NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the reference received from the Mumbai and Nhava-Sheva Ship Agents' Association (MANSA) seeking clarification on this Authority’s Orders dated 4 February 2000 and 8 April 2002 about levy of penal interest on delayed payments / refunds at the Jawaharlal Nehru Port Trust as in the Order appended hereto.

( A.L. Bongirwar )
Chairman


Tariff Authority for Major Ports
Case No. TAMP/34/2004 - JNPT

The Mumbai and Nhava-Sheva Ship Agents' Association

ORDER
(Passed on this 18th day of November 2004)

This case relates to a reference received from the Mumbai and Nhava-Sheva Ship Agents’ Association (MANSA) seeking clarification on this Authority’s Orders dated 4 February 2000 and 8 April 2002 about levy of penal interest on delayed payments / refunds at the Jawaharlal Nehru Port Trust (JNPT).

2. The main points made by MANSA are as follows:

(i). The Authority had passed an Order in February 2000 for levying penal interest on delayed payments by the users and delayed refunds by the major ports. At the request of the JNPT, its earlier Order was modified through another Order passed in April 2002.

(ii). While JNPT has introduced an accounting system whereby interest gets immediately billed and recovered from users, there is no system for payment of interest to the users on delayed refunds.

(iii). According to the Order of the Authority, port trusts are liable to pay interest on refunds / rebates, if refunds / rebates are not paid within the stipulated period of 20 days. The JNPT is taking more than 6 weeks to make refunds to the users as per the tariff for rebates and wrong bills. The applications of users claiming penal interest on these late payments are rejected by the JNPT.

(iv). Rebates are refund of tariff discounted / provided for a service as authorised in the Scale of Rates.

(v). The Authority may clarify the penal interest liability on the delayed payment of rebates by the JNPT.

3. In line with the consultative procedure adopted, a copy of the reference made by MANSA was forwarded to JNPT for its comments. The JNPT vide its letter dated 9 June 2004 furnished its comments which are summarised below:

(i). As per the approved Scale of Rates of JNPT, the delay in refund will be counted only 20 days from the date of completion of services or on production of all the documents required from the users whichever is earlier. Definition of refund is not indicated in the Authority’s Order.

(ii). (a). Refunds arise due to rebate which is offered as an incentive to the users towards the following:

(aa). For containers on account of volume, lashing, TT, ship gear and for transhipment;
(ab). For general cargo like cement on annual volume basis;
(ac). For berth hire charges for vessels calling at shallow drought berth.

(b). Rebate allowed is not a regular refund to the users. It is effected on the basis of information received from the users. The question of payment of penal interest on such refunds does not, therefore, arise. The refunds on account of rebate is processed within a reasonable time and credited to the port users’ accounts.

(iii). Refunds also arise due to wrong billing done by port. The users are entitled to receive penal interest of 13.5% if the refund is made by the JNPT after 20 days from the date of production of all documents required for verification of claim. So far, the users have not submitted their claim for penal interest on delayed refunds in the required manner.
(iv). Some users maintain revolving deposit account with JNPT and periodically they deposit amount with the port as per their own assessment of dues. In case, the users claim the excess amount available in their deposit account, the port refunds such excess amount on the basis of claim made by users.

4. A copy of the comments of the JNPT was forwarded to MANSA as feedback information.

5. A joint hearing in this case was held on 27 July 2004 at the office of this Authority. At the joint hearing, the MANSA and the JNPT have made their submissions.

