

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

TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 107

New Delhi, 13 July 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 Jawaharlal Nehru Port Trust (JNPT) regarding levy of wharfage for steel billets as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports

Case No. TAMP/8/2006 - JNPT

Jawaharlal Nehru Port Trust (JNPT)

Applicant

ORDER

(Passed on this 26th day June 2006)

This case relates to a reference received from Jawaharlal Nehru Port Trust (JNPT) regarding levy of wharfage for steel billets.

2.1. The main points made by JNPT are as follows:

- (i). No separate rate for steel billets is prescribed in the existing Scale of Rates of JNPT.
- (ii). In one particular case, where steel billets were handled, for transshipment from the vessel to barges for onward movement to Mumbai Port, JNPT billed the steel billet cargo as Over Dimensional Cargo (ODC) @ Rs. 625 per MT, towards wharfage in keeping with the conditionalities mentioned in its tariff.
- (iii). JNPT also has a separate head as "Unenumerated items" being charged @ Rs. 135 per MT as per the notified port tariff.
- (iv). The concerned agents M/s.J.M. Baxi & Co., has represented to the JNPT that since the cargo resembles steel slabs in bundles, the JNPT may levy wharfage applicable for steel slabs or unenumerated cargo @ Rs. 135 / MT. The user has also cited that the wharfage for billets at Mumbai Port Trust is Rs. 27.60 / MT.
- (v). The financial implication for handling steel billets considering the three options are:

	Rate per MT
(i). As per ODC cargo	Rs. 625.00
(ii). As per unenumerated cargo	Rs. 135.00
(iii). As per MBPT tariff	Rs. 27.60
- (vi). In the absence of clear cut definition / classification of the cargo billets in the existing JNPT tariff and taking into account the variance in the rates being charged by JNPT and MBPT, the matter was placed before the Board for suitable advice. The Board of Trustees of JNPT decided that the proposal may be moved to Tariff Authority for Major Ports for clarification whether to consider inclusion of steel billets under "unenumerated Cargo" or "Over Dimensional Cargo".

2.2. In this backdrop, the JNPT has requested this Authority to issue a direction in this regard.

3. In accordance with the consultative procedure prescribed, the reference received from the JNPT was circulated to the concerned users / user organisations for their comments. The comments received from the users were forwarded to JNPT as feed back information.

4.1. Clause 4.2.3 of the revised tariff guidelines stipulates that before classifying any cargo under "unspecified" category under the wharfage schedule, the relevant customs classification should be referred to find out whether the cargo could be classified under any of the specific categories mentioned in the wharfage schedule. The JNPT was, therefore, requested to refer to the relevant customs classification and find out whether the said cargo can be classified under any of the specific categories mentioned in the wharfage schedule vide our letter dated 10 March 2006.

4.2. The JNPT vide its letter dated 2 May 2006 has responded and the response of JNPT is summarised below:

- (i). As the weight of one bundle of billets is exceeding 3 MT, the consignment falls under the classification of ODC cargo as per the definition of ODC cargo given in JNPT tariff.

- (ii). For assessment of customs duty this item is classified under the heading "Semi finished products of iron or non-alloy steel". (Item no.72071920 of Chapter – 72)
 - (iii). In the present JNPT tariff, there is no separate classification for the "Semi-finished products of iron or steel".
 - (iv). Steel slabs mentioned in present JNPT tariff can be broadly classified under "Semi-finished product of iron or steel category".
 - (v). Both steel slabs and present consignment fall under the "Semi-finished products of iron and steel category" as per customs classification.
5. A joint hearing in the case in reference was held on 24 may 2006 in the office of this Authority. At the joint hearing, the JNPT and user organizations made their submissions.
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 are also available at our website <http://tariffauthority.gov.in>
7. With reference to the totality of the information collected during the processing of this case, the following position emerges:
- (i). This is a case for classification of steel billets for the purpose of levy of wharfage charges at JNPT.
 - (ii). The Scale of Rates of JNPT was last reviewed in August 2002. Item No.8 of the wharfage schedule of JNPT prescribes a wharfage rate of Rs.117.50 and Rs.135 per MT for steel pipes of length less than 12 mtrs. and length 12 mtrs. or more respectively. Item No.26 of the same schedule prescribes a rate of Rs.135 per MT for steel slab. Unenumerated items listed at item No.27 of the wharfage schedule attract a rate of Rs.135 per metric tonne.
 - (iii). Admittedly, there is no specific reference to the cargo "steel billets" in the wharfage schedule. It has to be recognised that it may not be feasible to itemise all possible commodities passing through a port and prescribe separate wharfage rates therefor.
 - (iv). The JNPT has sought direction from this Authority regarding classification of steel billets in the wharfage schedule. This Authority does not give direction; it frames the Scale of Rates based on scrutiny of cost and other details. The case in reference is not a cost based proposal; it is a reference made by JNPT for classification of a particular cargo in the wharfage schedule. In other words, it is a case involving clarification of the Scale of Rates.
 - (v). The reference made by JNPT to this Authority is to clarify whether "steel billets" fall under "over dimensional cargo" or "unenumerated cargo".

