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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 18

New Delhi, 15 January 2007

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 approves the proposal of the Mormugao Port Trust (MOPT) for revision in the Efficiency Linked Tariff (ELT) Scheme as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/55/2004 – MOPT

Mormugao Port Trust (MOPT)

Applicant

ORDER

(Passed on this 29th day of December 2006)

This case relates to a proposal received from the Mormugao Port Trust (MOPT) for revision in the Efficiency Linked Tariff (ELT) Scheme.

2.1. This Authority had passed an Order on 24 November 1998 prescribing an efficiency linked increase in the vessel related charges at the MOPT. The ELT scheme was revised by this Authority vide its Order dated 31 August 2000. This scheme was also incorporated in the Scale of Rates notified by this Authority in September 2002.

2.2. The MOPT found that in most of the cases inspite of high loading rate achieved at the MOHP, many vessels exceeded the cut-off limit prescribed under the scheme due to delay in aggregating of cargo by the Shippers. Consequently, the port had to forgo its incentive on account of reasons not attributable to the port thus resulting in financial loss (if compared to premium earned under the original ELT Scheme). It had, therefore, represented to this Authority to review the formula for excluding the pre-berthing detention time attributable to the Shippers.

2.3. While rejecting the representation of the MOPT for a review of the existing ELT Scheme, this Authority had, *inter alia*, observed that the financial loss reported by the MOPT was in fact the notional loss in reference to what the port would have earned under the notional scheme. As regards delay in aggregating of cargo by the Shipper, this Authority in its Order dated 20 September 2001 observed that the possible delay in aggregating cargo by the shipper should be tackled by the port operationally. The port could admit only such vessels to enter the port, which had adequate cargo for loading at the stack-yard, as certified to that effect by the concerned shipper.

3.1. In order to tackle the possible delay in accumulating the cargo, the MOPT had issued a circular on 24 December 2002 conveying to the trade that the turnaround time for the purpose of the ELT Scheme would be reckoned from the time of availability of adequate cargo i.e. 90% of the parcel size in the stack-yard. With reference to this circular, the Goa Mineral Ore Exporters Association (GMOEA) and Mormugao Ships' Agent's Association (MSAA) had submitted representations alleging that the MOPT had changed the method of computation of actual turnaround time without approval of the TAMP and had, therefore, requested this Authority to order withdrawal of the circular issued by the MOPT with retrospective effect.

3.2. The MOPT in September 2003 had earlier filed a proposal for revision of the ELT Scheme which was processed following the usual consultative process. At the joint hearing held in this case, the MOPT was advised to analyse the figures relating the last five years, which form the cut-off limit, to identify the cases in the past not satisfying the newly introduced condition and to forward an agreed proposal within a month in consultation with GMOEA and MSAA.

3.3. In response, the MOPT requested to maintain status quo and stated that revised agreed proposal would be filed after two months. This Authority, therefore, passed an Order on 22 June 2004 closing that case as withdrawn and decided to consider the revised proposal when received afresh. In the said Order, this Authority held that the port may admit only such vessels which have 90% of parcel size at stack-yard; however, while introducing such a condition affecting the actual performance, a corresponding change should also be made in computing the benchmark level. However, since the MOPT had requested to maintain status quo, this Authority did not find it necessary to dwell on this issue further and allowed the MOPT to continue with the ELT scheme approved in the Order of August 2002. The revised proposal was to be considered afresh.

