

No. 51

New Delhi, the 1st March, 2001

Tariff Authority for Major Ports

No.TAMP/60/2000 -TPT

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 representation submitted by M/s. Sterlite Industries (India) Limited relating to classification of 'copper concentrate' as 'ore and minerals' for the purpose of levy of wharfage at the Tuticorin Port Trust, as in the Order appended hereto.

(S. Sathyam)

Chairman

Case No.TAMP/60/2000-TPT

M/s. Sterlite Industries (India) Limited

Applicant

Vs

The Tuticorin Port Trust (TPT)

Respondent

ORDER

(Passed on this 14th day of February 2001)

M/s. Sterlite Industries (India) Limited have submitted a representation relating to classification of 'copper concentrate' under 'ore and minerals' for the purpose of charging wharfage by the Tuticorin Port Trust (TPT). They have requested for removal of the separate rate of wharfage for copper concentrate introduced by the TPT in March 1997.

2. In their representation, M/s. Sterlite Industries have given the following points for classification of copper concentrate under 'ore and minerals' for charging wharfage @ Rs.19/- per MT instead of Rs.55/- per MT being presently charged by the TPT:

- (i). The price of the commodity is independent of their margin.
- (ii). They also have no control over the raw material or finished copper prices and have to operate as per the global norms of running a smelter which is unique feature to copper processing all over the world. Therefore, the wharfage can have no relation to the price or volume of the commodity in our case.
- (iii). In addition, they have made a heavy investment and suffer from the resultant high cost involvement for a wafer thin margin.

(iv). By the operation of their smelter, the country saves foreign exchange to the tune of US \$ 150 million per annum.

(v). The wharfage increase meant for deepening the draft, increase the handling facilities, quickening of berthing of vessels and unloading of cargo has incidentally not given them the desired benefit of cost saving and they still continue to suffer due to delay of berthing and unloading of cargo.

The deepening of the draft has facilitated more cargo arrivals but the lack of corresponding increase in handling facilities has created an imbalance resulting in more waiting and heavy demurrage (last year alone the demurrage was about Rs.63 lacs.).

(vi). The commodities which require such depth for which the dredging is undertaken, will benefit out of such deepening and, therefore, the increase in levy will be justifiable only to those commodities, whereas in their case it is not so.

(vii). Aluminium is a similar non-ferrous metal in terms of smelting, refining and trading akin to copper and the wharfage on its raw material bauxite is fixed @ Rs.26/- per tonne.

(viii). As per Customs classification, world over, the copper concentrate comes under ores and minerals classified under Chapter 26.

3. The representation of M/s. Sterlite Industries was circulated to various representative bodies of users and also to the TPT for comments. The comments received from them are summarised below:

Tuticorin Port Trust (TPT)

(i). M/s. Sterlite Industries started importing the cargo through Tuticorin Port during 1996. At that point of time there was no specific wharfage rate for the cargo in the Scale of rates of the Port. Therefore, as per the provision of the Scale of Rates of the Port, the wharfage for "goods otherwise not specified (bulk)" (Rs.36/- per MT) was charged for handling the cargo.

(ii). In the meantime, action was taken to fix a separate wharfage rate for the commodity as it was expected that the cargo would be continuously moved through this Port. The proposal to fix a separate wharfage @ Rs.55/- for copper concentrate based on the then prevailing rate at the CHPT for cargo in granule form was approved by the Government in January 1997 and was made effective from 19 March 97.

(iii). During the last general revision of Scale of Rates of the Port (1999), it was decided not to increase the wharfage rate for the commodity as it was fixed only during 1997. But, at the time of the general revision the Sterlite Industry requested the TAMP to reduce the rate. During the joint hearing of the general revision proposal, despite invitation, no representative of the Applicant attended the joint hearing. The wharfage rate once fixed is to be reviewed only during the next revision.

(iv). The rate may be reviewed at the time of the next revision of Port's Scale of rates during 2002 based on a uniform policy to be evolved by the Authority.

All India Chamber of Commerce and Industry (AICCI)

(i). M/s. Sterlite Industries contribute considerable traffic and revenue to the Port. It also helps in the development of small industries and offers employment opportunities to hundreds of people.

(ii). The Port will gain more by way of wharfage and other charges by the proposed expansion of the industry.

(iii). The request of M/s. Sterlite Industries for reducing the wharfage is justified.

