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

TARIFF AUTHORITY FOR MAJOR PORTS

G. No. 98 **New Delhi, 19 June, 2003**

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal from the Chennai Port Trust for introducing a special scheme of vessel related charges for main line container vessels as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports

Case No. TAMP/14/2003-CHPT

The Chennai Port Trust (CHPT) - - - Applicant

O R D E R

(Passed on this 5th day of June 2003)

This case relates to a proposal received from the Chennai Port Trust (CHPT) for introducing a special scheme of vessel related charges for main line container vessels.

2.1. The CHPT has made the following main points in favour of its proposal:

(i). The Government of India has announced that the Chennai Port is to develop as a hub port on the east coast. In order to become a hub port, the container terminal has to serve main line vessels and attract not only the cargo from the hinterland but also from ICDs all over India as well as from the neighbouring ports and countries.

(ii). The vessel related charges at the Chennai port are higher than those at the neighbouring international ports. They are approximately 4.6, 3.2 and 3.5 times the charges payable at the ports of Dubai, Singapore and Colombo respectively. This is a main deterrent to the main line vessels for calling at Chennai.

(iii). Chennai is approximately 600 nautical miles away from the main International Sea Route. It is estimated that the cost of diversion of a vessel can be compensated by an additional parcel of 300 TEUs. In order to divert main line vessels to Chennai, a suitable climate for mainline vessels is to be created.

(iv). The average cost per TEU on account of port dues and pilotage works out to Rs.634.84 per TEU for main line containers vessels at present whereas for feeder vessels it comes to Rs.308.14 per TEU which means that main line vessels are incurring more cost per TEU while calling at the Chennai Port.

(v). It is relevant to mention that even the Tuticorin Port Trust (TPT) has prescribed a special package fee in order to attract the main line vessels.

2.2. In this backdrop, the CHPT has initially proposed to introduce a special scheme under vessel related charges for attracting main line container vessels to the port. It has stated that the feeder vessels will not be affected by the proposed scheme. The proposed scheme envisages the following:

(i). Fixation of port dues and pilotage put together at a maximum limit of US $ 14500. Berth hire charges are proposed to be recovered as per the rates prescribed in the existing Scale of Rates (SOR).

(ii). A minimum of 40 calls in a year are required to be made for availing the benefit envisaged in the scheme.

(iii). A shipping line/consortium of shipping lines desirous of availing the facility, should announce the service and indicate the route and give a commitment to make at least 40 calls per year at the port.

(iv). Main Line vessels will mean a vessel or service whose voyage extend beyond a major hub port in the international sea route either towards the east or west. It has specifically notified that the voyages beyond east has to extend beyond Tanjung Pelepas (in Malaysia), West Port and Singapore or towards the west the voyages has to extend beyond Dubai and Salalah. There should be atleast one port of call beyond the immediate hub ports indicated above in the particular route.

(v). A bond for the difference between the actual port dues and pilotage in excess of US$ 14500 is required to be given on berthing of the vessel, to enable the port to encash the guarantee so provided, if the shipping line or consortium does not complete 40 voyages in a year from the commencement of service or such proportionate number of calls in the period before the scheme expires. The bond shall also provide for recovery of interest at the rate of 15% or the TAMP approved rate from the date of sailing till the encashment. Thus, a vessel in the service need to pay the port dues and pilotage as per actuals, subject to a maximum of US$ 14500, before taking the port clearance.

(vi). The scheme will come into operation one month from the date of notification of the TAMP's approval and shall be valid for a period of one year thereafter.

2.3. This proposal was approved by the Board of Trustees of the CHPT in a meeting held on 24.1.2003.

3. In accordance with the consultative procedure prescribed, the proposal was forwarded to the Private Container Terminal operator at the CHPT and concerned port users/representative bodies of port users for their comments. The comments received from them were forwarded to the CHPT as feedback information.

4.1. A joint hearing was held in this case on 29 April 2003 at the CHPT premises in Chennai. At the joint hearing, the CHPT and the concerned users have made their submissions.

4.2. Conceding to the demands of the users at the joint hearing, the CHPT assured to further examine the matter relating to reduction in the ceiling rate and to introduce concessional rates in slabs to widen the scope of the scheme to cover more container vessels.

4.3. The users were advised to give their comments / suggestions, if any to the CHPT.

5. As decided in the joint hearing, the CHPT has reportedly held further consultation with the users on 6 May 2003, and has submitted its revised proposal. The contents of the revised proposal are furnished below:

(i). At present, port is considering only main line container vessels for any concession.

