annum levied in the TPT.

(iv). The TAMP in its Order dated 4 February 2000 in the matter directed to levy penal interest @ 24% per annum on delayed payments.

4. The representation of the SICL was circulated to the TPT and other port users for their comments. Comments received from them are summarised below:

Tuticorin Steamer Agents' Association (TSAA)

(i). Collection of 15% penal interest per month by the TPT is unreasonable and no other ports in India or any other agencies like Banks or Private Institution collect such high interest.

(ii). The TPT may be directed to follow the TAMP's Order No.TAMP/8/2000-Genl. dated 4 February 2000.

Tuticorin Custom Licensed Agents' Association (TCLAA)

(i). The TPT schedule of rates prescribing a penalty of 15% for each and every month or part thereof for belated payment is very high. Even after remission of 80% of the penal interest, the remaining 20% works out to 36% interest per annum.

(ii). The TAMP in its Order dated 4 February 2000 has fixed the penal interest @ 24% per annum for delayed payments.

(iii). The penalty for delayed payment is only intended to act as a deterrent for delayed payment and not to penalise the port users.

(iv). The matter can be sorted out by charging 15% interest per annum which is reasonable and not 180%.

Tuticorin Chamber of Commerce and Industry (TCCI)

The TCCI has no comments to offer on the matter in reference.

All India Chamber of Commerce and Industry (AICCI)

(i). The SICL is one of the leading port user of the TPT and the belated payment was not intentional on their part. The delay was due to the short notice received from TNEB and also due to the diversion of vessels from the CHPT arriving without prior intimation.

(ii). The delay of even 4 to 5 days were taken for claiming penal interest which needs to be reconsidered in view of the SICL's previous records. As a major revenue earner for the Port, it is reasonable for allowing a full remission of penal interest in this case.

Tamil Nadu Electricity Board (TNEB)

The SICL is the handling agents for Tuticorin Thermal Power Station. The period of delay for the belated payments was bare minimum and also not intentional. Hence, the matter may be sorted out by charging a reasonable interest and not 180% per annum.

5.1. The SICL has sent another representation against the penalty levied by the TPT for belated payment of wharf dues.

5.2. In this representation, the SICL has stated that the TPT has threatened to cancel their stevedoring licence unless penal interest charges are cleared by them. The firm has, therefore, requested intervention of the Authority. The SICL has alleged that the TPT is putting immense pressure for coercive recovery of the penal interest charges amounting to Rs.37,32,786/-, without any regard to the pendency of the approval before the TAMP.

5.3. The SICL has also stated that it has received a legal notice dated 13 October 2000 from the TPT calling upon it to pay the disputed amount forthwith, failing which appropriate legal action has been threatened to be initiated.

5.4. Considering this appeal made by the SICL, the TPT has been advised not to insist for payment of penal interest by the SICL till this case is finally disposed of by this Authority.

6. In the meanwhile, the Office of the Accountant General Audit (I) of Tamil Nadu and Pondichery have sent a letter to the Ministry of Shipping, a copy of which has been endorsed to this Authority. The Audit has pointed out that Section 53 of the MPT Act, 1963 empowers the Board to remit rates or charges subject to the clarification issued in its letter No.PW/PGR-15/84 dated 18 September 1997. The MOST has issued guidelines for remission of charges by the Port upto 80% which is applicable only for demurrage. The TPT vide its Board Resolution No.47 have approved to remit 80% of penal interest. This has indirectly reduced the rate of penalty for belated payments of wharfage, which is not in accordance with MOST letter referred above. Therefore, the Audit has sought the intervention of the Government to direct the TPT to rescind the resolution by which the remission was approved.

7. Comments received from the TPT on the representation of the SICL are summarised below:

(i). Prior to the 1999 revision of the Scale of Rates of the TPT, the wharfage charges were payable for import cargoes immediately on landing of goods and for import of coal the payment of wharfage charges is to be made on or before commencement of landing of the coal viz., the time of unloading and putting the coal on to the conveyor belt system. In case of belated payments, penalty at the rate of 15% for each and every month and part thereof was leviable. Since, the party has paid the dues after commencement of unloading, payment of penalty for belated payment has been claimed. Hence, the claim for penalty amounting to Rs.1,86,63,929/- at the rate of 15% per month or part thereof had been raised for 152 vessels where payment of wharfage was made after commencement of unloading operations.

