

(Published in Part – III Section 4 of the Gazette of India, Extraordinary)

No. 181

NEW DELHI, the 9 July, 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, disposes of the proposal of the Kandla Port Trust (KPT) to levy a wharfage on passengers as in the Order appended hereto.

(S. Sathyam)

Chairman

Tariff Authority for Major Ports

Case No. TAMP/34/2000-KPT

The Kandla Port Trust (KPT)

...

Applicant

ORDER

(Passed on this 28th day of June 2001)

This case relates to a proposal from the Kandla Port Trust (KPT) to levy a wharfage charge of Rs. 192/- per passenger arriving on cruise vessels.

2.1. Earlier, the Kandla Port Trust Steamship Agents' Association (KPSAA) in March 2000 represented that the KPT had levied a provisional charge of Rs. 500/- per passenger on 276 tourist passengers who arrived by a foreign cruise vessel (the first passenger vessel calling at the KPT in the last many years). The KPSAA contended that the KPT was not authorised to levy such a charge, even if only as an advance payment, when there was no such provision in its Scale of Rates.

2.2. The representation of the KPSAA was sent to the KPT for its comments. The KPT, after several reminders, in June 2000 informed that the issue was being examined by collecting information from other major ports. The Port had also informed that it would refund the excess advance wharfage collected, if any, on approval of final wharfage charges.

2.3. Several reminders were again issued urging the KPT to intimate the status of the case. The KPT did not respond. The matter was also discussed by the Chairman of this Authority with the Chairman (KPT) in September 2000.

2.4. In this backdrop, the KPT during end-November 2000 submitted the instant proposal seeking approval of this Authority for fixing a wharfage charge on passengers.

3. The KPT has arrived at the proposed wharfage charge of Rs. 192/- by considering the opportunity cost of revenue loss on account of cargo handling in the berth occupied by a passenger vessel. It has considered income from cargo berths during 1998-99 and the average berth-day for the corresponding period to arrive at the income per berth-day which has been sought to be recovered as wharfage charges on passengers assuming 500 passengers per vessel.

4. In accordance with the procedure prescribed, the proposal of the KPT was circulated to the KPSAA and the GCCI for comments. The comments received are summarised below:

Kandla Port Steamship Agents' Association (KPSAA)

- (i). Charges levied by the KPT must have a reasonable and logical bearing with the services rendered and the cost thereof. The KPT being a service organisation like all other ports is also engaged in rendering services / providing facilities.
- (ii). It is totally wrong to say that Kandla is not a passenger point like Mumbai, Chennai, Kolkata, etc. Merely because a cruise vessel did not call at this Port before 12 March 2000, it cannot be said that Kandla is not a passenger point. The importance and attraction of Kutch district in Gujarat is well known and Kandla is a Major Port situated in Kutch.
- (iii). The computation of wharfage charges based on the earnings per day at cargo berth is baseless and the approach of KPT to the problem is wholly misconceived. Wharfage charge levied on cargo contains cost of certain services rendered by the KPT such as supply of cranes, labour, etc.; and, hence, must be related to the services rendered and or facilities given. Also, the services rendered to goods and passengers cannot be compared, as they are not alike. Wharfage earned by the KPT on goods cannot at all be the basis of fixing wharfage payable by a passenger.
- (iv). The highest rate of wharfage prevailing in the KPT now is Rs. 100/- per cu. m. applicable to LPG gas. It is not understood why a passenger shall pay a sum as high as Rs. 192/- when no service is rendered.
- (v). If the KPT proposes to charge this amount of Rs. 192/- per passenger, it must first declare the services it will render or facilities it will provide to the passengers and then justify the amount fixed.
- (vi). In certain Major Ports in India no charges are levied on passengers or, if levied, the amount is minimal. The information furnished by the KPT in this regard is incomplete. As per the detail furnished by the KPT, out of six ports, no wharfage is charged in four, and the remaining two charge a nominal amount and provide certain services / facilities in return.

(vii). The KPT has not provided any basis for assuming a cruise vessel coming to Kandla would have 500 passengers. A vessel with the overall length and draft capable of carrying 500 passengers may not at all be able to enter Kandla.

Gandhidham Chamber of Commerce & Industry (GCCCI)

The GCCCI has reiterated all the points given by the KPSAA and stated that the wharfage charge proposed by the KPT on passengers is exorbitant and not justified.

