Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Sections 48 and 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal received from the New Mangalore Port Trust (NMPT) for fixation of hire charges of cargo handling equipment and reefer charges as in the Order appended hereto.

(S. Sathyam)
Chairman

The New Mangalore Port Trust (NMPT) - - - Applicant

ORDER
(Passed on this 12th day of August 2002)

This case relates to a proposal received from the New Mangalore Port Trust (NMPT) for fixation of hire charges of cargo handling equipment and reefer charges.

2.1 This Authority had passed an Order on 9 August 2001 relating to the general revision of the Scale of Rates of the New Mangalore Port Trust (NMPT).

2.2 The NMPT in the draft Scale of Rates forwarded along with its proposal for general revision had included hire charges of some of the cargo handling equipment which neither existed in its pre-revised Scale of Rates of 1997 nor were they approved by this Authority subsequent to 1997. To a query raised by us in this regard, the NMPT had clarified that it would submit a separate proposal to this Authority to regularise the rates approved by the Board of Trustees of the NMPT. Hire charges of Coles Husky 680 S of 75 MT capacity and forklift truck of 3 tonne capacity which existed in its pre-revised Scale of Rates were, however, allowed to continue in the revised Scale of Rates also.

3.1 In this backdrop, the NMPT has submitted a proposal for fixation of hire charges of cargo handling equipment.

3.2 The NMPT has made the following main points in its proposal:

(continued on next page)
(i). Escort JCB Pay Loader was disposed off in August 1999. In its place an identical capacity Pay Loader of Hindustan make Model 2021 was procured in the year 1992 and is in operation. The hire charges of both these equipment were not incorporated in the pre-revised Scale of Rates of the year 1997. Its proposal to include hire charges of Escorts JLB Pay Loader in the general revision of the Scale of Rates was not accepted by the Authority, since it had agreed to submit a separate proposal.

(ii). It has, therefore, proposed to delete from the Schedule of Hire charges for cargo handling equipment submitted at the time of the last general revision of Scale of Rates, the item number (4) Escorts JCB Pay Loader and to replace it with Hindustan 2021 Pay Loader. Since the capacity of both the equipment are the same, the hire charge of Hindustan 2021 Pay Loader is proposed at the same level as that for the Escorts JCB Pay Loader.

(iii). (a). The hire charges for the (a) Hindustan 2021 Pay Loader mobile crane, (b) 5 Tonne capacity Fork Lift Truck procured during the year 1992; and, (c) 10 Tonne Capacity Fork Lift Truck procured in the year 1995 are presently being levied based on the rates approved by the Board of Trustees of the NMPT eventhough the tariff for these equipment are not available in the Scale of Rates. The relevant copies of Board Notes/Resolutions have been furnished.

(b). Despite the fact that the hire charges of these equipment were computed long time back it has proposed not to revise the same so as to provide competitive rates. It has proposed to incorporate the existing hire charges in respect of the following equipment in the revised Scale of Rates:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Description of equipment</th>
<th>Unit</th>
<th>Application</th>
<th>For use on board the vessel</th>
<th>Non-Shipping purpose</th>
<th>Departmental use</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Shipping purpose</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Coastal Vessel</td>
<td>Foreign-going Vessel</td>
<td>Coastal Vessel</td>
<td>Foreign-going Vessel</td>
</tr>
<tr>
<td>1.</td>
<td>Hindustan 2021 Pay loader (front end loader) of Bucket capacity 1.53 Cum.</td>
<td>Per hour</td>
<td>520/-</td>
<td>780/-</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>2.</td>
<td>5 Tonne capacity forklift Truck</td>
<td>Per hour or</td>
<td>235/- (subject to a minimum of 315/-)</td>
<td>355/- (subject to a minimum of 475/-)</td>
<td>315/- (subject to a minimum of 475/-)</td>
<td>420/- (subject to a minimum of 475/-)</td>
</tr>
<tr>
<td>3.</td>
<td>10 Tonne capacity forklift truck</td>
<td>Per hour</td>
<td>530/-</td>
<td>---</td>
<td>1055/- (subject to a minimum of 4 hours)</td>
<td>465/-</td>
</tr>
</tbody>
</table>

(iv). It has further stated that the rate applicable for TIL GROVE 880 awaiting approval of TAMP will hold good in respect of hire charges for handling containers in case the 10 tonne capacity forklift is deployed for handling containers.