(ii). The SICL was advised to remit the payment. However, they represented to the TPT to reconsider the issue of penalty. Accordingly, the Board of Trustees after examining the issue, resolved for remission of 80% of the penalty amount and the SICL was advised to pay the balance 20% of the penalty amount amounting to Rs.37,32,786/-. This matter has been objected to by the Resident Audit Officer and a letter has been received from the Deputy Accountant General (Audit – I), Tamil Nadu and Pondicherry indicating that the proposal for remission tantamounts to reduction in rates and therefore, has no legal sanctity. The Principal Accountant General has since taken up the issue as a draft para with Government of India. It is a matter of concern, that the company has not remitted the penalty amount. Non-payment of the penalty shall be dealt with as per the provision of the Scale of Rates.

(iii). The Port can act only on the basis of approved Scale of Rates and the intention to pay promptly cannot be viewed separately from the provisions of the Scale of Rates.

(iv). The arrival of the vessels on a continuous basis does not have any relation to the current issue of payment of penalty as the same is purely an internal matter pertaining to the production plan of Tuticorin Thermal Power Station.

(v). The problem of insufficient notice/official information of arrival of vessel cannot be a reason for belated payment of wharfage dues as the same should have been known to their principals viz., the Tuticorin Thermal Power Station in advance.

(vi). The diversion of vessels from Chennai Port to Tuticorin Port for discharge of full or balance cargo can not have impact on the flow of information from their principals or other representatives from Chennai before the vessel arrives from Chennai to Tuticorin. It is an issue between the principal and agent and cannot be a reason for delaying payment of wharfage.

(vii). The question of making a hue and cry quoting the percentage as 180% per annum only has an arithmetical relevance to blow the issue out of proportion.

(viii). All Orders of the Authority for common adoption by all major ports are implemented only prospectively and not retrospectively. Hence, the request of the SICL to the Authority to direct the Port not to pursue the recovery of the huge penalty does not merit any consideration and is not justified as per the provisions of the Major Port Trusts Act, 1963. It is also stated that the Board of Trustees of the Port Trust has waived 80% of the penal interest and only the balance 20% remains to be paid.

(ix). In view of the above, the TPT has submitted the following:

(a). The company has to pay the penal interest of Rs.37,32,786/- as per the remission allowed by the Port Trust Board failing which interest on the penalty shall be levied as per the provisions of the Scale of Rates.

(b). The issue of 180% penalty per annum does not have any practical relevance and the claim by the Port is restricted to only one month in respect of all cases and already 80% of the same has been waived.

(c). The company may be directed to pay the amount without any further delay as the port is losing interest on the amount due and also the same will violate the provisions of Major Port Trusts Act, 1963 which will attract further audit objections.

8. A joint hearing in this case was held on 23 January 2001 at the TPT. During the joint hearing the following submissions were made:

The South India Corporation Limited (SICL)

They have filed a further written submissions during the joint hearing with a request to consider them as their arguments. Some of the point stated in their original representation are reiterated. In addition, the following points have been made:

- (i). We are one of the biggest port user for Tuticorin Port for more than two decades.
- (ii). We have been awarded Coal handling contract at Tuticorin Port for TNEB from November 1991 and we are doing the job for more than nine years and are instrumental in bringing revenue of more than 150 crores for the past nine years.
- (iii). We have been remitting port dues in time for the past so many years. During the period from October 1997 to February 1999 there were delay in payment of wharfage dues which were unintentional.
- (iv). The Port Scale of Rates prescribed that wharfage dues were payable immediately on loading of goods'. But they have charged on berthing of the vessel, which is wrong.
- (v). The Port Scale of Rates stipulated that in case of belated payment a penalty of 15% for each and every month or part thereof was leviable. This may be a mistake. It is perhaps 1.5%. per month. None of the statutes or none of the major port has prescribed such huge penalty for delayed payments.
- (vi). We represented before the TPT Board of Trustees for waiver of penalty listing out various reason and considering our long-term relationship.
- (vii). We understand that the Board in its meeting held in May 2000 passed a resolution to charge 15% per annum for the delayed payments. Also the members suggested that the penalty should be charged proportionately taking in to account the quantity landed and the date of payment of wharfage as the wharfage were payable only on landing of the goods. Without confirming this decision, the Board in its next meeting decided to waive only 80% of the penalty charges.
- (viii). We request the TAMP to sympathetically consider our appeal for waiver of and render justice to us.
- (ix). TAMP had itself prescribed penalty interest of 24% per annum. Now, therefore, please change it to 15% per annum for the earlier period.