Tuticorin Steamer Agent's Association (TSAA)

- (i). In the Customs tariff, Copper ores and concentrates are classified along with Iron, Aluminium, Nickel, Cobalt, Lead, Zinc ores and concentrates under Chapter 26.
- (ii). For levy of wharfage dues, all the above-mentioned items are treated as ores and minerals except Copper ores and concentrates at the TPT.

Indian Chamber of Commerce and Industry (ICCI)

- (i). The wharfage presently being collected by the TPT is very high compared to the wharfage collected by other Major Ports for the same kind of ores and minerals. As a result, M/s. Sterlite Industries will not be competitive in the market with their competitors.
- (ii). If the cost of operation through the TPT is competitive, M/s. Sterlite Industries can expand their production capacity substantially and, in turn, the Tuticorin Port will have more traffic and revenue.

M/s. M.M.T.C. Limited

The MMTC which is presently importing copper concentrate on behalf of M/s. Hindustan Copper Limited, Calcutta, fully agrees with the proposal of M/s. Sterlite Industries India Ltd. that copper concentrate shall be classified as 'ore and minerals'; and, therefore, wharfage charges for import of copper concentrate shall be same as other imports under 'ores and minerals'.

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

M/s. Sterlite Industries (India) Limited

- (i). The imports of copper concentrate which is presently at four lakh tonnes is steadily increasing. We are a prominent user.
- (ii). Our cargo must go under 'Ores and Minerals'; but, has been classified as a separate item. We now request the TAMP to classify our cargo under 'Ores and Minerals' prospectively.
- (iii). We had protested to the Board and have been paying wharfage under protest.
- (iv). Copper concentrate is to be given a process based treatment; and, all ores and minerals are similarly treated.
- (v). Copper concentrate is more akin to Bauxite.

The Tuticorin Port Trust (TPT)

- (i). Piecemeal revision of Scale of Rates is not good.
- (ii). Sterlite should have objected at the appropriate time. They did not attend the hearing of the general revision case. They cannot do so now.
- (iii). TAMP should not encourage such petitions. We object.
- (iv). They did object to the Board. But, we can not accept that copper concentrate is the same as 'Ores and Minerals'.

- (v). The COPT and the CHPT charges much more for copper concentrate compared to the TPT.
- (vi). This rate was fixed in 1997. We have not revised for four years.
- (vii). Broad classification will be there for cargo of small quantities. Other cargo that pick up will have a separate classification.
- (viii). They have benefited by recent dredging. They cannot complain about congestion. Evacuation is their responsibility.
- (ix). Customs may classify copper concentrate as 'Ores and Minerals'. We have to go into specific costing when the volume increases and the cargo becomes important. (Why is Thermal Coal treated differently from 'Coal' for the purpose of wharfage?)
- (x). Any change in the classification now will have financial implication. That will require tariff adjustment.
- (xi). This issue can be settled at the next revision in 2002.
- (xii). They are paying regularly. There is no 'protest' now. They had protested initially once.

Indian Chamber of Commerce and Industry (ICCI)

- (i). Technically, copper concentrate is a mineral.
- (ii). As volume of cargo goes up, its wharfage must come down.

4.2. M/s. Sterlite Industries also submitted a written submission during the joint hearing reiterating their arguments made earlier and requested for fixing wharfage on copper concentrate in line with ores and minerals.

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

- (i). This case relates to the wharfage rate prescribed at the TPT for 'copper concentrate'.
- (ii). The prevailing rate of Rs.55/- PMT was prescribed on 19 March 1997 with sanction of the Government. During the general revision of the Scale of Rates of the TPT in 1999 by this Authority this rate was not altered. In other words, it has remained unchanged for four years.
- (iii). M/s. Sterlite Industries (India) Limited have argued that they did request for a (downward) revision in 1999. But, the TPT did not support it. And, the Petitioner failed to participate in the joint hearing and lost the opportunity of canvassing their cause.

The main contention of the TPT in this case has been that piecemeal tinkering with the Scale of Rates shall not be allowed/ encouraged by the TAMP; having failed to agitate this issue at the time of the joint hearing in 1999, M/s. Sterlite Industries (India) Limited must wait till the next revision around 2002.

- (iv). As has been pointed by the TPT, the normal practice in Scale of Rates is to have a broad classification for cargo of small quantities. Other cargo that pick up get singled out for separate classification subsequently.