5. The comments received from the KPSAA and GCCCI were sent to the KPT as feed back information. The KPT has given the following further comments on the views of the representative bodies of users:

- (i). It is a fact that Kutch District in Gujarat State has immense tourism potential. Although, promotion and development of tourism in the State is the responsibility of the concerned State Government and its tourism department, the Gujarat State Tourism Corporation (GSTC) has never shown interest or indication to attract the cruise vessels through the port of Kandla as a part of its efforts to develop tourism. It has never approached the Port to provide facilities for tourist vessels.
- (ii). It was not thought to develop some berths as passenger berths since in the last many years no passenger vessel has arrived at the KPT. There is no infrastructural support at the moment. It is only after arrival of the passenger cruise M.V. Minerva, that a need to have a charge in respect of passengers in the Scale of Rates of KPT has been felt.
- (iii). Tourism does not directly add to the income of the Port, as the passenger charges have to be subsidised to make them attractive.
- (iv). It is a fact that passenger vessels do not require facilities such as cranes, etc.; but, the KPT has shore cranes fixed on the wharves which remain idle when a passenger vessel arrives; and, to that extent, revenue generation is lost. Till the time the KPT decides to have full-fledged passenger berths, and keeping in view the responses received from the State Government for promotion of tourism through this port, the opportunity loss of income can be the only basis for recovering per-passenger wharfage charges in such cases.
- (v). The KPSAA has opined that passenger vessels carrying a maximum of 350 passengers can arrive at the Kandla Port. In order to have the lowest rate possible, and for the benefit of the prospective passengers, the KPT has assumed the highest number of passengers that can be accommodated by a cruise vessel as 500.

6.1. A joint hearing in this case was originally scheduled to be held on 16 March 2001. The KPT, however, requested for a postponement, citing the abnormal

situation prevailing in Gandhidham as an aftermath of the earthquake. Accordingly, the joint hearing was deferred to 12 April 2001.

6.2. A joint hearing in this case was held on 12 April 2001 in Kandla. At the joint hearing, the following submissions were made: _

Kandla Port Steamship Agents' Association (KPSAA)

- (i). How can the KPT say, this is not passenger port? There are no passenger ports in India.
- (ii). This is not the way to fix tariff for the passenger vessel. How can it be on opportunity cost basis? A port charge must be commensurate with the services provided.
- (iii). The KPT must facilitate growth of trade. It must not be a spoil sport.

Gandhidham Chamber of Commerce & Industry (GCCCI)

- (i). In every industry, the passenger traffic is given benefit in preference to goods traffic. How can it be otherwise here?
- (ii). The port shall try to convert this case into an opportunity to attract more passenger traffic.
- (iii). If there is no rate for passengers, then why not go under the residuary entry? Why introduce a new provisional rate?
- (iv). The opportunity cost has been worked out on the basis of total occupancy. For passenger vessels, once the passengers get off, the vessel can be taken to anchorage and the cargo vessel can be brought in. The opportunity cost can be much less.
- (v). The COPT rate is the highest elsewhere. Even that is only Rs.30/- . The proposed rate of Rs.192/- per passenger is too high.
- (vi). If the passenger vessel shifts in one hour, the cargo vessel can come in and start cargo operations. In other words, only one hour of cargo handling will be lost. So the opportunity cost of 'wharfage should be of one hour handling and not of a whole shift.

Kandla Port Trust

- (i). Shifting of vessel to anchorage has no relevance for wharfage.
- (ii). Vessels cannot be shifted so suddenly. There will be operational difficulties.

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

- (i). Arrival of passengers is a new experience in the Kandla Port. The existing Scale of Rates of the KPT does not contain any provision for levy of wharfage on passengers. The KPT has levied a provisional wharfage, which it has agreed to adjust with final wharfage to be fixed now and refund the excess amount, if any. Eventhough the KPT has not mentioned in its proposal, the wharfage rate is to be fixed now with retrospective effect from March 2000. Unless this is done, the provisional charges levied by the KPT for the passengers who arrived during March 2000 cannot be regularised.
- (ii). The passengers have no doubt used the wharf of the KPT. That being so, the Port can legitimately levy a wharfage charge on them. It is true that some of the major port trusts do not levy any wharfage on passengers. It is to be recognised that the wharfage rates across the major port trusts are not (and, can not be) uniform. They vary due to cost of operation, trade practices, commercial consideration and pricing policy. It is, therefore, not correct to cite the wharfage charges levied by one major port to demand a similar rate at some other ports.
- Just because some major ports do not levy wharfage on passengers, the demand for such a charge by some other major port trusts cannot become unreasonable.
- (iii). The Gandhidham Chamber of Commerce and Industries (GCCCI) has argued that if there is no rate for passengers in the Scale of Rates, the KPT should levy charges under the residuary entry under the wharfage schedule instead of proposing a separate rate. It is to be recognised that the residuary entry in the Scale of Rates is for unspecified 'cargo'. It is an ad valorem rate prescribed in the Scale of Rates of the KPT. It will be absurd to levy wharfage on passengers on an ad valorem basis.
- (iv). The users have demanded development of Kutchh as a tourist centre and the KPT as a terminal for tourists embarkation / disembarkation. It is for the port management to decide the facilities to be developed within the port and the traffic it wants to encourage. It will be a commercial judgement of the Port; and, this Authority cannot interfere in such matters. In the instant case, it is for the KPT to decide whether or not it wants to develop a passenger terminal. The response from the KPT, obviously, indicates that it has no plans for such a development in near future.
- (v). It is to be recognised that the passenger traffic through a port will not see a sudden surge only because the wharfage rate of the port has been reduced. The various other associated physical facilities in the port and its hinterland are crucial factors. This point has come out very clearly in the proceedings relating to a proposal submitted by the Cochin Port Trust (COPT) to extend concessions in the vessel related charges for foreign cruise vessels.

