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Tariff Authority for Major Ports

G.No. 43

New Delhi, 31 March, 2003

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 from the Tuticorin Port Trust (TPT) for review of the volume discount scheme on copper concentrate and coal as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/7/2003 - TPT

The Tuticorin Port Trust

Applicant

ORDER

(Passed on this 17th day of March 2003)

This case relates to a proposal received from the Tuticorin Port Trust (TPT) for review of the volume discount schemes introduced for copper concentrate and coal.

2.1. This Authority had passed an Order on 20 September 2002 in the general revision case of the TPT. This Authority for the reasons stated in that Order held that the classification of Copper Concentrate under the specific entry was in order; and, therefore, the wharfage rate for the specific item of Copper Concentrate was not changed. Nevertheless, in view of the volume of traffic of copper concentrate and in view of financial surplus position reflected in the cost statement, a volume discount scheme was prescribed for this item keeping the base rate at the existing level. Likewise, a volume discount scheme for coal was also introduced without disturbing the basic wharfage rate bearing in mind the fact that coal is a major commodity handled at the TPT.

2.2. Since the SPIC, another major user of the TPT, had not suggested anything concrete with supporting details, the TPT and the SPIC were advised to examine the issue of introducing volume discounts and, to come up, preferably, with an agreed proposal.

3.1. M/s. Sterlite Industries Limited (SIL) have sought clarification about the date of application of the volume discount scheme as to whether the date per annum means financial year of the port i.e. 1 April to 31 March 2001 and if so whether the volume discount is applicable for the current financial year.

3.2. In this regard, it has been clarified that the quantity of copper concentrate handled from 1 April 2002 till the effective date of implementation of the volume discount scheme i.e. 20 October 2002 will be liable to pay wharfage charges as per the pre-revised Scale of Rates; only the quantity of copper concentrate handled from the date of implementation of the scheme upto 31 March 2003 will be eligible for the rebate in wharfage rate insofar as the financial year 2002-03 is concerned. It has also been pointed out that the quantity of cargo handled since 1 April 2002 will be reckoned with to determine the appropriate slab of wharfage rate payable from the date of implementation of the volume discount scheme.

3.3. In response to our clarification, the TPT has pointed out that the volume discount scheme in its entirety can be effective only from 19 October 2002; and, the terminology per annum means a running year from the date of implementation of the Order. In this back drop, it has requested this Authority to review the clarification offered; and, approve the implementation of the volume discount schemes with effect from 19 October 2002 to 18 October of the each following year pending a decision on its review petition.

4.1. The TPT has also filed a petition for review of the volume discount scheme introduced by this Authority for copper concentrate and coal. The TPT has made the following main points in its review petition:

- (i). There was no proposal from the port or the users for introduction of volume discount scheme as a part of general revision exercise. The SIL had requested for classification of copper concentrate under 'Ores and Mineral'; in respect of coal and coke handled at the jetty there was no representation from any user for volume discount.

- (ii). The volume discount scheme prescribed by the Authority is not realistic with respect to the traffic handled by the said users. The traffic handled by the concerned users for the past three years are as follows:

(in lakh tonnes)

Year	Copper Concentrate	Coal and coke handled through coal jetty.
1999-2000	3.50	35.54
2000-2001	4.03	56.58
2001-2002	5.42	51.95

- (iii). It has pointed out that though the base rate is not altered, the volume chosen for introduction of volume discount scheme is 50% of the current annual traffic handled. It is not appropriate to pick up 50% of the current year traffic handled by the respective users while envisaging the volume discount scheme.
- (iv). Volume discount should be offered on the incremental volume during a particular year or over the highest volume handled in the past three years.
- (v). If the Authority had advised the TPT to introduce a volume discount scheme, the port would have come out with a suitable proposal which is mutually agreeable to the port and the users. Such an advice would also not be very appropriate if similar advice has not been rendered by the Authority to the other Ports as well.
- (vi). While other ports (like the Mormugao Port) have been rewarded for showing better productivity, the Tuticorin port has been penalised despite improving its productivity levels.
- (vii). In view of the above points, the Authority is requested to review the sliding rates prescribed for copper concentrate and coal and coke handled at the coal jetty and issue a speaking order after giving an opportunity of hearing.

4.2 The TPT has further clarified that since the traffic handled by the SPIC has been volatile and as there is no increase in the volume of cargo handled by the SPIC, volume discount scheme need not be introduced for the cargo handled by the SPIC. It has also agreed to submit shortly a detailed calculation about keeping the tariffs at existing level or to increase/decrease the existing tariff wherever warranted after considering the current income and expenditure figures, impact of income tax for traffic throughput estimated for the years 2002-03 and 2003-04.

5.1. A copy of the proposal was forwarded to various concerned users/representative bodies of port users for comments. The comments received from the various users / representative bodies of port users were forwarded to the TPT as feed back information.

5.2. A joint hearing in this case was held on 5 February 2003 at the TPT premises. At the joint hearing, the TPT and the port users have made their submissions.

5.3 The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpts of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be available in our website (www.tariffauthority.org).

