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New Delhi, 29 May, 2001

Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 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 Mormugao Port Trust for review of TAMP's Order dated 4 February 2000 relating to prescribing the rates of port dues in terms of Section 50 A and 50 B of the Major Port Trusts Act, as in the Order appended hereto.

(S. Sathyam)

Chairman

Tariff Authority for Major Ports

Case No. TAMP/92/2000-MOPT

**The Mormugao Port Trust
(MOPT)**

...

Applicant

ORDER

(Passed on this 16th day of May 2001)

This Authority had passed an Order on 4 February 2000 prescribing the rates of port dues in terms of Section 50 A and Section 50 B of the Major Port Trusts Act, 1963 for common adoption by all the Major Port Trusts.

2. The Mormugao Port Trust (MOPT) has represented against this and requested for a review of the Order to considering the following points:

(i). The iron ore vessels calling at this port have to come in ballast and it may not be practicable to apply the provisions of Section 50 A of the MPT Act to these iron ore vessels.

(ii). The proviso shall apply only to select group of vessels which carry passenger-cum-cargo. In case it is applied to all vessels, the port will suffer substantial revenue loss.

(iii). The subject provision was inserted in the statute during 1997 only. However, the Port, by convention, has been granting this concession under a proviso in the Scale of Rates (under Foot Note – D in Page-2, Part-I, Section-A of the Scale of Rates) only to cargo-cum-passenger vessels.

(iv). The port has been giving the above concession for more than two decades only to a specified class of vessels i.e. cargo-cum-passenger vessels and it may be permitted to continue the concession only to that class of vessels. The MOPT port is a mono-commodity port, wherein iron ore ships have necessarily to come only in ballast and more than 40% of the total vessels called at this port are iron ore vessels.

(v). The concession granted to the vessels entering the port in ballast and not carrying any passengers means that vessel must be a cargo-cum-passenger vessel. The intention behind the clause is to see that the port's revenue also is protected.

(vi). There is logic that the vessels coming in ballast shall be charged only 75% of the port dues and concession extended to them when their intention is to load full cargo and sail. The iron ore vessels enter the MOPT in ballast; but, they load cargo to the maximum capacity. If such concessions are extended, not only the Port but the country will also lose huge amount of foreign exchange.

3. The MOPT has further intimated that the provision for levying only 75% of the applicable port dues from cargo-cum-passenger vessels was available even prior to 1985. The Government of India, in the Ministry of Shipping and Transport, vide its Notification No.PW/PGR-58/84(ii) dated 30 January 1985 had approved the applicability of the above provision only to cargo-cum-passenger vessels.

4. With reference to this proposal, the following users have sent comments as summarised below:

The Mormugao Ship Agents' Association (MSAA)

(i). The Order of the TAMP is made applicable to all the major ports. MOPT cannot be an exception.

(ii). All other Indian Ports including iron ore exporting ports have been charging 75% of the port dues from vessels arriving in ballast.

(iii). The MOPT is trying to dilute the TAMP's Order and make it applicable only to selected group of vessels viz., cargo-cum-passenger vessels when the MOPT is very well aware that this category of vessels are not calling at this port at all.

Indian National Shipowners Association (INSA)

(i). We fully endorse the views given by the Mormugao Ship Agents Association.

(ii). According to information available, all other ports have implemented the order of the TAMP and are charging 75% of the port dues from all vessels entering in ballast and not carrying passengers.

5. A joint hearing in this case was held on 21 September 2000 at MOPT. At the joint hearing the following submissions were made:–

The Mormugao Port Trust (MOPT)