(v). The following new equipment have been procured in replacement of the old and obsolete equipment which had outlived their economical life fixed by the Ministry of Shipping:

(a). ‘Jessop’ Road Roller of 8/10 Tonne capacity was acquired during December 1998 as replacement to ‘Jessop’ Road Roller of 1965 Model for purpose of hiring it to the contractors for civil works.

(b). Tata Truck Model LPT 909/36 was acquired during February 1999 as replacement to 1972 Model Tata Truck for transportation of materials for departmental works and also for hiring it out to contractors for carrying out the departmental works.

(c). Escorts Model 8100, 10 Tonne capacity Hydraulic crane was acquired in August 1999 as replacement to 7.5 Tonne and 16.0 Tonne Coles model cranes. The new hydraulic crane was acquired for handling of empty containers, machinery packages, timber logs etc., and also for various other purposes.

(vi). (a). The hire charges for the equipment cited above at (v) above were approved by the Board of Trustees of the NMPT vide Resolution No. 127/1999-2000 dated 28 January 2000 subject to a modification proposed in respect of the cost of fuel. In the Board meeting it was pointed out that the hire charges in respect of Road Roller and Tata LPT Truck must be revised taking into consideration the prevailing cost of fuel as Rs. 15.79 instead of Rs. 11.70 per litre.

(b). The modification of fuel cost suggested by the Board of Trustees has, however, not been done by the NMPT in the proposal under consideration.

(c). The hire charges of these equipment have been worked out taking into consideration Return on Investment @ 18% on capital cost, fixed cost and the variable cost. The hire charges proposed by the NMPT in respect newly acquired equipment are as follows:

<p>| Application |  |  |  |  |  |  |</p>
<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Equipment Description</th>
<th>Unit</th>
<th>Shipping purpose</th>
<th>Non-Shipping purpose/ use by private firms</th>
<th>Departmental use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>8/10 'Jessop’ make Road Roller</td>
<td>Per hour</td>
<td>---</td>
<td>Rs. 330/- (subject to a minimum of Rs.1320/- for 4 hours)</td>
<td>Rs. 285.00</td>
</tr>
<tr>
<td>2.</td>
<td>Tata Truck Model LPT 909/36</td>
<td>- do -</td>
<td>---</td>
<td>Rs. 417/- (subject to a minimum of Rs.3,340/- for 8 hours)</td>
<td>Rs. 350.00</td>
</tr>
<tr>
<td>3.</td>
<td>‘Escorts’ Model 8100,10 Tonne Capacity Hydraulic Crane</td>
<td>Per hour or part thereof</td>
<td>Rs. 650 (subject to a minimum of Rs. 1300/- for 2 hours)</td>
<td>Rs. 1100/-</td>
<td>Rs. 550.00</td>
</tr>
</tbody>
</table>

(vii). It has proposed to adopt the reefer plug charges for reefer containers prevailing at the Cochin Port Trust (COPT) at Rs. 700/- for 20’ container and Rs.850/- for 40’ container per day of 24 hours.

(viii). It has further pointed out that the hire charges of these newly acquired equipment and reefer plug charges are being levied provisionally till the approval of the Authority.

4.1. In accordance with the procedure prescribed the copy of the NMPT proposal was forwarded to the Kanara Chamber of Commerce and Industry, Mangalore Customs House Agents’ Association, New Mangalore Port Clearing and Forwarding Agents’ Association and Association of New Mangalore Port Stevedores for their comments. The Kanara Chamber of Commerce and Industry (KCCI) has indicated that it agrees with the existing level of tariff levied by the NMPT for cargo handling equipment.

4.2. Stevedores Association of the New Mangalore Port Stevedores has sent an interim reply stating that its comments will be sent shortly. We have, however, not received any further communication from them so far.

5. A copy of the comments received from the KCCI was forwarded to the NMPT as feedback information. The NMPT has stated that it has no comments to offer in this regard since the KCCI has agreed with its proposal.

6.1. Based on a preliminary scrutiny of the proposal the NMPT was requested to furnish additional information / clarification on the following main points.