(ii). In line with the concessions offered by Tuticorin Port Trust (TPT), a two tier ceiling system is worked out. The two tier ceiling system is as follows:

Sl. No.	Particulars	Rate
(a).	Vessels below 26509 GRT	US $ 11,500
(b).	Vessels more than 26509 GRT	US $ 14,500

(iii). The number of voyage to be completed by the consortium / joint services partners shall be a minimum of 40 in a year from the commencement of the first voyage.

(iv). The shipping lines shall either pay full port dues and pilotage as per Scale of Rates and GRT of the vessels or pay the maximum amount due as per the scheme and submit a bank guarantee for the difference between the actual amount due and the ceiling applicable for the purpose on berthing of the vessels. At the end of the year or on completion of 40 voyages, whichever is earlier, the bank guarantees so submitted will be returned without encashment or the amounts paid in excess of the applicable ceiling rate in respect of vessels will be refunded. No interest shall be payable by the port on the amount thus refunded.

(v). In the event of failure of consortium / joint service partners failing to complete 40 voyages as above, the bank guarantees will be encashed and the amount so paid and due as per actuals will be appropriated as vessel related charge for the vessel by the port.

(vi). The scheme will be in force for a minimum period of two years from the date of approval by the TAMP.

(vii). The earlier proposed definition of main line vessels has been modified so as to extend the concession even on vessel / service calling at any of the African ports.

6. 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 will also be available in our website www.tariffauthority.org.

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

(i). In order to realize its objective of becoming a container hub port, the CHPT has proposed ceiling rates for marine charges on main line container vessels so that such vessels may find it attractive to call at the Chennai port. It has also analysed the marine charges at the neighbouring international container ports and showed that the existing charges at the CHPT are higher. The concept of introducing ceiling rates for main line container vessels to boost container traffic has already been admitted by this Authority, while approving such a scheme for the Tuticorin Port Trust sometime ago. A proposal of the VPT for allowing discount in vessel related charges on all container vessels has also been approved by this Authority recently.

(ii). The users have generally welcomed the proposal of the CHPT. There is, however, a demand from them that a similar arrangement should be made for feeder vessel and also some other categories of vessels which by their inherent design have larger GRT. The CHPT has, however, reiterated its original position that it wants to consider only main line container vessels for any concession at present. The port's stand that it wants to give concession to attract new business and not to the existing one at this juncture is not found to be unreasonable. Depending on the success of the scheme now introduced to the main line container vessel, the CHPT is advised to review the position with reference to feeder vessels also. General reduction in vessel related charges for other categories of vessels can be kept in mind while formulating the proposal for the next general review / revision of the Scale of Rates of the CHPT. No justifiable reason is found to emerge for holding up the proposal in hand for want of further action to examine the issues about extending concessions to other categories of vessels.

(iii). The Chennai and Ennore Ports Steamer Agents' Association has questioned the logic of the CHPT extending concessions to main line container vessels when the private container terminal operator is required by the BOT agreement to bring main line vessels. While the obligation of the private terminal to bring main line vessels is factual in terms of the BOT agreement, the initiative of the CHPT is to be seen from its revenue angle and its anticipation of traffic growth. Firstly, vessel related charges are levied by the CHPT and not by the CCTL. If traffic of larger size vessels increase as a result of the proposed Scheme, the benefit will accrue to the CHPT. Secondly, in view of the revenue sharing arrangement envisaged in the BOT agreement, the CHPT will derive revenue from the containers handled at the private terminal. If container traffic goes up, not only the private terminal operator but also the CHPT will stand to gain.

(iv). The CHPT has revised its original proposal after holding a second round of consultation with the concerned users. In its revised proposal, it has proposed the ceilings in two tiers. This, in fact, has widened the scope of coverage of the concession and will now include the existing main line vessels operated by the SCI consortium. The revised ceiling rates proposed by the CHPT are more or less in line with the suggestion made by the HCC. The CEPSAA and MCCI have, however, demanded that the ceiling rate should be scaled down to cover vessels having GRT of around 17400. The CHPT has pointed out that it presently gets vessels of 20000-25000 GRT and its intention is to attract larger main line vessels. In any case, the vessels of 17400 GRT will pay actual marine charges which will be less than the ceiling rate proposed by the CHPT.

(v). The CHPT has proposed to levy an interest of 15% on the differential amount between the actual vessel-related charges and the ceiling rate, in the event of encashing bank guarantees for not achieving 40 calls in a year. The interest will be for the period from the date of sailing of vessels till the date of encashment of the bank guarantee. Since the concessional rate is given by the CHPT with the expectation of more number of main line calls, its proposal to levy interest on the differential amount if the stipulated number of calls does not materialise is found to be in order.