- (i). We have had this distinction for several years. The Government had also approved the procedure.
- (ii). We will incur a huge loss if the TAMP Order is enforced.
- (iii). There is no reason to change.
- (iv). This Section of the MPT Act was introduced in the amendment of the year 1997. Earlier this provision was there in the Indian Ports Act.
- (v). Government approved in 1985 a condition in the Scale of Rates that it applies only to cargo-cum-passenger vessels.
- (vi). The very fact that the Section talks of “..... not carrying any passenger....” shows that it is meant only for cargo-cum-passenger vessels.
- (vii). Earlier cargo-cum-passenger vessels used come. This provision was for that only. Now only cargo vessels come. But, that shall not blind us to the earlier logic.
- (viii). Government will not have specified cargo-cum-passenger vessels for no reason. This is a long-standing practice.
- (ix). In any bulk cargo handling port, vessels have to come in ballast. Surely, they cannot be given a concession.
- (x). We have requested for a review to correct the error.
- (xi). Indian Port Act was enacted prior to Independence. The UK Government could not have thought of promoting exports from India.
- (xii). Users had accepted the arrangement so far. There was no protest until now. How can they start questioning now?–

The Indian National Shipowners Association (INSA) / Mormugao Ship Agents' Association (MSAA)

- (i). The Order notified on 6 March 2000 has not yet been implemented by the MOPT citing the proviso in its Scale of Rates as the reason.
- (ii). (a). This proviso goes against the grain of the provision in the IP Act (now, the MPT Act). Please read the preamble of the two Acts.

- (b). The MOPT can not through a proviso in the Scale of Rates, restrict the scope of a statutory provision. Even if the Government had sanctioned it, it can not become valid.
- (iii). In the last thirty-five years or so, no cargo-cum-passenger vessel has come. We can not, therefore, see the logic of the change made in the Scale of Rates in 1985.
- (iv). Main intention of this provision is to boost exports. Iron ore is the mainstay of the MOPT. Do not deny it of a legitimate benefit due to it.
- (v). Other ports are extending such concessions as ordered by the TAMP. Why not the MOPT?
- (vi). We did not protest earlier because we were not aware.
- (vii). IP Act was amended many times since Independence. This Section has not been amended; it has been allowed to continue. Therefore, the MOPT's argument about the intentions of British Government is not correct.

The Mormugao Ships' Agents Association (MSAA)

- (i). 'Cargo-cum-passenger' was relevant, if at all, prior to liberation (of Goa). After liberation, no such vessel has come.
- (ii). This concession is an incentive for vessel to come in ballast and take out maximum cargo.
- (iii). Basis of charging has changed from NRT to GRT and from Rupee denomination to dollar denomination. The Port has already benefited.
- (iv). Other ports are also exporting iron ore and give this concession. Why not the MOPT?

The Goa Mineral Ore Exporters' Association (GMOEA)

There is no stay of the Order in reference by the TAMP. The MOPT action amounts to 'contempt'.

6.1. At the joint hearing, a joint representation was submitted by the Mormugao Ships Agents Association, INSA and Mormugao Stevedores' Association reiterating the points made by them during the joint hearing.

6.2. The MOPT submitted copies of notifications dated 30 January 1985 and 2 February 1993 issued by the Ministry of Surface Transport prescribing rates and conditionalities relating to levy of port dues at MOPT.

7. Since the MOPT has stated that the Government of India in the (then) Ministry of Shipping and Transport had approved the proviso that the concession

applies only to cargo-cum-passenger vessels in the port of Mormugao, the Ministry of Shipping (MOS) was requested to intimate the special considerations under which the Government approved a condition of levying concessional port dues only for cargo-cum-passenger vessels in the case of the MOPT.

8. The MOS has intimated that the MOPT has granted the concession under provisions of the Ministry's Notification No.PW/PGR-58/84(ii) dated 30 January 1985. The MOPT is giving the concessions only to a specified class of vessels i.e., cargo-cum-passenger vessel for the reason that the MOPT is a mono-commodity port wherein Iron ore ships have necessarily to come only in ballast. Initially about 90% of the total traffic handled at the port was iron ore. The intention behind the clause is see that the port revenue is also protected.

9.1. Since the reply given by the MOS did not clarify the legal position, another reference was made to the MOS seeking clarifications on the following points:

- (i). Why the expression "any vessel" in the statute has been taken as 'cargo-cum-passenger vessel' in the case of MOPT alone and not in the other major Ports?
- (ii). The statutory provisions which were available under the Indian Port Act empowering the Government to make such deviation only in the respect of one Port.