(i). The availability and the utilisation norms of the cargo handling equipment newly acquired.
(ii). Reasons for not considering the insurance cost of the crane for fixation of hire charges of cargo handling equipment. Clarify the existing arrangement for recovery of damages in case of accidents.

(iii). The actual repairs and maintenance cost and the actual overhead incurred for these equipment for past period.

(iv). Confirmation whether the fuel and lubricant cost considered in its working are based on the actual cost/consumption. Also, a detailed working of staff cost.

(v). The basis of estimating operating hours in case of 8/10 Tonne Road Roller, Tata LPT truck and Hydraulic Crane of 10 tonne capacity.

(vi). Estimated cost of supply of electricity to the reefer containers.

(vii). The reasons for not obtaining approval of the competent Authority before introducing the tariffs in consideration.

(viii). It has also been brought to the notice of the NMPT that this Authority had decided (in the general revision case) that hire charges should be the same irrespective of the purpose of use.

6.2. In response to the queries raised by us, the NMPT has furnished additional information/clarifications as follows:

(i). The availability and utilisation norms as communicated by the Ministry in 1982 have been furnished.

(ii). Third party insurance has been taken for the cargo handling equipment and in case of accident, charges shall be recovered as per the provisions covered in the insurance policy. Since the insurance premium is negligible the same is not considered in the computation of hire charges.

(iii). The repairs and maintenance cost of equipment are not maintained individual equipment-wise; and, hence the details can not be furnished.

(iv). The average consumption and cost of fuel as applicable at the time of operating the equipment have been considered. Detailed computation of staff cost has been furnished. Staff cost has been worked out for two shifts.

(v). The operating hours of Escort Model has been based on the norms indicated by the Government. For Road Roller the idle time is more during rainy days; and, hence working days has been reduced to 225 days. The working hours in case of other newly acquired equipment are taken as 2000 hours (250 days of 8 hours a day) keeping in view holidays, breakdown period, idle time, etc.

(vi). (a). A detailed working of electricity and monitoring charges for reefer container has been furnished. It has proposed to levy Rs. 270/- per 20’ container and Rs.285/- for 40’ container for a shift of 8 hours as against the earlier proposal to adopt the COPT tariff at Rs. 700/- for 20’ and Rs. 850 for 40’ container per day of 24 hours.

(b). The exact cost of the 5 Nos. for new Reefer boards with six sockets each and the existing cost of transformer and related switchgears have been considered for the purpose of estimating the reefer charges for 20’ and 40’ container.

(c). The cost of only one workman is proposed to be debited to the Container Yard though the Container Yard is attended by
electrician posted at wharf sub-station round the clock who also attends other maintenance works,

(vii). Proposal for revision of tariff of cargo handling equipment was sent to the Ministry in 1993 for seeking approval. The Ministry had advised the port in 1994 to improve availability and utilisation level and then to send the proposal in the light of the improved performance. The approval of the TAMP for continuance of existing rates was not made by it in the general revision proposal inadvertently which may be condoned.
7. A joint hearing in this case was held on 3 May 2002 at the NMPT. At the joint hearing, the following submissions were made:

**New Mangalore Port Trust (NMPT)**
(i). We are sorry for omission of this tariffs in the general revision proposal. We assure this will not happen again.
(ii). In case equipments are used only for port purpose, do we need to propose rates for them also?
(iii). Different rates are required for different purposes for example-shipping, non-shipping, etc. This has been so as per Government instructions
(iv). Government has given availability and utilisation norms in 1982. we have gone by that. The Government letter is attached to our reply.

**Kanara Chamber of Commerce & Industry, (KCCI)**
(i). We agree with the NMPT proposal.
(ii). (a). The TAMP’s suggestion about insuring equipment is good. Please get it done.
   (b). Please do so for fenders also. Otherwise, one ship pays for the folly of the others.

**Association of New Mangalore Port Stevedores**
(i). By and large we agree with the proposal.
(ii). We strongly support the idea of insuring equipment.
(iii). Rates must be the same everywhere and for all purposes. Forklift trucks are taken out for stuffing/destuffing. It must be viewed as ‘shipping’ purpose. (The NMPT says forklifts are not required for use outside. We have not gone to the RTO at all.)