Package exceeding 3 Metric Tonne in weight is levied a charge as applicable for over dimensional cargo prescribed in the Scale of Rates of JNPT. However, the Scale of Rates specifies that the definition of over dimensional cargo does not apply to steel pipes/ coils / slabs. As brought out by JNPT, steel billets and steel slabs fall under the semi finished products of iron or steel category as per Customs classification. That being so, steel billets, which is semi furnished product of iron ore steel like steel slab, may also be reasonably excluded from the definition of over dimensional cargo category. Mere unitizing of steel billets into bundles for ease of handling may not be the sole ground to treat the said cargo as over dimensional. It is noteworthy that the Board of Trustees of JNPT is also, *prima facie*, not convinced about categorizing the said cargo as 'over dimensional' as revealed by the documents attached to the proposal.
 - (vi). There is a suggestion from the users that the steel billets may be classified under "unspecified" category. Clause 4.2.3 of the revised tariff guidelines stipulates that

before classifying any cargo under "unspecified" category under the wharfage schedule, the relevant Customs classification should be referred to find out whether the cargo could be classified under any of the specific categories mentioned in the wharfage schedule. JNPT has confirmed that "steel billet" has been classified under "semi finished products of iron or non-alloy steel" under Customs classification for assessment of duty. That being so, steel billets cannot be brought under the category of "unspecified cargo" also.

- (vii). As per the Customs classification, steel billets, fall under "semi furnished products of iron or non-alloy steel". But, no separate tariff item for "semi finished products of iron or non-alloy steel", is prescribed in the existing wharfage schedule of JNPT.

It may be relevant here to note that "steel slab" for which a separate wharfage rate is prescribed in the Scale of Rates has also been classified under "semi finished products of iron or non-alloy steel". In brief, both "steel slabs" and "steel billets" fall under the "semi finished products of iron and steel category". That being so, in the absence of any specific cost details made available, steel billets can be logically grouped with steel slabs for the purpose of levying wharfage rate which is Rs.135 per MT. It has to be recognised that wharfage rates must be a function of the handling efforts required from the port concerned and the infrastructural / superstructural requirements to accomplish such tasks. It would have been ideal had the JNPT proposed wharfage charge for handling steel billets based on the cost of handling and the facilities provided. It is a coincidence that the rate of Rs.135/- per MT suggested by the users happens to be wharfage rate for steel slabs, which is to be applied for steel billets.

- (viii). The BCHAA has argued for retrospective effect to the Order passed by this Authority. The tariff fixed by this Authority will ordinarily be effective only prospectively. The case in hand is, however, not a proposal for rate fixation. It is a reference made by JNPT for a clarification on correct classification of cargo for the purpose of levy of wharfage. Lack of clarity in the Scale of Rates has led to wrong classification by JNPT which has resulted in application of incorrect wharfage rate on the said cargo. Therefore, it may not be unreasonable to require the JNPT to rectify its earlier billing made based on wrong classification of steel billets. It is relevant to mention here that this Authority had in the past ordered reclassification of Pilot Fermentation Plant for assessment of wharfage charges as per customs classification and refund of excess wharfage collected vide Order dated 10 April 2000 in case No.TAMP/72/99-CHPT at the Chennai Port Trust (CHPT). A similar approach was adopted to correctly classify "Linen fabric" and refund the excess wharfage collected by CHPT vide Order dated 12 August 2002 in case No.TAMP/29/2002-CHPT. This Authority, therefore, requires the JNPT to adjust its billing with reference to correct classification of steel billets under item no.26 in Section 5.1 wharfage in Chapter-V of the Scale of Rates of JNPT.