4.1. In this back-drop, the MOPT has submitted the proposal in September 2004 for revision of the ELT Scheme.

4.2. The MOPT has made the following submissions in its proposal:

- (i). The ELT formula prescribed by the TAMP suggested five year period for calculation of "cut-off limit" so that any variations in waiting time of vessels get evened out over a period of five years. The waiting time of vessels on account of non-accumulation of any cargo, has, however, gone abnormally high during the year 2002-03 as a result it does not get evened out thus creating anomalous situation. Applying the cut-off limit based on five years data will pose a serious problems to the port in terms of loss of revenue, therefore, it is essential to revise the formula for computation of cut-off limit.
- (ii). The joint committee constituting members from the Goa Mineral Ore Exporters' Association (GMOEA), Indian National Shipowners' Association (INSA) and the Mormugao Ships' Agent's Association (MSAA) have held several meetings in this regard and have come to a consensus on the following points:
 - (a). The stipulation of 90% cargo accumulation for the purpose of arrival time is agreeable.
 - (b). As per the TAMP formula, the average cut-off time has to be worked out based on the data for past 5 years. Since the data are not available for the past 5 years, for the operational year 2004-05, the cut-off limit may be worked out based on the past 2 years actuals.
 - (c). On the representation of the users to rework the cut-off time, based on the old formula prescribed by this Authority, the port held a view that it could not be done as the past data for 5 years as per TAMP's ELT Scheme is not available. Further, due to more number of vessels' arriving now without accumulation of cargo, an abnormality has come into play and variations do not get evened out. Port also would incur heavy loss for no fault of it.

4.3. The MOPT has pointed out that it will incur heavy financial loss for majority of vessels if the existing ELT Scheme is allowed to continue. It has, therefore, requested to approve revision of the existing ELT Scheme with admittance of vessels with 90% cargo and fixing the cut-off time for pre-berthing detention based on the past two years data for the year 2004-05. Accordingly, the average cut-off limit for pre-berthing detention was worked out at 0.81 days for the operational year 2004-05. The MOPT has informed that the relevant users have agreed to consider arrival time of vessel when 90% of cargo is accumulated in the stack-yard and to work out cut-off limit based on the past 2 years' actuals. The minutes of the Joint Committee meeting also confirms this position.

4.4. In view of the exigencies expressed, and the consensus position reported by the MOPT, this Authority granted *ad hoc* approval to the following proposed arrangement for the year i.e. 2004-05:

- (i). The pre-berthing detention time included in the turnaround time for the purpose of ELT Scheme will be reckoned from the time of availability of adequate cargo i.e. 90% of parcel size in the stack-yard and ready for shipment.
- (ii). Cut-off limit for the year 2004-05 to be worked out based on past two years actuals.
- (iii). Since a condition about availability of 90% of parcel size at stack-yard is to be applied for measuring actual performance, the same yardstick should be maintained while determining the cut-off time with reference to the past actuals.

5. In the meanwhile, there was a reference from the GMOEA pointing out that the MOPT continues to implement the ELT Scheme as per its circular issued in the year 2002 despite the fact that this Authority in its Order dated 22 June 2004 has specifically ordered to maintain status quo and continue the ELT Scheme as prescribed in its existing SOR. The MOPT has also rejected its request for refund of the all charges wrongly collected by it in view of wrong interpretation of the TAMP's Order.

Since the MOPT intends to continue the ELT Scheme as per its earlier circular without giving effect to the said TAMP Order, it has requested this Authority to intervene and clarify the matter. It has been decided to deal with this reference alongwith the instant proposal filed by the MOPT.

6.1. Accordingly, a copy each of the proposal of the MOPT and the reference received from the GMOEA were circulated to various concerned port users / representative bodies of port users for their comments. The reference received from the GMOEA was also forwarded to the MOPT seeking their comments. We have not received any pointed response from the MOPT so far in this regard.

6.2. We have not received comments on the MOPT proposal from any users other than the GMOEA. A copy of the comments received from the GMOEA was forwarded to the MOPT as feedback information. The MOPT has not furnished any specific comments on the points made by the GMOEA.

7.1. Subsequently, the MOPT has informed that the cut-off limit under the ELT Scheme for the operational year 2004-05 was computed based on the past two years actuals and reckoning availability of 90% cargo at stack-yard ready for shipment. The *ad hoc* approval to this condition in the ELT Scheme is going well without any complaint from GMOEA, MSAA and INSA. Since the case has not been finalised and the scheme was to be applied from October 2005 for the operational year 2005-06 also, it has requested this Authority to extend the *ad hoc* approval to the existing scheme for the year 2005-06. It has stated that two main parameters for determining the cut-off limit i.e. average pre-berthing waiting time per ship and average daily loading rate based on past 3 years data works out to 0.69 days and 57461 million tonnes respectively to be reckoned with for the operational year 2005-06.

7.2. The letter of MOPT was forwarded to the concerned user organisations for obtaining their comments for implementing the proposed arrangement from October 2005 onwards for the operational year 2005-06.