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

(i). This proposal is not for revision of charges for hire of equipment but only to regularise the charges already levied by the NMPT by including such rates in its Scale of Rates retrospectively. These rates are levied for a long time now since the respective equipment have been commissioned. These rates are being levied for such a long time, the NMPT did not even bother to verify their legal validity and routinely include in the draft Scale of Rates presented for consideration at the time of the last general revision of tariffs. Only after being questioned about the validity of these tariffs, the NMPT has now submitted this proposal.

   It is noteworthy that the Board of Trustees of the NMPT had approved these rates at different points of time with a stipulation of obtaining the approval of the competent Authority. Unfortunately, the Port Administration did not follow up the decision taken by its Board.

   A Port Trust has no statutory power to prescribe on its own tariffs for services provided by it. It is legally bound to levy charges as per the Scale of Rates approved by the competent authority. The position emerging in this case is due to the action of the NMPT taken in total disregard of the tariff setting system envisaged in the MPT Act.
Realising the inappropriateness of its action, the NMPT has not only regretted for the omission on its part but also assured that it will ensure in future compliance of the correct legal position. Since the omission has occurred due to an administrative lapse and, not with any other apparent malafide intention, this Authority is willing to take a lenient view to condone the lapse and take up this case for according post-facto approval to the hire charges of equipment levied at the NMPT.

(ii). All the users who have participated in this proceeding have expressed their agreement with the charges levied by the NMPT. That being so, this Authority is inclined to ratify the charges levied by the NMPT and allow them to continue till the next general revision/review of the Scale of Rates, without going into the cost details. This approach is in line with the decision taken by this Authority of allowing the existing rates (except in the case of coastal vessels) to continue at the time of the last general revision of tariffs at the NMPT.

(iii). Even though the existing rates are not taken up for revision now and the cost details are not scrutinised from that angle, it cannot be construed as an endorsement of the costing methodology adopted by the NMPT in this case. This Authority has already passed an Order fixing hire charges of TIL-GROVE RT 880 75 MT capacity mobile crane of the NMPT wherein many principles have been set out with reference to fixing of hire charges of equipment. While proposing for the next revision of the hire charges, the NMPT is advised to formulate its proposal duly taking into consideration the factors like linking of ‘return’ with reference to capacity utilisation, estimation of operation and maintenance cost with reference to past actuals, realistic allocation of common expenditure and overheads, etc.

(iv). To our query, the NMPT has replied that it does not maintain equipmentwise repair and maintenance cost details. This position has already been commented upon by this Authority in its Order relating to fixation of hire charges for TIL ‘GROVE RT 880 mobile crane. This Authority reiterates its advice rendered earlier to the NMPT to strengthen its costing system so that such details are atleast available in future for an objective analysis of the issues.

(v). The users have supported an approach of insuring the equipment of the Port. The Port has, however, claimed that since the insurance cost is negligible the same has not been considered in the computation of the hire charges. It will be reasonable for the NMPT to consider actual insurance cost in the computation of tariffs at the time of the next revision of these tariff items; thereafter, it shall claim damages and compensation only from the insurance company and not from the users. This advice has not only been given to the NMPT in our recent Orders relating to general revision of tariff and fixation of hire charges for TIL GROVE 880 mobile cranes, but also to the other major port trusts.

(vi). The Port has proposed separate hire charges for departmental use, shipping use and non-shipping/private use. It has already been
decided by this Authority in the case relating to general revision of tariffs and the case relating to fixation of hire charges for TIL GROVE 880 mobile crane that it will be sufficient to prescribe only a single rate for hire of equipment. This decision holds good in the instant case also. Notwithstanding the decision to allow the existing rates to continue, it may be necessary for uniformity sake to prescribe single rates of hire charges for the equipment in reference. While ratifying the different rates for different purposes adopted by the NMPT, it will be appropriate to introduce prospectively a single rate of hire charges for each of the equipment based on the existing rates for shipping purposes. It is noteworthy that this approach was adopted for prescribing hire charges for other equipment at the time of the last general revision of rates.

In the case of Road Roller and Tata Truck, the existing rates are not prescribed for 'shipping purpose’. The rates in existence are for non-shipping purposes/private use and departmental use. Since the hire charges to be included in the Scale of Rates will be relevant for realisation of charges by the NMPT from the persons availing the services, it seems relevant to retain the rates prescribed for 'non-shipping purposes/private use’ in these cases.