- (ix). Since the case involves retrospective adjustment of billing by JNPT, it should ensure that the benefit of refund reaches the ultimate Indian Exporter / Importer. While the JNPT may refund the excess collection to the concerned agent, it may also inform the concerned Importer / Exporter about the refund of charges effected.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority clarifies that the cargo "steel billets" should be charged the wharfage under item 26 in Section 5.1 Wharfage in Chapter-V of the Scale of Rates of the JNPT. Consequently, the JNPT should adjust its billing accordingly and refund excess collection, if any, made due to wrong classification.

(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/8/2006-JNPT _sal from the Jawaharlal Nehru Port Trust regarding
levy of wharfage for steel billets.**

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

M/s. J. M. Baxi & Co.

- (i). JNPT has levied wharfage for steel billets at Rs.625/- per MT. i.e. based on the charges for over dimensional cargo (ODC).
- (ii). Steel billets are 12 mtrs. in length and weight of each piece is 1.2 MT. However, for easy handling, 4 to 6 pieces are bundled/ unitised.
- (iii). It is presumed that the high rate of wharfage for ODC has been fixed for high value project cargo and not for semi processed steel products which cannot sustain such high rates of wharfage.
- (iv). The MBPT charges wharfage of Rs.27.60 per MT for steel billets.
- (v). The matter has been forwarded to TAMP for clarification since the steel billet is not enumerated in JNPT wharfage scale of rates though all concerned, including the Trustees of the JNPT are convinced that ODC wharfage charges should not be applied to steel billets.
- (vi). The JNPT has no role to play in the handling of this cargo as the cargo has been discharged over side into barges and transshipped to Mumbai.
- (vii). Wharfage on steel billets should be categorized the same as steel pipes or unenumerated items.

Federation of Indian Export Organisation (FIEO)

The steel billets being semi finished steel products, should be classified along with slabs in view of similar end use of the products (i.e. re-rolling), for the purpose of applicability of wharfage.

Bombay Custom House Agents' Association (BCHAA).

- (i). It is understood that -

- (a). There is no separate head for steel billets in port tariff.
 - (b). Currently, steel billets are classified as Over Dimensional Cargo by JNPT.
 - (c). Difference between the cargo made of steel and ODC is approximately 288% i.e. Rs. 390.00 per MT.
- (ii). It is recommended that steel billets should be categorized under the heading of steel pipes or slabs and wharfage should be charged at Rs.135.00 per MT.

Indian Merchants' Chamber (IMC).

- (i). Classifying the steel billets under ODC is nothing but exploiting the industry and denying fair trade practice to the Shipping Industry. Therefore, steel billets should not be permitted to be classified under the category of ODC.
- (ii). It is of the opinion that the steel billets should be classified either under the heading unenumerated category or steel products, like pipes / slabs and wharfage should be Rs. 135.00 per MT.

2. A joint hearing in the case in reference was held on 24 may 2006 in the office of the Authority. At the joint hearing, the following submissions were made:

Jawaharlal Nehru Port Trust (JNPT)

- (i). There is no rate for steel billets in the existing SOR of JNPT. We classified the consignment under "Over Dimensional Cargo" considering the weight and length of steel billets.
- (ii). Steel billet is classified under the heading "semi finished products of iron or non-alloy steel" under customs classification (Chapter 72).
- (iii). There is no separate classification for the semi finished products of iron or steel in JNPT tariff.
- (iv). Steel slabs and steel billets can be classified under "semi finished products of iron and steel category" as per customs classification.

Indian Merchants Chamber (IMC)

We agree for Rs.135 per MT.

Bombay Custom House Agents' Association (BCHAA).

We agree for Rs.135 per MT.

M/s. J. M. Baxi & Co.

We have no objection for the rate of Rs.135 per MT.

- - - - -