7.3. The Goa Chamber of Commerce and Industry agrees to accept this proposal of the MOPT for the year 2005-06 the TAMP has already granted *ad hoc* approval to the proposal for the year 2004-05. It is only extension of the same principle on the basis of past three years (in the absence of past 5 years data). In any case it does not have any cost effect on the vessels loaded at MOHP.

The GMOEA has reiterated its earlier comments. It has no objection to accept past two years data for the computation of average pre-berthing detention time. It has, however, pointed that the other parameter involved in the computation of the "cut-off limit" formula (i.e. average daily loading rate) should be based on the past 5 years data and not on the past 2 years data since these two elements of the formula are independent ones and do not influence each other.

8. It was decided to allow the *ad hoc* approval granted for the ELT for the year 2004-05 to continue for the year 2005-06 subject to determination of cut-off limit based on the immediate past three years' actuals as proposed by the MOPT till the subject proposal is finally disposed off.

9.1 A joint hearing in this case was held on 5 July 2006. At the joint hearing, the MOPT introduced the proposal. The GMOEA made a slide presentation on the MOPT proposal reiterating its earlier submission. Apart from this, at the joint hearing the MSAA made its submissions.

9.2. As decided in the joint hearing, Mormugao Port Trust was advised to hold further discussion with the Goa Mineral Ore Exporters' Association for considering the pre-berthing detention time on a five year average and about refund of excess billing made in the past due to non-adjustment of norm by MOPT.

9.3. The MOPT in reply has informed that it had convened a meeting with the GMOEA to discuss and sort out all the issues raised by them including alleged non-supply of information. It has forwarded a copy of the minutes of the said meeting. As regard the pre-berthing detention time adopted by the port and the alleged excess billing, it was unanimously agreed to leave it to the good offices of the TAMP to decide it one way or the other.

10.1. Subsequently, in the line with the earlier proposal, the MOPT has requested this Authority to approve the existing ELT Scheme for the year 2006-07 also since the operational year for this scheme was to commence from 1 October 2006.

10.2. This Authority allowed the *ad hoc* approval granted for the ELT Scheme for the year 2005-06 to continue for the year 2006-07 (starting from 1 October 2006) subject to the cut-off limit based on the immediate past four years' actuals as proposed by the MOPT. The MOPT was also advised to share the relevant data used for computation of the past average with the users and rectify a mistake observed in the reported average pre-berthing waiting time.

11. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details are also available at our website <http://tariffauthority.gov.in>

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

- (i). The Efficiency linked tariff Scheme was last revised in August 2000 prescribing various conditionalities governing this scheme. As pointed out by the MOPT, the scheme has been working well since then without any major objections or complains from users except the issues relating to a condition introduced by the port requiring availability of 90% of cargo at the stack yard.

Ad hoc approval has also been granted to some of the modification proposed by the MOPT in the ELT scheme for the operational years 2004-05 to 2006-07 primarily with a view to accommodate the non-availability of relevant past data with the port.

- (ii). The MOPT within a year of implementing the revised ELT scheme in the year 2000, had pointed out that as per the approved scheme it had to forgo incentive due to reasons not attributable to it but due delay in aggregating cargo by shipper. Its request for review of the scheme was not considered favourably by this Authority and the port was also advised to admit only such vessels to enter the port which have adequate cargo for loading at the stack yard.
- (iii). (a). In order to tackle this operational issue, the MOPT had issued a circular in December 2002 conveying that the turnaround time for the purpose of the ELT Scheme will be reckoned from the time of availability of adequate cargo i.e. 90% of the parcel size in the stack-yard.

The GMOEA had initially raised objection on introduction of this condition by the MOPT without the approval of the TAMP. In this regard, this Authority in its earlier Order Number TAMP/63/2003-MOPT dated 22 June 2004 had clarified that the condition introduced by the port was based on the direction of this Authority to the port to tackle the issue of delay in aggregating of cargo operationally and admit only such vessels into the port which have adequate cargo for loading at the stack yard. It was observed that since the port had found that availability of 90% of the parcel size would serve its intended purpose, no further approval of this Authority was found to be necessary in this regard.