6.1. It was agreed at the joint hearing that the JNPT, in consultation with the MANSA, would furnish a revised proposal differentiating incentive / volume discount allowed and other rebates arising due to non-provision of components of service by the port against a composite fee levied. The JNPT, after a reminder, responded vide its letter dated 7 September 2004. The submission of JNPT and the position reportedly maintained by MANSA are summarised below:

<table>
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<tr>
<th>Sl. No.</th>
<th>JNPT</th>
<th>Position maintained by MANSA</th>
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<tr>
<td>(i).</td>
<td>Rebate on consolidated charges for handling transhipment containers</td>
<td>Since the tariff stipulates different rates, it should be possible for JNPT to invoice the users as per their achievement of throughput. The excess amount collected should be refunded forthwith or subjected to penal interest in case of delay.</td>
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<td>(a).</td>
<td>As per the notified tariff, differential rate is to be applied on achieving a throughput of 3000 TEUs, 6000 TEUs, 9000 TEUs and more than 9000 TEUs. As per the notes to the relevant tariff item, the rate is based on the total TEUs brought by the users in the same financial year and necessary adjustment to the number of transhipment containers has to be made if the status of a transhipment container changes to normal import container. Presently, JNPT is billing at the maximum rate and rebate can be given only after determination of the status of container.</td>
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<td>(ii).</td>
<td>Rebate on transhipment containers are, therefore, normally calculated by JNPT after confirmation of TEUs handled as per the monthly report of the operations department. In the absence of relevant module in the existing billing software, JNPT may be permitted to refund the rebate in the succeeding month (30 days time for JNPT to process the monthly report and effect the refund either by direct payment or by credit note).</td>
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<td>(c).</td>
<td>JNPT is still in the process of finding out a suitable accounting programme so that a smooth procedure for settlement of these rebates can be taken care of.</td>
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<td>(d).</td>
<td>JNPT reiterates that since rebates are paid as an incentive to attract more traffic, penal interest provision may not be insisted on this item.</td>
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<td>(ii).</td>
<td>Volume Rebate</td>
<td>The respective principals are aware of the tariff and they will not accept any debit beyond the tariff level if the required threshold throughput is achieved. Hence, rebates are to be paid within 20 days.</td>
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<td>(a).</td>
<td>Volume rebates are paid for attaining a defined volume per vessel and not on yearly throughput. In the absence of a specific mechanism in the billing module, the process of calculation of volume rebate involves the following:</td>
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<td>(b).</td>
<td>Confirmation of total TEUs handled vessel-wise.</td>
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<td>(c).</td>
<td>Raising invoices relating to cargo handling charges.</td>
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<td>(d).</td>
<td>Consideration of total handling of containers billed for the vessel including Export – TP containers but excluding shut out and import inter – TP containers for the particular vessel.</td>
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| (e).   | Though the number of containers handled by a vessel after the completion of discharge is known in order to give the volume rebate, the total charges to be levied against the vessel including the container handling charges can be known only after completion of all the container related items against a particular vessel are billed. A proper reconciliation is, therefore, required vessel-wise. All these take time. JNPT is releasing volume discount within a reasonable time and JNPT is still of the opinion that this type of rebate should not attract the penal interest provision. | ----
6.2. The JNPT has stated that it is partially in agreement with MANSA on the various issues indicated above and requested additional 10 days in addition to 20 days grace period for payment of rebate brought out at (iii) in the table above.

7. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the 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.

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

(i). In compliance with the policy directive issued by the Government, this Authority had stopped entertaining representations from individual parties for adjudication. The Government has, however, subsequently clarified that this Authority can entertain request for interpretation / clarification in respect of Orders relating to Scale of Rates.

The JNPT is operating the schemes of rebates as per the notified tariffs and the associated conditionalities. It is noteworthy that the MANSA has sought clarification from this Authority regarding the interest liability on the delayed payment of rebates by the port. In this backdrop, the representation received from the MANSA was registered as a case and processed further following the usual consultation procedure adopted.

(ii). Emphasising the principle of level playing ground, this Authority had passed an Order on 4 February 2000 prescribing payment of penal interest on delayed payments both ways i.e., by the port users as well as by the port trust. This Order was subsequently amended on a few occasions to modify the rate of penal interest and grace period in consideration of the requests made by some of the major port trusts. It is noteworthy that the Orders passed in this regard are for common adoption by all ports. Subsequently, in consideration of the difficulties expressed by the JNPT, this Authority granted exemption to the JNPT from implementation of the Orders relating to levy of penal interest for the period 23 March 2000 to 30 September 2001.