9.2. The MOS has not sent any reply so far despite several reminders.

10. 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). Section 50 A of the MPT Act empowers this Authority to fix the rates of port dues, not exceeding $\frac{3}{4}$ th of the rate otherwise chargeable, on vessels entering any port in ballast and not carrying passengers.
- (ii). The impugned Order dated 4 February 2000 was passed by this Authority for a uniform implementation of the relevant statutory provision across all major ports. This Authority has prescribed the maximum permissible rate of port dues of 75% under Section 50 A of the MPT Act for common adoption by all major ports.

It is to be recognised that Section 50 A itself prescribes the condition of levy of concessional port dues on vessels entering in ballast. It only empowers this Authority to prescribe the rate. This Authority has prescribed the maximum permissible rate under Section 50 A, to soften the financial burden on the Ports.

- (iii). The wordings of Section 50 A indicate that any vessel entering a port and satisfying the following conditions will qualify for payment of concessional Port dues:

(a) It shall enter the ballast; and,

(b) it shall not carry passengers.

The Act does not stipulate that this concession will be available only to 'cargo-cum-passenger vessel', as interpreted by the MOPT.

- (iv). As has been mentioned earlier, the circumstances under which vessels qualify for concessional port dues under Section 50 A are clearly given in that Section itself. Since this is not a new conditionality introduced by this Authority, the argument of the MOPT for a review of the Order dated 4 February 2000 to correct an error appears to be without any merit.
- (v). The MOPT has advanced various arguments about boosting exports, loss of foreign exchange to the country, colonial inheritance, benefit to iron ore carriers, intention of law makers, etc. It appears that all these arguments are irrelevant. What is in reference is a prescription made in the Act. It is not for this Authority to go into the intentions of lawmakers or to prescribe something contrary to the legal provisions. If the MOPT faces any hardship due to operation of Section 50 A of the MPT Act, it must approach the Government to amend the Act and not this Authority with a request to interpret the express legal provisions in a different manner. It is relevant here to mention that this provision is commonly applicable to all major ports; and, no other port (including, significantly, iron ore exporting ports) has expressed any difficulty in implementation of the impugned Order.
- (vi). It is noteworthy that the Act does not provide any discretion to this Authority to prescribe a different conditionality for levy of port dues under Section 50 A only in respect of one port considering its revenue loss.
- (vii). The MOPT has strongly relied on the two revisions of its Scale of Rates approved by the Government in 1985 and 1993 which included a concession in port dues only to cargo-cum-passenger vessels. The decisions taken earlier by the Government with reference to port tariffs, cannot bind this Authority. If the argument of the MOPT is accepted, then, the Authority cannot revise rates and conditionalities of any of the major ports since they, at one point of time or another, would have all been approved by the Government.

Nevertheless, this Authority has consulted the Government in this case. The Government has not informed us of any special consideration, which can withstand legal scrutiny, under which a deviation can be made in respect of the MOPT.

- (viii). As has rightly been emphasized by the INSA and the MSAA, it needs to be stressed that a clause in the Scale of Rates of a Port Trust cannot supersede a provision contained in the governing Act. This Authority's Order dated 4 February 2000 specifically amends the

existing Scale of Rates of all Port Trusts to provide for inclusion of the prescriptions made therein. Accordingly, the conditionality earlier approved by the Government in the Scale of Rates of the MOPT stands deleted and the prescription made by this Authority has come into force from 5 April 2000. The MOPT is legally bound to levy charges as per the Scale of Rates approved by this Authority. The MOPT's action of not implementing the Order cannot be approved of. Filing a review petition cannot be seen as a valid reason for non-implementation of the Order. Until this Authority reviews its Order and amends it, if necessary, the original order remains in force except when a specific stay is granted by this Authority or any other higher judicial forum.

- (ix). There is no error apparent on the face of records which warrants modification in review of the impugned order in respect of the MOPT.

11. 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 TAMP's Order dated 4 February 2000.

(S. Sathyam)

Chairman

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