Nevertheless, since the MOPT had requested to maintain status quo, this Authority had directed the MOPT to continue with the (then) conditions prescribed in the Scale of Rates of the MOPT till final decision is taken on the revised proposal to be received from the port in this regard.

- (b). There appears to be some confusion on interpretation of this Order. The MOPT has continued to implement the ELT Scheme as per its circular issued in the year December 2002 till the *ad hoc* approval was given to this specific condition from 1 October 2004 despite the fact that this Authority in its Order of June 2004 had specifically required the port to maintain status quo and continue the ELT Scheme as prescribed in its (then) existing SOR. The MOPT has rejected the

request of the GMOEA for refund of all the charges collected by it in view of a wrong interpretation of the Order.

The GMOEA and the MOPT could not arrive at any consensus on the issue of excess billing for the past period due to different interpretation of the Order and have unanimously agreed to leave the matter to be resolved by this Authority.

- (c). The Order of June 2004 held that the port may admit only such vessels which have 90% of parcel size at stack-yard; however, while introducing such a condition affecting the actual performance, a corresponding change should also be made in computing the benchmark level. The MOPT had not made any corresponding adjustment in the benchmark level while effecting this condition about stacking of adequate cargo in the actual performance.

Since the objections of the users were found to have force and also at the request of the MOPT, June 2004 Order required status quo to be maintained and directed the port to continue to apply the conditions of the ELT scheme as prescribed in its Scale of Rates approved in August 2002.

In view of this position, the application of the specific condition by the MOPT about accumulation of cargo at the stack yard in the actual performance without making any corresponding adjustment in the benchmark level for the intermediary period from the date of issue of Circular in December 2002 till this Authority granted specific *ad hoc* approval to this condition with effect from 1 October 2004 is not found to be in line with the decision of this Authority in its Order of June 2004. That being so, the MOPT is advised to refund the excess billing made for this period to the respective user / user associations.

- (iv). The Goa Mineral Ore Exporters' Association had initially raised objection on introduction of the condition of accumulation of adequate cargo. Subsequently, in the joint committee represented by the members of the Goa Mineral Ore Exporters' Association (GMOEA), Indian National Shipowners' Association (INSA) and the Mormugao Ships' Agent's Association (MSAA) and the port, all the user associations have come to a consensus about stipulating a condition of 90% cargo accumulation at the stack yard while computing the turn around time. Based on the consensus amongst all the user association and the port on this issue, this Authority on the request of the MOPT had granted *ad hoc* approval to this specific condition of accumulation of adequate cargo from 1 October 2004-05 for the operational year 2004-05 subject to the condition that the same yardstick should be maintained while determining the cut-off time with reference to the past actuals.

This *ad hoc* approval for the operation year 2004-05 was also extended for the subsequent two operational years i.e. 2005-06 and 2006-07 based on the request of the port and consensus of all the users.

Since the modification in the ELT scheme stipulating the condition of availability of adequate cargo is already being implemented for the last three operational years, and all the concerned users have given consensus to this arrangement, this Authority is inclined to grant final approval for incorporation of this condition in the existing ELT scheme subject to the condition that the same yardstick should be applied while determining the cut-off time with reference to the past actuals. This amendment in the ELT scheme is incorporated in the revised Scale of Rates of the MOPT approved recently.

- (v). Another issue brought out by the MOPT is about non-availability of past data for five years period for computing the cut-off limit as per the formula prescribed by this Authority. There are two elements i.e. average daily loading rate and average pre-berthing detention for which past five years data are to required to be considered as per the formula prescribed by this Authority.

In view of the constraint in the availability of data for the past period, the MOPT has requested to allow the computation of cut-off limit for the operational year 2004-05 based on the data available for the past two years. The same procedure is proposed to be adopted for the subsequent years also till the time the data for the past five years becomes available for computation of cut-off limit as per the ELT formula prescribed by this Authority reckoning the past five years data.

None of the users have raised any objection on this point except the GMOEA. The GMOEA has also agreed to the suggestion of the MOPT to consider the past two years data for the operational year 2004-05 as regards one of the parameters i.e. pre-berthing detention time. But it has expressed reservation to extend this logic for computation of average loading rate on the grounds that the past data for five years period are available for computing this parameter.