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

- (i). Scrutiny of the financial / cost position of the TPT as a part of the proceeding relating to the last general revision of tariffs at the TPT revealed a revenue surplus position. This Authority, however, found that it would be reasonable to allow the TPT a six months' time to propose reduction in tariff instead of effecting a *suo motu* reduction. Notwithstanding this decision, volume discount schemes for Copper

Concentrate and coal were introduced bearing in mind the fact that the traffic of these two commodities form major share at the TPT.

- (ii). The TPT has now alleged that the scheme introduced discriminates users and the approach adopted discriminates between ports. This Authority has always advocated for uniformity in the concepts and principles applied for tariff setting across different ports. The concept of volume discount scheme is not perceived only in the concept of the TPT. This Authority has introduced (even suo motu) volume discount schemes at other major ports also. That being so, the question of this Authority discriminating between ports does not arise at all.

Likewise, there is no reason why this Authority which stresses on user orientation should discriminate between users. As has been correctly pointed out by the AICCI, coal and copper concentrate are the major commodities handled at the TPT; and, therefore, volume discounts for them were introduced in the first instance pending the TPT proposing a reduction in tariff for other cargo.

- (iii). The TPT has also pointed out that this Authority has clubbed its proposal with an individual representation filed by the Sterlite. In view of the policy direction given by the Government about this Authority not entertaining representations from individual users, the case relating to the representation filed by the Sterlite was closed. The direction issued by the Government, however, does not restrain this Authority to follow the usual consultation process before deciding the tariff proposals filed by the port trusts. In the proceeding relating to the last general revision of tariff at the TPT, there was a specific demand from the Sterlite for introduction of volume discounts for raw materials in line with the volume discounts proposed by the TPT to be allowed on wheat. That being so, it is not correct to say that the introduction of volume discounts for copper concentrate is based on a representation filed by the Sterlite in some other case. It is, therefore, clear that the decision to introduce volume discounts for copper concentrate does not violate the policy direction issued by the Govt about individual users.
- (iv). The TPT has also pointed out that it was not consulted before the volume discount scheme was introduced. The issue relating to volume discount scheme was considered at the joint hearing held on 6 June 2002 when the TPT expressed its view against such schemes. It is, however, to be admitted that the discussion at the joint hearing was on the principle of volume discounts and not on the exact details of the volume discount schemes introduced for copper concentrate and coal.
- (v). The TPT has now pointed out that the volumes prescribed in the schemes have been achieved by the concerned users long ago and, therefore, the schemes may not be useful in attracting additional volumes. As has been admitted earlier, the parameters used in the schemes are ad hoc and not based on any careful analysis of the traffic pattern and growth. The schemes have been introduced with the intention of providing relief to the two major users of the port. In that sense, the scheme is not really a volume discount scheme with the objective of attracting additional traffic but more of a graded wharfage schedule for these cargo.

This Authority has already allowed six months' time to the TPT to propose reduction in the existing rates. The TPT has assured that it will come up with a proposal within the stipulated time limit allowed upto 4 April 2003. It has also made an assurance that it will specially consider introducing volume discount schemes for all cargo including the rates for copper concentrate and coal. Since the volume discount scheme introduced is based on ad hoc parameters and the TPT has assured to come up with a well analysed proposal, it is found reasonable to allow the volume discount schemes introduced vide this Authority's Order dated 20 September 2002 to operate till 31 March 2003. Since the volume discount schemes will not be in operational from 1 April 2003, the pre-revised wharfage rates will apply to coal and copper concentrate thereafter.

In this context, it is noteworthy that the SPIC and TNEB have also admitted that their volumes may not go up due to capacity constraints. This also bolsters the TPT argument relating to volume discount scheme and traffic growth.

- (vi). With reference to the applicability of the scheme, a clarification was earlier issued as detailed in paragraph 3.2 above. The TPT has requested that no retrospective effect should generally be given to the Order passed by this Authority. The clarification given does not reduce the rates retrospectively. It has been categorically mentioned that only the cargo handled from the date of implementation of the impugned Order will be eligible for the rebate in wharfage rate. This clarification has been given with an idea to adopt a convenient financial year basis for measuring the volume of cargo. With the decision to allow the volume discount schemes to operate only upto 31 March 2003, the issue relating to financial year-wise volumes has lost its relevance. The rebate in wharfage for copper concentrate and coal should, therefore, be allowed by taking pro-rata volumes for the period from the original date of implementation of the scheme upto 31 March 2003 in supersession of the clarification earlier given.

7. In the result, and for the reasons given above, and based on a collective application of mind, this Authority decides as follows:

- (i). The argument of the TPT for a review of the volume discount schemes for copper concentrate and thermal coal introduced vide earlier Order dated 20 September 2002 carries some force.
- (ii). The existing volume discount schemes for copper concentrate and coal will operate upto 31 March 2003.
- (iii). For regulating the scheme upto 31 March 2003, pro-rata volume handled from the original date of implementation of the scheme should be reckoned with.