Nevertheless, it will be useful for the Port Trusts to tap this source of traffic considering the potential for development of tourism in India. The KPT is advised to consider taking up this issue with the Gujarat Tourism Development Department for exploring further the possibility of developing facilities in this regard.

- (vi). Since the KPT does not have an exclusive passenger terminal, passenger vessels are to be handled at general berths. The KPT's argument that this berthing has caused loss in its revenue on account of cargo handling deserves to be admitted considering the high berth occupancy rate at the KPT. The GCCI and KPSAA have questioned the KPT's estimate of 500 passengers per vessel for the purpose of arriving at the rate. If their argument such a big vessel cannot enter the KPT is accepted, then, the result will be an increase in the wharfage rate proposed by the KPT since distribution of cost will be over a lesser number of units.
- (vii). While the approach adopted by the KPT seeking compensation for the opportunity cost of revenue foregone appears to be reasonable, the methodology of working out the rate contains a basic mistake.

The KPT has considered the opportunity loss of total wharfage income per day. It is to be recognised that, if the KPT had handled general cargo instead of passengers, it would have incurred expenditure on such handling. By handling passengers, the Port has saved such handling cost. It is, therefore, reasonable to include a portion of this saving in handling costs while working out the opportunity cost and revenue loss.

- (viii). Since the port has not done this calculation, we have to adopt an approximation to arrive at the estimated saving in operation cost. The average operating ratio for the KPT during the year 1987-88 to 1999-2000 (excluding the abnormal year of 1998-99) is around 50% (Source: Basic Port Statistics of India 1999-2000; the Govt. of India). So, to earn an operating income of Rs. 96,200/- per day, the KPT would have incurred an operating expenditure of Rs. 48,100/-. Since the operating expenditure contains both fixed and variable elements, the saving to the port is only of the variable cost element. It is a well known fact that all major ports carry a heavy burden of fixed costs. It is, therefore, reasonable to assume that the variable cost element in the total operating cost is only 30%. By this analogy, the saving in cost per day to the KPT in the instant case comes to Rs. 14,430/-. By allowing this credit in estimation of notional revenue, the net operating income the port would have earned comes to Rs. 81,770/- (Rs. 96,200 minus Rs. 14,430/-). Since this net income is stated to be the notional revenue loss to the Port on account of handling passengers, it is to be recovered from the estimated passengers of 500. This means recovery of a wharfage charge of Rs. 163/- per passenger.

The above analysis indicates that the wharfage charge proposed by the KPT of Rs. 192/- per passenger needs to be modified. A wharfage charge of Rs. 160/- per passenger is found to be justified.

- (ix). When its own estimation of wharfage charge is Rs. 192/- per passenger, the rationale behind the KPT action of levying a provisional charge of Rs. 500/-, which is about 260% in excess of its own estimates, is not easily discernible. This is not the first instance of the KPT fixing a provisional charge of its own and start levying from the users with an undertaking that it would refund the excess amount, if any, once this Authority fixes a final rate. Eventhough fixing a provisional rate in this case was apparently inevitable, the KPT should have taken immediate steps in the next available opportunity to regularise it. It took more than 8 months for the KPT to forward its proposal seeking the approval of this Authority. This proposal has also come after several reminders from our side including a personal intervention of the Chairman of this Authority. We are constrained to mention that such a casual approach of the KPT to tariff matters is highly disappointing.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves a wharfage rate of Rs. 160/- per passenger for inclusion in the Scale of Rates of the KPT with retrospective effect from March 2000. The KPT is directed to amend its Scale of Rates accordingly and refund immediately the provisional wharfage charge collected by it in excess of the approved rate.

(S. Sathyam)

Chairman