The NMPT has raised a doubt regarding the need for prescribing rates for equipment used for port's own purposes. The Scale of Rates is to prescribe rates (and, conditionalities) relating to the services provided by the Port. Costing of equipment used by the port may be required for internal purposes and, perhaps, to determine transfer pricing; but, not necessarily the rates therefor. In any case, rates for departmental use need not be prescribed in the Scale of Rates.

(vii). As per the policy decision of the Government, coastal vessels enjoy a concession of 30% in tariffs over the foreign-going vessels. The differential maintained in the tariffs for coastal vessels and foreign-going vessels hiring Pay Loader and 5 T capacity forklifts does not conform to this accepted norm. While ratifying the existing rates for these two equipment, the disparity is to be destored to the accepted level of 30% with a stipulation that the adjusted rates will have prospective effect.

(viii). The NMPT has adopted the reefer charges available in the Scale of Rates of the COPT. Even if an approved rate for some other major port is to be adopted, it is to be justified with reference to costing of the concerned port. On being pointed out, the NMPT has furnished costing details with reference to providing electricity to reefer containers. Based on its calculation, the rates to be charged will be more than the adopted rates. Viewing it as a commercial decision of the NMPT, this Authority is inclined to allow the existing reefer charges to continue.

This Authority has already decided that the unit of levying reefer charges must be reduced to ‘8 hours’. This change in the unit of charging has already been introduced at some other major port trusts and private terminals. A similar change in the unit of charging reefer charges is introduced prospectively at the NMPT.
(ix). This Authority has already prescribed container handling charges at the NMPT with a stipulation that such rates are leviable irrespective of the equipment used. That being so, the container handling rates for using Godrej make 10 tonne fork lift for empty container handling need not be prescribed again. Nevertheless, a separate hire charge for this crane at the existing rate can continue which will apply when this crane is used for handling commodities other than containers.

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

(i). Ratification of the hire charges of equipment and reefer charges levied by the NMPT from the date of operation of each of these equipment and facilities.

(ii). Inclusion of the following rates in the Scale of Rates of the NMPT with immediate effect:

(a). The hire charges for cargo handling equipment:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Description of the equipment</th>
<th>Unit</th>
<th>Rate in Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Coastal Vessel</td>
</tr>
<tr>
<td>1.</td>
<td>Hindustan 2021 Pay loader (front end loader) of Bucket capacity 1.53 Cum.</td>
<td>Per hour or part thereof</td>
<td>546/-</td>
</tr>
<tr>
<td>2.</td>
<td>5 Tonne capacity Forklift Truck</td>
<td>- do -</td>
<td>249/ (subject to a minimum of Rs. 996/-)</td>
</tr>
<tr>
<td>3.</td>
<td>10 Tonne capacity Forklift truck</td>
<td>- do -</td>
<td>530/-</td>
</tr>
<tr>
<td>4.</td>
<td>8/10 Tonne ‘Jessop’ make Road Roller</td>
<td>- do -</td>
<td>Rs. 330/- (subject to a minimum of Rs.1320/-)</td>
</tr>
<tr>
<td>5.</td>
<td>Tata Truck Model LPT 909/36</td>
<td>- do -</td>
<td>Rs. 417/- (subject to a minimum of Rs.3,336/-)</td>
</tr>
<tr>
<td>6.</td>
<td>‘Escorts’ Model 8100, 10 Tonne Capacity Hydraulic Crane</td>
<td>- do -</td>
<td>Rs. 650 (subject to a minimum of Rs.1300/-)</td>
</tr>
</tbody>
</table>

(b). Electricity and monitoring charges for reefer containers:

<table>
<thead>
<tr>
<th>Sr.</th>
<th>Description</th>
<th>Unit</th>
<th>Rate in Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>Description</td>
<td>20’ container</td>
<td>40’ container</td>
</tr>
<tr>
<td>-----</td>
<td>-----------------------------------------------------------------------------</td>
<td>---------------</td>
<td>---------------</td>
</tr>
<tr>
<td>1.</td>
<td>Electricity and monitoring charges for reefer containers</td>
<td>233/-</td>
<td>283/-</td>
</tr>
</tbody>
</table>

9.2. The NMPT is directed to amend its Scale of Rates accordingly.

(S. Sathyam)

Chairman