(iii). There is no disagreement between the port and MANSA in the matter relating to application of penal interest provision on delayed refunds arising due to non-provision of components of service by port against a composite fee levied or in cases where the tariff leviable is a proportion of rates prescribed for some other activity / facility. The port has, however, pleaded for extension of the existing grace period from 20 days to 30 days citing certain difficulties. The existing penal interest provision is in place for quite some time now not only in JNPT but in all the major ports. The JNPT has not brought out any extraordinary circumstances to deviate from the existing arrangement. Procedural issues like updating the billing module, software, etc., are well within the control of JNPT and it should take suitable remedial measures.
(iv). In accordance with the existing provisions of the Scale of Rates of JNPT, the users are entitled for rebate on consolidated charges for handling transhipment containers for achieving a certain quantum of throughput and incentive if they attain a defined volume per call of vessel. The JNPT has been consistently maintaining that rebates and incentives will not qualify as refund and they are only discounts on charges fixed in the Scale of Rates.

(v). As stated earlier, the JNPT is operating the schemes of incentives in accordance with the notified tariffs and associated conditionalities governing such schemes. Such notified schemes, like other items in the notified Scale of Rates of the port, are further subject to the notified provisions relating to penal interest on delayed refunds. That being so, refunds arising on account of incentives cannot have a different tariff treatment but fall within the existing provisions prescribed in the Scale of Rates.

(vi). As rightly pointed out by MANSA, the notified tariff stipulates differential rates in a sliding scale for the services rendered by the port towards handling transhipment containers. Another area where the port has a scheme of incentive is to offer rebate to the users when they attain a defined volume per call of vessel. Since the rates payable are definite once the prescribed conditions are satisfied it may not be correct to require the users to continue to pay at the maximum slab and wait for the admissible rebate to be allowed subsequently. The users are not to be burdened for the loose ends, if any, in the internal procedure devised by the port to verify whether the prescribed conditions of throughput are satisfied by a party.

(vii). The procedure envisaged by the JNPT to process refund of charges is an internal matter of the port. The users are entitled to get back within a reasonable period of time the amount paid by them in excess of the admissible tariff. Recognising the reasonable time required for a port to complete billing process, this Authority has already allowed 20 days lead time for effecting refund of the excess amount collected by the port. This is further subjected to the users producing the required documents in support of their claim for refund. If such a transaction could not be concluded within the stipulated time limit, the port has to pay penal interest for delay. There does not appear to be any need for any modification to the existing prescription.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority clarifies that the provision in the Scale of Rates of JNPT relating to payment of penal interest on delayed refunds covers all refunds arising in the context of rebates, volume discounts and incentives prescribed in the Scale of Rates. Penal interest is, therefore, payable by JNPT for any delay in refund of such charges beyond the time limit stipulated in its Scale of Rates governing the payment of penal interest.

( 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/34/2004 - JNPT


A joint hearing in this case was held on 27 July 2004 at the office of the Authority. The MANSAA and the JNPT have made the following submissions at the joint hearing:

Mumbai and Nhava-Sheva Ship-Agents’ Association

(i). We want a clear understanding of the term ‘refund’.

(ii). Since JNPT does not allow penal interest, our Principals deduct it from our agency fees.

(iii). We need to differentiate incentive and volume discounts. Some rebates arise because port does not provide the required services. For such rebates, the delay should attract penal interest.

(iv). Volume discounts and incentives should be paid early but they need not attract penal interest.

Jawaharlal Nehru Port Trust

(i). Delay an account of port counts 20 days after all documents for refund are submitted by users.

(ii). Volume discounts are allowed based on annual handling. Some rebates for handling equipment, tractor-trailer, etc., are also allowed.

(iii). Based on the details furnished by Operations department, the Finance Department immediately refunds. Please allow us 30 days for refund.

(iv). Incentives and volume discounts allowed will not qualify as refund.