The CHPT has also proposed that it will not pay interest on refunding the difference between actual charges and the ceiling rate. Since penal interest is payable by port only for the delay caused by it in refunding and refunding is conditional upon the Lines achieving the minimum number of voyages, the proposal of the CHPT is accepted. Nevertheless, if the CHPT delays refund even after the required conditions for refunding are satisfied, then penal interest should be paid by it as per the provision in this regard already existing in its Scale of Rates.

(vi). In the revised proposal, the CHPT has elaborated the definition of main line vessel which is more or less in line with the definition adopted by the TPT. It is noteworthy that a shipping line or consortium of shipping line are required to make 40 calls in order to qualify for the concession extended. This proposal has not been objected to by any of the users.

(vii). The users have demanded that the scheme should be valid for three years. In its revised proposal, the CHPT has proposed to make the scheme valid for a minimum period of two years. The CHPT is advised initiate its internal review well in advance so that a decision on extending the scheme for a further period on expiry of initial two years can be taken well in time to enable the shipping lines to plan their operations.

(viii). If volume remaining more or less static, discount allowed at one place will have repercussion on other activity / segment in the cost plus model of tariff setting being adopted now. It may not be unrealistic to expect more containers volume and more number of main line vessels call at the CHPT in near future. Till such time volume builds up to off-set the revenue loss on account of the proposed concession, the CHPT should adjust such loss from the return on capital employed allowed to it in the last general revision of tariff. In other words, as has been correctly pointed out by the HCC, the port cannot seek tariff increase elsewhere to compensate the drop in revenue in the container vessel activity on account of the proposed concession.

(ix). Ordinarily, an amendment in vessel related charges comes into effect 30 days after its notification in the Gazette of India. Bearing in mind the fact that this case is only for prescribing a ceiling rate for vessel related charges of main line vessels and not alteration of the tariff prescribed in the Scale of Rates, the approved provision is allowed to be enforced from the date of notification of the Order in the Gazette of India.

8. In the result, and for the reasons give above, and based on a collective application of mind, this Authority approves the revised proposal of the CHPT and incorporates a new Section 2.3.7 in Chapter-II of the Scale of Rates of CHPT as follows:

"2.3.7. Special scheme for main line container vessels

(i). The Scheme is applicable for main line container vessels calling at Chennai Port. For the purpose of this Scheme, main line vessel/service is defined as a vessel or service whose voyage extends beyond a major hub port in the international sea route either towards the east or the west – specifically a voyage towards the east has to extend beyond Tanjung Pelepas (in Malaysia), West Port and Singapore or towards the west beyond Dubai and Salalah to qualify as a main line vessel. Any vessel/service calling at any of the African Ports will also be eligible for concession under the scheme. There should be at least one port of call beyond the immediate hub port, indicated in the particular route.

(ii). The maximum limit for pilotage and port dues put together will be US$ 11500 in case of main line container vessels with GRT below 26509 and for vessels with GRT above 26509, it will be US $ 14500. If the actual charges based on GRT are less than the ceiling rates prescribed, the same shall only be payable towards pilotage and port dues. The berth hire charges shall be payable as per actual GRT for the period of occupation of berth as per the provisions of the Scale of Rates in all cases.

(iii). The number of voyages to be completed by the consortium/joint service partners shall be a minimum of 40 in a year from the commencement of the first voyage.

(iv). The shipping lines shall either pay full port dues and pilotage as per the Scale of Rates or pay the maximum amount due as per this scheme and submit a bank guarantee for the difference between the actual amount due and the ceiling applicable before berthing of the vessels. At the end of the year or on completion of 40 voyages, whichever is earlier the bank guarantees so submitted will be returned without encashment or the amounts paid in excess of the applicable ceiling rate in respect of vessels will be refunded. No interest shall be payable by the port for the holding period on the amount thus refunded. If there is delay in refund by the port, it will pay penal interest as per the provisions of Clause (vi); Section 1.2; Chapter-I of the Scale of Rates.

(v). In the event of failure of consortium / joint service partners to complete 40 voyages as above, the consortium / joint service partners shall deposit the amount of concession availed under the scheme within 15 days of sailing of their last vessel. If consortium/joint service partners fail to deposit the amount within the stipulated 15 days, the Port Trust shall encash the bank guarantee to enforce recovery of concession availed by them. In the event of encashment of bank guarantee, the concession amount shall carry interest at the rate of 15% or at the rate notified by TAMP from time to time from the sailing of the last vessel till encashment of the bank guarantee.

(vi). The scheme will be in force for a minimum period of two years from the date of its notification in the Gazette of India.**"**

(A.L. Bongirwar)
Chairman