(A.L. Bongirwar)
Chairman

**SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT
USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE
JOINT HEARING BEFORE THE AUTHORITY**

**F. No. TAMP/7/2003-TPT) Proposal from the Tuticorin Port Trust for a
review of volume discount scheme on copper
concentrate and coal.**

1. The comments received from the port users / representative bodies of port users are summarised below:

M/s. Sterlite Industries Limited

- (i). Its earlier representation to classify copper concentrate as 'Ores and Minerals' and levy wharfage rate of Rs. 19/- PMT was deferred by the TAMP with a view that a revision is not possible in the middle of the year. The Authority had stated that this matter could be taken up during the next general revision of the ports Scale of Rates.
- (ii). In the recent general revision Order passed by the Authority volume discount scheme for Copper Concentrate have been offered; but, the TPT is not ready to implement the said volume discount scheme. This approach of the TPT is not correct and hence may be advised to implement of the TAMP Order in letter and spirit.
- (iii). The volume of copper concentrate and rock phosphate imported by it from 1996-97 till February 2003 at the Tuticorin port has been furnished. It has imported 5.09 lakh MT of copper concentrate in the current year 2002-03 till February 2003.
- (iv). It has requested that the volume discount scheme presently introduced from 19 April 2002 by the TAMP may be made effective from the year 1999-2000 for the volume handled beyond 2.5 lakh MT.
- (v). Volume discount scheme may also be provided for the rock phosphate since its imports have increased by three folds from 1.1 lakh MT in the year 1998-99 to 3.5 lakh MT in the current year 2002-03.

All India Chamber of Commerce and Industries (AICCI)

- (i). Both copper concentrate and coal are account for more than 80% of the traffic at Tuticorin Port and these cargo are the major contributors for the growth of traffic at the Tuticorin port.
- (ii). The wharfage rate on copper concentrate in Tuticorin Port is Rs.55/- PMT which is very high in comparison to wharfage rate at some other

ports like Kandla where it is Rs.13/- PMT. This disparity in wharfage is partially being offset by the introduction of volume discount scheme.

- (iii). The wharfage rate charged for coal and coke handled at coal jetty is much more than the wharfage rate levied for other industrial coal.
- (iv). It has supported the decision of the TAMP has urged you that the current volume discount scheme for these two cargoes must be continued. It is in fitness of things that two largest volume cargoes at the port get the volume discount.

2. A joint hearing in this case was held on 5 February 2003 at the TPT premises. At the joint hearing, the following submissions were made:

Tuticorin Port Trust (TPT)

- (i).
 - (a). There was a representation from the Sterlite which was dismissed by TAMP for want of jurisdiction in terms of the policy direction issued by the Government.
 - (b). Notwithstanding this, TAMP had considered the request of the Sterlite and introduced volume discount scheme for copper concentrate while approving our proposal for general revision of tariff.
- (ii). We have not been consulted. Therefore, it is against the principles of natural justice. In fact, we should have been asked to propose volume discount.
- (iii). The base volume considered is less than the traffic handled by the Sterlite nearly 5 years ago.
- (iv). Why only coal & copper concentrate were singled out for special treatment? The scheme introduced is, therefore, discriminatory.
- (v). Port should be allowed to do its market and marketing segmentation. There is no justification for introducing volume discount for captive cargo.
- (vi). The TAMP has given us 6 months' time to propose reduction in tariffs. We are on the job. We will submit our proposal within the stipulated time frame. We will come with volume discount scheme. We will cover copper concentrate and coal also in our proposal.
- (vii). The TNEB had not demanded any volume discount. They asked for reduction in wharfage. The TAMP has *suo motu* introduced volume discount.

- (viii). Application of volume discount should be with prospective effect. Reduction in rates, even counting of volumes, cannot be retrospective.
- (ix). Discount should be available for incremental traffic only. It should not be for existing traffic.
- (x). The TNEB has benefited a lot due to our capital dredging. 'Way leave' is not for cargo. It is for the land allotted.

M/s. Sterlite Industries Limited

- (i). The port says it will come with a proposal for volume discounts which means, it agrees for volume discount.
- (ii). The TAMP has allowed volume discounts to two biggest users. Where is the discrimination?
- (iii). The TAMP has not given any financial relief retrospectively. Only the tonnage handled from April 2002 to October 2002 is reckoned with for allowing discounts beyond October 2002.

The Southern Petrochemical Industries Corporation

Growth in our volume may not be there in near future. We don't ask for volume discount.

Tamil Nadu Electricity Board (TNEB)

- (i). Our capacity is 5 million MT. We can't improve our capacity.
- (ii). If not volume discount, please consider wharfage for coal and coke handled at coal jetty handled at our jetty at the same rate as prescribed for 'other coal' at 'other berths'.

All India Chamber of Commerce and Industries

We welcome the volume discounts introduced. Please don't rescind. When the port sends a proposal, the TAMP may consider revising the scheme. After all, the wharfage had to be revised downwards. Instead, the TAMP has allowed the discounts based on volumes handled.

Indian Chamber of Commerce and Industry

Please introduce volume discounts for other cargo also.