M/s. Sterlite Industries (India) Limited started importing the cargo (i.e., copper concentrate) through the TPT in 1996. At that time, there was no specific wharfage rate for this

cargo. Therefore, as per the provision in the Scale of Rates, the wharfage for 'goods otherwise not specified (bulk)' of Rs.36/- PMT was charged. In the meanwhile, action was taken to fix a separate wharfage rate for the commodity as it was expected that the cargo would be continuously moved through the TPT. The proposal to fix a separate wharfage @ Rs.55/- PMT for 'copper concentrate' based on the then prevailing rate at the Chennai Port Trust for such cargo in granular form was sanctioned by the Government in January 1997 and made effective from 19 March 1997.

The ICCI have stressed that, in conformity with the general practice, as the volume of this cargo goes up, its wharfage rate must come down. In this connection, it has to be recognised that, as has rightly been contended by the TPT, any change in the classification now will have financial implications affecting the financing model adopted for the general tariff revision thereby necessitating a tariff adjustment. That being so, as stated earlier in (iii) above, this issue can best be settled at the time of the next tariff revision around 2002.

(v). At the joint hearing, M/s. Sterlite Industries (India) Limited stated that they had protested to the Board of Trustees about the excessive rate and had been paying wharfage 'under protest'. Countering this statement emphatically on the spot, the TPT has observed that "they had protested initially once; there is no 'protest' now; and they are paying regularly." While admitting that M/s. Sterlite Industries (India) Limited did object to the Board of Trustees, the TPT has categorically stated that the proposal to treat 'copper concentrate' under the heading 'Ores and Minerals' has just not been acceptable to it. In other words, this dispute is not pending for any consideration at the Board level. In any case, with the emergence of the new tariff regulatory mechanism, the Board of Trustees will have no say in such tariff matters. That being so, it will not be of much consequence for the Petitioner to refer to some protest they had made a long time ago to the Board of Trustees of the TPT.

(vi). The TSAA have supported the petition with the argument that, in the Customs List, 'Copper Ores and Concentrates' are classified along with Iron, Aluminium, Nickel, Cobalt, Lead, Zinc Ores and Concentrates, under Chapter 26. The ICCI have added their endorsement with the observation that, technically speaking, copper concentrate is a mineral. M/s. Sterlite Industries (India) Limited themselves have attempted to bolster their plea with the argument that 'copper concentrate' like all ores and minerals, is given a process-based treatment.

The TPT has forcefully countered this argument to say that, even if the Customs classify copper concentrate under 'Ores and Minerals', the TPT will have to go into specific costing with the volume increases and the cargo becomes important. The example of 'thermal coal' being treated differently from 'coal' for the purpose of wharfage has been cited in support. It will be difficult to ignore this logic.

(vii). M/s. Sterlite Industries (India) Limited have parallelly argued that import of copper concentrate, which is presently at the level of four lakh MT per year, is steadily increasing. Being such a prominent user of the TPT, therefore, M/s. Sterlite Industries (India) Limited must be entitled to better consideration. As has been pointed out in (iii) above, the TPT has conceded this contention by saying that the rate can be reviewed at the time of the next revision.

(viii). M/s. Sterlite Industries (India) Limited have argued that the wharfage increase was meant for deepening the draft and increasing the handling facilities. But, the increase has not given the desired benefit of cost saving. The deepening of the draft has no doubt facilitated more cargo arrivals; but, it is alleged by them that lack of corresponding increase in handling facilities has created an imbalance resulting in more waiting and heavy demurrage. The TPT response to this has been that M/s. Sterlite Industries (India) Limited have definitely benefited by the recent dredging by gaining advantages of scale flowing from the parcel size; they cannot complain about congestion; evacuation of cargo is their responsibility.

It is not relevant for this Authority at this stage to go into these operational details. The cost of the recent dredging is meant to be covered through a separate rate for dredging recently notified which is levied on vessel related charges. The change in the wharfage rate for 'copper concentrate' notified in March 1997 had nothing to do with that.

(ix). The ICCI have alleged that the wharfage collected by the TPT is very high when compared to the wharfage collected by the other major ports for the same kind of ores and minerals. At the joint hearing, this allegation was countered on the spot by the TPT saying, “The Cochin Port Trust and the Chennai Port Trust charge much more for copper concentrate when compared to the TPT.” And, this counter has remained unchallenged.

(x). All in all, there is no merit in the demand for such a midway piecemeal tinkering with the Scale of Rates.

6. In the result, and for the reasons given above, and based on a collective application of mind, this Authority finds no force in the petition of M/s. Sterlite Industries (India) Limited to cause a revision at this stage in the wharfage rate for copper concentrate. That being so, their request is rejected.

(S. Sathyam)

Chairman

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