The main reasons for considering past five years data while prescribing cut-off limit based is to even out the variations in the individual years.

It is not found appropriate to consider the data for a different time period for different parameters involved for arriving at the cut-off limit. Hence for sake of simplicity and uniformity, the data pertaining to the past is considered for the same period for all the parameters involved in the computation of cut-off limit requiring the past five years data.

Infact, this Authority has already granted *ad hoc* approval to the computation of cut-off limit on this basis allowing the MOPT to consider past data for two years, three years and four years respectively for the operational years 2004-05, 2005-06 and 2006-07 in the absence of availability of past five years data.

In view of this position, the approval granted on an *ad hoc* basis in this regard for the operational years 2004-05 to 2006-07 is regularised. It has to be recognized that this approval is only for an interim period till the data relating for the past five years period becomes available with the port.

For the operation of the ELT scheme for the year 2007-08, data for the past five years will be available with the port and hence the ELT formula as prescribed by this Authority can be applied from the operational year 2007-08 onwards.

13. In the result, and for the reasons given above, this Authority grants final approval to the modification in the ELT scheme prescribed in Note No.13 under Notes common to Section (C) I and II earlier approved on *ad hoc* basis and approves the following other decisions:

“(i). **The Note No. 13 (ii) under Section (I) and (II) under Part-I Vessel Related Charges prescribed in the Scale of Rates approved in August 2002 is deleted and substituted by the following in the revised Scale of Rates approved on 30 October 2006:**

“The turnaround time for the purpose of ELT scheme will be reckoned from the time of availability of adequate cargo i.e. 90% of the parcel size in the stack yard and ready for shipment on the basis of stock declared by the concerned exporter and close at the time of departure from berth on completion of cargo operation. ”

(ii). The *ad hoc* approval granted earlier to the ELT scheme for the operational years 2004-05 to 2006-07 is regularised.

(iii). The MOPT is advised to refund the excess billing made by applying the condition of accumulation of adequate cargo for the period from introduction of the condition by the port till effective date of implementation of the *ad hoc* approval given to the scheme earlier for the year 2004-05.

(A.L. Bongirwar)
Chairman

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

F. No. TAMP/55/2004 – MOPT - Proposal received from the Mormugao Port Trust (MOPT) for revision in the Efficiency Linked Tariff (ELT) Scheme.

1. We have not received comments on the MOPT proposal from any users other than the GMOEA. The comments received from the GMOEA are summarised below:

- (i). The MOPT has informed them that the data relating to pre-berthing detention (consequent to introduction of the stipulation of 90% cargo accumulation) are available for the past two years i.e. from October 2002 to May 2004. With a view to arrive at an amicable solution, it agrees to adopt the average pre-berthing detention based on last two years data for the year 2004-05.
- (ii). It may, however, be noted that pre-berthing detention and average daily loading rate are two independent elements of the formula to work out the 'Cut-off Limit' having no relationship with each other. The MOPT proposal is to revise the computation of pre-berthing detention time only. Since the data on the average loading rate for the past 5 years are available with the MOPT, unlike in the case of pre-berthing detention, there should be no deviation from the TAMP's order as far as the method of computing the average daily loading rate is concerned.
- (iii). Introduction of the new stipulation about 90% cargo readiness to reckon the arrival time of the vessel has no impact on the average daily loading rate.
- (iv). The MOPT had unilaterally introduced the stipulation of 90% cargo availability vide their circular of December 2002 and applied the same from the fair season of the year 2002 onwards. All cases were accordingly settled on that basis until the adhoc approval was granted by the TAMP in October 2004 on the modification proposed in the ELT Scheme. Therefore, wrongful collection of incentives and denial of rebates under the scheme, for the intermediary period needs to be rectified and the amount so collected need to be refunded to the trade forthwith in respect of the period in question.

2. A joint hearing in this case was held on 5 July 2006. At the joint hearing, the MOPT introduced the proposal. The GMOEA made a slide presentation on the MOPT proposal reiterating its earlier submission. Apart from this, at the joint hearing the MSAA made the following submissions:

- (i). We agree with the proposal of MOPT.
- (ii). But, whatever has been unilaterally billed by MOPT without adjustment of norms should be refunded to us.