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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 87

New Delhi, 25 May 2006

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 reference received from the Central Warehousing Corporation relating to levy of dwell time charges for ICD containers at Nhava Sheva International Container Terminal Limited and amends the Scale of Rates of Nhava Sheva International Container Terminal Limited as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/20/2006 - NSICT

Central Warehousing Corporation

- - -

Applicant

ORDER

(Passed on this 11th day of May 2006)

The Central Warehousing Corporation (CWC) vide its letter No.CWC/RO-AHD/DUS/Tariff/2005-06/8631 dated 5 December 2005 has represented that the NSICT refuses to grant 15 days free dwell time for the ICD import and export containers. The points made by CWC are summarised below:

- (i). CWC operates Inland Container Depots (ICDs) at Vapi and Dashrath, Vadodara in the State of Gujarat.
- (ii). As there are no regular train services available from these ICDs to JNPT/NSICT, most of the containers are transported by road between these ICDs and JNPT / NSICT.
- (iii). As per Section 10 (D) of TAMP Order dated 21 February 2002 and subsequent notification dated 4 August 2005, first 15 days are free for all ICD loaded and empty import / export containers and no dwell time charges should be levied by NSICT for this free period. However, NSICT is reluctant to allow 15 days free dwell time for the import / export ICD containers. This causes additional transaction cost to the exporters and importers who make use of the hinterland ICDs. They are, therefore, forced to make use of Container Freight Stations (CFS) located in the close vicinity of JNPT / NSICT which defeats the basic purpose of setting up CFS/ ICDs at the hinterland and to decongest the port and dock areas.
- (iv). TAMP may intervene and instruct NSICT to honour the provisions of Section 10 (D) of the Order of TAMP.

2. A copy of the reference made by CWC was forwarded to the NSICT for comments. The comments received from NSICT are summarised below:

- (i). The free dwell time of 15 days is applicable only in the case of containers moved by rail and not applicable in the case of containers transported by road as per Section 10 (D) of the TAMP Order. While NSICT Scale of Rates does not specifically mention about the mode of transport of ICD containers for eligibility of 15 days free dwell time, reference could be drawn from various tariff heads on handling that the same is applicable only for containers going by rail.
- (ii). As per the General Note in NSICT Scale of Rates, the JNPT Scale of Rates has to be referred for clarification in case of any doubt or ambiguity. All ICD containers (import or export, loaded or empty) moved by road and stored in the container yard shall be treated at par with any other container moved by road for the purpose of calculating dwell time charges as per JNPT Scale of Rates.
- (iii). We extend additional free days only for containers that are moved by rail. We have always considered road and rail containers separately for the purpose of revenue calculations submitted to TAMP. No distinction has been made on any further basis.
- (iv). Notification No.G194 dated 25 September 2002 issued by TAMP prohibits the Authority from taking up representations from individual parties for consideration and thus should not be entertained.

3. With reference to the NSICT proposal for upward revision in the consolidated charges for movement and handling of containers and containerised cargo, this Authority passed an Order dated 7 November 2000. The position relating to the dwell time charges prescribed in the Order dated 5 December 1998 remained unaltered in the tariff Order dated 7 November 2000. This position

continues to remain intact in the *suo motu* review of the Scale of Rates of NSICT carried out in July 2005 and in March 2006 vide Order dated 22 July 2005 and Order dated 7 March 2006 respectively.

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

- (i). The NSICT has raised an objection relating to the powers of this Authority to entertain representations from individual parties for consideration. The notification dated 25 September 2002 relates to the policy direction issued by the Government of India under Section 111 of the MPT Act refraining this Authority from entertaining representations made by individual parties for adjudications. The Government of India in a subsequent communication dated 26 March 2003 has clarified that its direction does not prohibit this Authority in the matter of entertaining request for interpretation / clarification in respect of Orders relating to Scale of Rates prescribed by this Authority. The case in hand relates to removing ambiguity in the Scale of Rates of NSICT. It is noteworthy that Clause 3.1.5. of the revised tariff guidelines authorises this Authority to entertain representations filed by individual users which involves fixation of tariff.
- (ii). The number of free days admissible for ICD containers is dependent on the mode of transport of such ICD containers as per the position obtaining in the JNPT. In view of General Note No.8 in the Scale of Rates of NSICT, the admissible free days for ICD containers handled at NSICT also depends on the mode of transport of such ICD containers. That being so, the ICD containers stored in the container yard of NSICT shall enjoy 15 days free dwell time as per position obtaining in the JNPT, only if such ICD containers are moved by rail.
- (iii). The free dwell time in respect of ICD containers moved by road prescribed in the Scale of Rates of JNPT depends on whether such ICD containers are loaded or empty, as different number of free days are prescribed for empty and loaded ICD containers. Since free dwell time for the loaded and empty containers falls under one tariff entry in the Scale of Rates of NSICT, it also needs to be clarified that the free dwell time for ICD container (import or export) moved by road and stored in the container yard of NSICT will be governed by the general provision applicable for import and export containers.
- (iv). It is clear that the approach adopted by NSICT is correct and is in terms of the Scale of Rates in view of the General Note No.8. Nevertheless, it will be a better arrangement to amend the Scale of Rates of NSICT to remove any possible ambiguity of expression and to avoid any cross-reference to the JNPT Scale of Rates.

5.1. In the result, and for the reasons given above and based on the collective application of mind, this Authority approves the following:

- (i). The existing sub-Section-D to Section-9 Dwell time charges in the Scale of Rates of NSICT is amended to the extent that the sub-Section-D is applicable for ICD containers moved by rail.
- (ii). The free days in respect of the ICD containers moved by road will be governed by the existing sub-Section-A, sub-Section-B and sub-Section-C of Section-9 Dwell time charges.

5.2. The NSICT is directed to amend its Scale of Rates accordingly.

(A.L. Bongirwar)
Chairman