Tuticorin Steamer Agents Association (TSAA)

- (i). The penal interest should be 15% per annum and not 15% per month. It is an error.
- (ii). Independently of the SICL we have repeatedly been agitating this issue.

Tuticorin Customs Licensed Agents Association (TCLAA)

Earlier Scale of Rates prescribed penal interest @ 15% per annum. This was altered unauthorisedly to 15% per month. The Board also discussed it. Please verify.

The Tuticorin Port Trust (TPT)

- (i). The Board agenda papers refer to only 15% per month.
- (ii). The amendment of October 1997 about payment of wharfage dues immediately on landing of the goods was approved by the Government.

9. With reference to the totality of information collected during the proceedings of this case, and taking into account the arguments advanced at the joint hearing, the following position emerges:

- (i). The TPT has to act on the basis of the notified Scale of Rates. It cannot be expected to exercise discretion arbitrarily in particular cases.
- (ii). The Scale of Rates, as it existed at the material time in this case, clearly provided for a penal interest of 15% per month in cases of delayed payments.

It is, therefore, factually inaccurate for the SICL to contend that the rate could actually have been 15% per annum (or, possibly, 1.5% per month).

- (iii). The Order passed by this Authority for common adoption by all the ports prescribing a penal interest of 24% per annum on delayed payments/refunds seems to have given a fillip to the feud. The rate prescribed by this Authority has been cited to contend that the TPT's imposition of 15% per month (i.e., 180% per annum) is very high. While there can be an argument about the excessiveness of the penalty in this case, as earlier stated, the position remains that the said rate of 15% per month was the rate notified in the Gazette after sanction by the Government. The TPT cannot legitimately be expected to disregard such a notification even if it is seen to be excessive in its prescription.

The Orders of this Authority ordinarily have only prospective application. In the Order prescribing a penal interest of 24% per annum it has been so specifically stated also. That being so, it will be futile for the Petitioner to attempt to take advantage of that in this case or to ask for its retrospective enforcement.

- (iv). It has to be recognised that this matter arose as a result of an audit observation; and, it has come to be taken up as a 'draft para'. In the circumstance, it will be unrealistic to expect the TPT to exercise any discretion in favour of the Petitioner even if it had the power to do so.

- (v). The TPT has taken up the matter with its Board of Trustees for grant of remission in view of some special circumstances seen to govern the case. The penalty of Rs.1,86,63,929/- was reduced to Rs.37,32,786/-. In other words, the Petitioner was given a remission of 80%. The resultant 20% amounts to a levy only of 36% of penal interest per annum. That being so, it will not be reasonable to accuse the TPT of being insensitive to the distress of a prominent user of the port. There can, possibly, be a counter-allegation that the TPT has been excessively indulgent in this case. This Authority, in any case, has no reason to interfere in matters relating to grant of remissions, which is the prerogative of the Board of Trustees of the ports in terms of Section 53 of the MPT Act 1963.

- (vi). The following arguments advanced by the TPT deserve to be singled out for specific attention:

- (a). The port can only act on the basis of the approved Scale of Rates; and, the intent of the party to pay promptly cannot be viewed separately.
- (b). The arrival of the vessels on a continuous basis does not have any relation to the current issue of payment of penalty. This is entirely an internal matter

pertaining to the Tuticorin Thermal Power Station based on its production plan.

- (c). The problem about 'insufficient notice'/'official information' of arrival of vessels cannot be a reason for belated payment of wharfage dues as the required information would have been known in advance to their Principals viz., the Tuticorin Thermal Power Station.
- (d). The diversion of vessels from the Chennai Port Trust (CHPT) to the TPT cannot be said to have any impact on the flow of information from their Principals or their representatives in Chennai before the vessels arrived from Chennai at Tuticorin.

(vii). The Petitioner is a Company of long-standing and considerable experience of port procedures. It is inconceivable that the Petitioner would not have been clearly aware of the time at which payments have to be made and the implications of not doing so especially when there was an express and explicit provision in this regard in the Scale of Rates.

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority finds no force in this representation; and, accordingly, dismisses it.

(**S. Sathyam**)

Chairman